



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Edgardo Garcia

SUBJECT: SEE BELOW

DATE: September 3, 2020

Approved

Date

9/4/2020

**SUBJECT: POLICE DEPARTMENT PRELIMINARY AFTER ACTION REPORT FOR
THE PUBLIC PROTESTS, CIVIL UNREST, AND LAW ENFORCEMENT
RESPONSE FROM MAY 29 – JUNE 7, 2020**

RECOMMENDATION

Accept the Police Department's preliminary After-Action Report for the public protests, civil unrest, and law enforcement response from May 29 – June 7, 2020.

OUTCOME

The Police Department's preliminary After-Action Report will provide the City Council and community a detailed understanding of the public protests, civil unrest, and law enforcement response from May 29 – June 7, 2020, from the Police Department's operational perspective, including a review of command, policy, training, staffing, and tactical issues that affected police actions. Recommendations to the Chief of Police are outlined in the report for consideration with the intent to positively impact future responses and restore community trust. Some of those recommendations have already been implemented, but the remaining will be further evaluated by the Police Department's executive leadership group for further implementation, as appropriate. This report is not a comprehensive review of the events from all perspectives but will serve as one of many foundational informational pieces that will be used to inform the Independent After-Action Report that will be coordinated in the coming months by the Office of the Independent Police Auditor. That report is intended to have a broader perspective, including input from the community and others, and will contain recommendations for Police Department operational improvements as well.

BACKGROUND

On May 25, 2020, George Floyd, an African American man, was killed during his arrest for an alleged property crime by police in Minneapolis, Minnesota. Public outrage turned to protests that erupted across the nation in response to his death. In San Jose, beginning on May 29, 2020 and continuing daily well into the month of July, there were more than 70 protests, most of which remained peaceful, but some of which became violent. The Police Department's preliminary After-Action Report focuses on the time period between May 29 – June 7, 2020, the first ten days of the protests that drew criticism from some members of the public, the media and City officials related to the Police Department's response.

The Police Department routinely prepares an internal After-Action Report after major events to examine and make improvements to operations, and this report is no exception. However, it is important to note that this report has been prepared from the Police Department's own operational point of view with a review of command, policy, training, staffing, and tactical issues that affected police actions during the May 29 – June 7, 2020 time period. An Independent After-Action Report will be coordinated by the Office of the Independent Police Auditor that will include a broader perspective of the protests, civil unrest, and law enforcement response during that same time period, including input from the community and others. Both reports will serve to improve the Police Department's response to future similar events and restore community trust.

ANALYSIS

On May 28, 2020, the Department's Special Investigations Unit observed a post on social media indicating a protest related to the death of George Floyd would occur at San Jose City Hall on May 29, 2020. Nothing in the social media post suggested the planned demonstration would not be peaceful, but the Department prepared an operational contingency plan as a precaution. Despite many peaceful protesters, the protests that began on May 29 devolved quickly into violent rioting by many people and required police intervention. The Department established a centralized Command Post at the SAP Center and continued to operate from it for ten days (May 29 – June 7). Reflecting similar cascading civil unrest and violence occurring in cities throughout the nation, the Department's crowd control resources were overwhelmed by the size of the crowd and violence of many people within the crowd. An urgent mutual aid request became necessary.

The beginning of the public protests was punctuated by clashes between the rioters in the crowds and police. When the protests developed into violent confrontations, police personnel declared unlawful assemblies and gave continuous dispersal orders. The crowd failed to heed these lawful orders and, instead, many within the crowd launched attacks on police. To contain violent elements in the crowd, prevent rampant destruction of property, arson, and looting, the Department employed common crowd control techniques, including the deployment of "Mobile Field Force Teams" and "Strike Teams." The Department also deployed projectile impact weapons and chemical agents in response to violent attacks on police and to disperse the crowd and restore order. While crowd management and crowd control operations are especially

challenging for law enforcement, police commanders also faced challenges in resources, unity of command, communication, training, experience, and span of control during the initial days of the protests. The violence by certain protesters did steadily wane as the protests continued over several days. As the behavior of the overall crowd moderated, the Department adjusted its tactics accordingly and directed fewer deployments of officers in an effort to continue the de-escalation. The Department was able to deactivate the Incident Command System and Command Post on June 7 (the end of the timeline covered in the preliminary After-Action Report), although dozens of peaceful protests occurred well into July.

The Police Department continually strives to build and maintain strong relationships of trust and legitimacy with the community and is strongly committed to continuous improvement in its work. These events stress-tested the often-difficult responsibility of striking a delicate balance between our community's First Amendment rights and protecting the public from the real hazards of violent civil unrest. While the Police Department's response to the protests as individuals became violent was in line with the Santa Clara County's Mutual Aid protocol, the use of projectile impact weapons, and chemical agents, among other issues, drew sharp criticism and concern from some members of the community necessitating an internal review of the Department's actions in order to make improvements. In addition, both the investigation into officer misconduct and a robust community engagement process will be vital components to ensuring transparency, accountability, and adjustments to Department operations. However, the preliminary After-Action Report does not perform these latter functions and is only meant to serve as an internal procedural review of the Department's response during the operational period. Specifically, the report seeks to examine command, policy, training, staffing, and tactical issues that affected police actions. Informed by the resulting examination, the preliminary After-Action Report includes numerous recommendations in the spirit of better enabling and preparing the Department in its response to future similar events and restoring trust with the community. Among the major findings in the report are several overarching issues that influenced the Department's response: lack of training and experience, insufficient staffing levels, and a need to update policies and procedures.

CONCLUSION

As outlined in the Executive Summary and throughout the report, and as stated previously, the preliminary After-Action Report provides many recommendations for consideration by the Chief of Police as a blueprint for operational improvements that will better prepare the Department to respond to similar incidents of civil unrest in the future. The Department has already modified some policies related to use of force and crowd control techniques and has begun providing crowd control training to patrol personnel. All other recommendations contained in the preliminary After-Action Report will be further evaluated by the Police Department's executive leadership group for further implementation, as appropriate. In addition, an Independent After-Action Report for the public protests, civil unrest, and law enforcement response from May 29 – June 7, 2020 will be coordinated in the coming months by the Office of the Independent Police Auditor. As discussed, that report is intended to have a broader perspective, including from the

community and others, and will contain recommendations for Police Department operational improvements as well.

EVALUATION AND FOLLOW-UP

The Police Department's preliminary After-Action Report and the implementation of the recommendations contained within it, combined with many other items on the Police Reforms Work Plan that have been directed by the City Council, will be used to positively impact future Police Department responses to public protests, civil unrest, and general law enforcement operations as well as community trust. Like this report, many of the other Police Reform Work Plan Items will be brought to the City Council for review and approval once robust community engagement processes and further analyses on those items have been completed, especially related to the use of force and the future of policing.

CLIMATE SMART SAN JOSE

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

PUBLIC OUTREACH

This memorandum will be posted on the City Council Agenda website for the September 15, 2020 Council Meeting.

COORDINATION

This memorandum and the attached Police Department preliminary After-Action Report have been coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

September 3, 2020

Subject: Police Department Preliminary After-Action Report

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CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

A handwritten signature in black ink, appearing to read 'Edgardo Garcia', with a stylized 'Fol' or similar mark to the right.

EDGARDO GARCIA
Chief of Police

By Acting Chief of Police
DAVE KNOPF

EG:JD

Attachment:

San Jose Police Department – Preliminary After-Action Report for the Public Protests, Civil Unrest, and Law Enforcement Response from May 29th – June 7th, 2020

For questions, please contact Elle Washburn, Police Captain, at 408-537-1808.

Police Department Preliminary
After Action Report for the
Public Protests, Civil Unrest and
Law Enforcement Response from
May 29th - June 7th, 2020

2020

Executive Summary

On May 25th, 2020, George Floyd, an African American man, was killed during his arrest for an alleged property crime by police in Minneapolis. The incident was videotaped by bystanders. The involved officers were promptly terminated from the Minneapolis Police Department, but the outraged public demanded arrest and prosecution of the involved officers. Public outrage, fueled by long-standing tension between the African American population and police over other controversial police encounters, fueled protests and rioting throughout the nation over subsequent days.

On May 29th, a planned and peaceful protest took place in San Jose ultimately erupting into a chaotic and violent event that presented operational and tactical challenges for the San Jose Police Department (the “Department”). The accompanying series of events are captured in this report. As is standard protocol, Chief Edgardo Garcia convened a team (AAR Team) to review the Department’s response, with focus on the initial days of the civil unrest. The AAR Team consisted of sworn and non-sworn personnel of varying ranks, with input from Training commanders, Mobile Field-Force (MFF) Training commanders, Special Operations commanders and the BFO Deputy Chief. This preliminary After-Action Report encompasses the period from May 29th through June 7th, 2020 (the “Operational Timeline”). The Chief directed the Team to produce a candid, transparent, and detailed report of the Department’s actions during the Operational Timeline. Additionally, this later coincided with City Council direction in the Police Reforms Work Plan.

Over the course of six weeks, the AAR Team reviewed a wide range of salient documents and data, including department policies and procedures, computer-aided dispatch logs, training materials, and training records. The AAR team also performed open-source research on the response, including reviewing social media and news media footage and reporting. In addition, they reviewed After Action Reports from similar incidents of mass violence and civil unrest to identify recurring issues and challenges, as well as to understand how this incident’s response may have differed.

Throughout the Operational Timeline, the Department’s objective, as expressly stated in its operational plan, was to preserve and facilitate First Amendment rights and allow for peaceful demonstrations while managing crowds and reducing any disruption on surrounding neighborhoods and businesses. When a demonstration is peaceful, these dual objectives balance naturally. However, when elements of a protest devolve into violence, looting, and vandalism, the Department is expected to protect the community and restore order. This burden rests with law enforcement leaders who are forced to make complex decisions in a dynamic, sometimes chaotic environment offering little time to prepare.

On May 28th, 2020, the Department’s Special Investigations Unit saw a post on social media indicating a protest would occur at San Jose City Hall on May 29, 2020. Nothing in the social media post suggested the planned demonstration would become violent, but the Department prepared an operational contingency plan as a precaution. The protests that

began on May 29th devolved quickly into violent rioting requiring police intervention. Public protests continued for several days, punctuated by violent clashes between rioters and police. At times, when the protests morphed into a violent, unlawful assembly, the Department deployed less-lethal munitions and chemical agents to disperse the crowd, protect officers from multiple physical assaults, and restore order. Violent encounters between rioters and police occurred again the following day, May 30th. As the protests continued over several days, the violence steadily waned. The Department was able to deactivate the Incident Command System (ICS) and Command Post on June 7th (the end of the Operational Timeline), although dozens of peaceful protests occurred well into July.

Crowd management and crowd control operations are especially challenging for law enforcement. On May 29th, in a continuation of the recent, cascading violence in cities throughout the nation, the Department's deployed crowd control resources were overwhelmed by crowd violence at scale and mutual aid was required. As the days progressed, and as the behavior of the crowd moderated, the Department was able to transition to a crowd management posture to enable peaceful protests.

Throughout the Operational Timeline, police commanders faced challenges in resources, unity of command, communication, training, experience, and span of control. On May 29th, to contain violent elements in the crowd, the Department employed common crowd control techniques, including the deployment of "Mobile Field Force Teams" and "Strike Teams." Continuous violent confrontations with officers, rampant destruction of property, arson, and looting led to dispersal orders being given. When the crowd failed to heed these lawful orders, police were forced to escalate their response, and employed crowd control batons, less-lethal projectile impact weapons, and chemical agents. This escalated response drew sharp criticism from the public, media, and some City officials.

On May 30th, similar violence erupted among small groups of rioters embedded within the larger, mostly peaceful crowd. Again, following the declaration of an unlawful assembly, and to quell the violence and assaults on officers, the Department employed riot batons, less-lethal projectile impact weapons, and chemical agents to disperse the crowds, protect officers from multiple physical assaults, and restore order. Mobile Field Force units were deployed to interdict rioters that had begun vandalizing and looting numerous businesses downtown.

Beginning on May 29th, and throughout the Operational Timeline, the Department implemented the ICS and established a command post to provide unified leadership, coordination and centralization of resources.

The Department continually strives to improve on its delivery of quality service. These events stress-tested the sometimes difficult and delicate balance between First Amendment rights and protecting the public from the real hazards of violent civil unrest. This report seeks to examine command, policy, training, staffing, and tactical issues that affected police actions. Informed by the resulting examination, numerous recommendations are proffered for consideration that may better enable and prepare the Department in its response to future similar events. These recommendations, and those made in the Independent Police

Auditor's After Action Report, will be reviewed by the Chief of Police for consideration, approval and implementation through collaboration with Department leadership, the Independent Police Auditor, and community stakeholders.

While the Department remains open to and is committed to transparency around the possibility that instances of force may have occurred that were not within policy, determination of such requires a full and complete investigation. Currently, Internal Affairs is investigating specific complaints of misconduct. Those investigations will include interviews with the involved parties and review of relative video footage.

Key Findings

Among the findings in this report are several overarching issues that influenced the Department's response: lack of training and experience, insufficient staffing levels, and a need to update policies and procedures.

In any after action review, themes will emerge. This project was no exception. Below are the identified themes and corresponding recommendations contained within the report. Several recommendations have already been implemented or are in the process of being implemented and are indicated by italics.

- 1. Training & Experience.** Much of the Department's personnel lack experience and tenure in their rank. The devastating effects of the financial crisis, in and around 2012, led to the Department's loss of hundreds of police officers. In recent years, the Department has engaged in rapid hiring which dilutes the experience pool. Most of the Department's officers have never experienced civil unrest of this type. Crowd control training has been minimal and infrequent as mass training requires time away from already depleted patrol staffing. In some instances, commanders lacked the sufficient training and experience in the implementation of the ICS as it related to crowd control.

Recommendations:

- a. As increasing staffing permits return to prioritizing training on overlap days.
- b. Formalize training to be delivered consistently during briefings.
- c. Provide additional training to sworn personnel regarding the use of force during crowd control situations.
- d. Mandate a minimum number of Mobile Field Force (MFF) training annually for all sworn personnel, to include practical scenarios.
- e. Designate patrol Specialists as MFF squad leaders and provide them the relevant training.
- f. Ensure designated personnel attend Santa Clara County Managing Civil Actions in Threat Incidents (MCATI) bi-annual training.
- g. Maintain detailed training records to include rosters and curriculum outlines.
- h. Supervisors should receive Standardized Emergency Management System (SEMS) and Incident Command System (ICS) training, to include practical/tabletop exercises and scenario training.

- i. Department should provide ongoing training in ICS, MFF, and other relevant areas to provide as much experience as practical.
- j. Evaluate whether the training provided to patrol issued 40mm Launchers is adequate and feasibility of providing more comprehensive and ongoing training.
- k. Ensure formal debriefings are conducted after unusual or tactically complex events to enable rapid knowledge transfer.

2. Insufficient Staffing. The Department has one of the lowest officer-to-community member ratios per capita in the country for a major city. There were simply not enough officers to address the event as it unfolded, requiring a Code 30 (request for all available officers in San Jose) and a call for Mutual Aid. Patrol operations were left critically understaffed, and the Department struggled to manage calls for service in the rest of the City. The two Special Operations commanders were faced with too broad a span of control once patrol resources arrived. While there were patrol sergeants accompanying patrol officers, there were no patrol commanders in the field for the first two days, resulting in a lack of continuity in communicating mission objectives and tactical plans.

Recommendations:

- a. Develop a process by which off duty officers can be electronically notified of large-scale events to help bolster staffing.
- b. Develop a plan to activate the Bureau of Administration and Bureau of Investigations personnel to supplement patrol during large-scale events, particularly in positions at the Command Post (prisoner processing, Mutual Aid liaison, logistics, etc.)
- c. Review staffing models to determine if adjustments to the current model are needed to allow for sufficient command and control during large-scale events.

3. Policies and Protocols. In reviewing policies and protocols, the Team found several that should be reviewed and, as appropriate, updated, especially considering that the County Mutual Aid protocol was last updated in 2009.

Recommendations:

- a. Engage the community in a comprehensive review of the Department's policies and procedures applicable to crowd control events and use of force.
- b. Review Department policies, procedures, and unit guidelines to determine the appropriate use of chemical agents during crowd control situations.
- c. Revise the Department's dispersal order script to include POST recommended language, including an explicit warning about force and gas.
- d. Pre-record dispersal orders in the three languages most likely to be encountered in San Jose: English, Spanish and Vietnamese.
- e. Incorporate into protocols a recommendation that unlawful assembly orders be repeated periodically once the Department is prepared to take

enforcement action to avoid prolonged repeated announcements that may cause the crowd to become complacent.

- f. Unlawful assembly orders should be given repeatedly and then enforcement action taken soon thereafter so the crowd does not become emboldened or complacent.
- g. Requirement that briefings prior to deployment to large-scale events includes a review of rules of engagement, use of force and other relevant policies.
- h. Establish a system to accurately record and document the deployment of less lethal weapons, to include the date, time, circumstances and number of munitions.
- i. Supervisors and commanders should ensure the accurate documentation of all events, facts and uses of force as soon as practicable after the event.
- j. Field supervisors should emphasize and ensure complete and accurate information is provided to the transport officers before arrestees are transferred to their custody.
- k. Develop written guidelines for prisoner processing during large-scale events that provide clear direction to arresting, transporting, and booking officers.
- l. Develop a protocol for quality control of booking paperwork/citations, etc. to minimize mistakes that compromise prosecution.
- m. Consider working with the Police Chiefs' Association of Santa Clara County to review the Mutual Aid Protocol (2009) to determine what changes, if any, should be made to bring the protocol in line with current best practices. For future events, provide a mutual aid liaison solely dedicated to managing mutual aid resources.

4. Insufficient Equipment. Without a fixed-wing airplane or unmanned aerial system (UAS), critical aerial surveillance was lacking. When the Department's sole helicopter was not airborne, commanders were left without a broad-scope real time view and tactical decision making lacked complete situational awareness. By the end of the first day, most of the Department's less-lethal munitions and chemical agents were exhausted, requiring an improvised emergency purchase. The Command Van was initially unavailable due to maintenance; however officers were eventually able to retrieve it from the maintenance location and deploy it. The Department does not have a backup Command Van. While there are two new transport wagons already purchased by the Department, at the time of these events there was only one dilapidated transport wagon available to transport prisoners. The Department only has one Long Range Acoustic Device (LRAD) immediately available to make announcements. There are additional LRAD devices available through the Emergency Operations Center which were not utilized.

Recommendations:

- a. Acquire a fixed-wing aircraft to provide critical aerial surveillance to provide commanders appropriate situational awareness.

- b. Acquire hand-held downlink devices in all command vehicles to receive the aerial surveillance feed from air support units.
- c. Fully implement the UAS program and utilize UAS for aerial surveillance in large scale civil unrest events
- d. Coordinate with Emergency Operations Center (EOC) to acquire additional LRAD devices to ensure dispersal orders and announcements can be heard in all directions for several blocks.
- e. Research whether the Department is equipped with the state-of-the-art crowd control tools.
- f. Maintain a storage container (shed or conex box) containing supplies that would be needed during a spontaneous, large scale civil unrest (i.e.: sufficient munitions for a multi-day, large scale event; extra gas filters; flex-cuffs)
- g. Explore upgrading patrol 40mm Launchers with red dot technology to improve accuracy of round placement.
- h. Employ civilian supply personnel during large-scale events to better track equipment use and inventory.
- i. Continue diverse and ethnic recruitment.

5. Media Relations. During large-scale events, the media will be present. During the Operational Timeline, media were often indistinguishable from the crowd, and some were detained or injured in the ensuing riot. Additionally, the Department did not leverage social media to improve communication between the Department and protesters.

Recommendations:

- a. During large-scale incidents, a Press Information Officer (PIO) should be assigned to the command post for impromptu press interviews and messaging.
- b. Press Information Officers should leverage social media to communicate important messages to the public during events.
- c. When dispersal orders are given, they should be published on various social media platforms and include instructions that the order applies to everyone present.
- d. Before deployment, commanders should remind personnel of policies and protocols for interaction with media, and operational plans should include such reminders.
- e. In addition to media credentials, the Department should issue easily identifiable reflective vests, and/or other conspicuous indicators to media representatives, so they are more easily distinguishable in a crowd.

The events beginning on May 29th were unprecedented in the recent history of the San Jose Police Department. Commanders were challenged by the sheer numbers of protesters, the violence committed from within the crowd, and the duration of the daily demonstrations.

The trials of these events severely taxed the physical and mental well-being of the responding officers.

The lessons learned through this experience will inform the development and implementation and best practices for protest response. The Department has already begun reviewing and implementing policies to improve its response to future events. As critical incidents can happen anywhere and anytime, law enforcement must invest in training and equipment, leadership, and community engagement to ensure an effective and appropriate response.

In service to the community, the San Jose Police Department is committed to a discipline of continuous evaluation and improvement of its policing practices. Through this review process, the Team identified several actionable suggestions for improvement to be considered by the Department and the community. Through critical self-examination, leaders in the Department were instrumental in aiding the Team's candid critique, feedback, and recommendations. The City's Independent Police Auditor will be conducting an independent After Action Report that will include community feedback as directed by City Officials. Any findings and recommendations that come from that, along with those in this preliminary After Action Report, will serve to positively impact similar future operations. These findings will no doubt serve to support the intentions as outlined in the City's Police Reforms Work Plan.

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1. Introduction



Figure 1. SJPD Patch and Badge

In June of 2020, San Jose Police Chief Edgardo Garcia convened an After Action Review Team (the “AAR Team”) to review the Department's response to the events that led to civil unrest between May 29, 2020 and June 7, 2020 (the “Operational Timeline”). The goal of this preliminary after action report (AAR) is to examine the San Jose Police Department’s (the “Department”) response to the demonstrations, identify significant dynamics as events unfolded, decisions and practices, and lessons learned in order to better respond to these events in the future while

balancing the Department’s mandates to (i) build and preserve trust and community relationships, (ii) safeguard civil rights, and (iii) maintain public order to protect the lives and property of the community it serves.

Over the course of six weeks, the AAR Team reviewed a wide range of salient documents and data, including department policies and procedures, computer-aided dispatch logs, training materials, and training records. The AAR team also performed open-source research on the response, including reviewing social media and news media footage and reporting. In addition, they reviewed After Action Reports from similar incidents of mass violence and civil unrest to identify recurring issues and challenges, as well as to understand how this incident’s response may have differed.

From this information, the team synthesized observations and recommendations with an emphasis on identifying strengths and areas for improvement related to the response. Through this AAR, the Department seeks to understand how to improve its practices, to learn from these experiences, and to identify training objectives for future incidents.

Critical incidents can happen anytime without warning. The Department recognizes that the ability to respond effectively to such critical incidents requires forethought, training, investment in leadership and community engagement. This is an opportunity to learn and invest in each of these areas. Through this AAR, the Department seeks to transparently evaluate the efficacy of its response, and where the AAR reveals areas to potentially improve its practices, accept and implement the training in policy, procedures, cultural imperatives and best practices.

The AAR Team had only limited time to study the Department’s response to the events addressed in this Operational Timeline. The AAR Team was tasked by Chief Garcia to

thoughtfully and deliberately search for opportunities to learn and improve, so that any future events are managed using best practices and community-oriented frameworks. Crowd management and control are among the most complex areas of police work. Significant civil unrest is a rarely occurring but highly consequential event. The infrequency of such events limits the real-world opportunities to accumulate experience and institutional knowledge. The police must manage the unique and sometimes delicate balancing of twin mandates: preserving and facilitating community members' rights to peaceably assemble, their free speech and protecting the broader community from chaos and crime.

When a protest or demonstration is orderly and peaceful, these missions comfortably coexist. However, when elements of a demonstration resort to violence, looting and vandalism, the police are expected to take action to uphold the rule of law and protect the community. This burden rests with law enforcement leaders who are forced to make complex decisions in a highly dynamic and volatile situation with a broad, shifting continuum of events and actors and actions. Within a single field of view, vastly outnumbered officers must contend with intermingled groups of peaceful demonstrators, those who would use the protests as a pretext for amplifying disorder creating chaos in the name of a variety of political beliefs (many unrelated to the cause of social justice), those engaged in the planned or opportunistic theft or destruction of property, and those persons acting with (in some cases premeditated) intent to injure and harm police, or unwitting community members swept into the violence.

The Department was further challenged by the reality that the demonstrations sparked by the George Floyd incident were fueled by specific antipathy towards police and policing for high profile incidents widely believed to constitute misconduct and brutality. In this case the police were not just tasked with managing a protest, they were tasked with managing a protest that was expressing outrage with acts of injustice by police and more broadly the institution of policing itself. In this environment, quite different from, for example, a labor strike, or protest related to federal immigration policy, the police face a paradox of being the specific target of anger and violence, are simultaneously charged with quelling the violence, but in doing so are further delegitimized in the view of the protesters and a spiral of negative action and reaction takes hold.

Of course, the recommendations made in this report are made with the benefit of hindsight. The origins, locations and compositions of future events are extremely difficult to predict, as are the vagaries of crowd psychology and behavior. As such, it would be naive to say with certainty that a different police response, even in a similar situation, will result in a better outcome. However, despite these inherent challenges, the recommendations herein are offered in the spirit of continuous improvement in Department practices and restoration of community trust.

The AAR Team reviewed hundreds of videos of the events that transpired during the Operational Timeline, many of which were collected from public sources. These videos vary significantly in picture quality, editing, timing and perspective, and, while an

important element in our reconstruction, we certainly do not have a complete video picture of the events. The AAR Team also reviewed relevant documents and artifacts such as local news articles, local news video and City Hall video surveillance to paint as complete a picture as possible. Video clips are embedded throughout this report to provide additional context to the narrative. Given the incredible volume of source material, it was necessary to distill the available video down to selected clips that the AAR Team believes gives perspective relevant to the narrative facts. The embedded video clips largely focus on police-protester interaction and unlawful behavior, as these moments are more central to the exploration of how to generate better outcomes from these interactions. Due to inherent time limitations, there are, of course, significant intermittent periods of peaceful assembly documented by the videos, and it is important to keep that context in mind when viewing the curated clips. Additionally, all open source videos are available for viewing, unedited, in their entirety on the following link.

(<https://www.youtube.com/channel/UCUJ9Yq6WrOrK8Ia0KdS0hGA/playlists>)

This AAR Team did not address whether specific allegations of misconduct or excessive force used during these events were within policy as that analysis is currently being made as part of an ongoing Internal Affairs investigation.

2. Background

On May 25th, 2020, George Floyd, an African American man, was killed during his arrest for an alleged property crime by police in Minneapolis. The incident was videotaped by bystanders. The involved officers were promptly terminated from the Minneapolis Police Department, but the outraged public demanded arrest and prosecution of the involved officers. Public outrage, fueled by long-standing tension between the African American population and police over other controversial police encounters, fueled protests and rioting throughout the nation over subsequent days.

The San Jose community and the Department were also grappling with the stresses, disruption and operational changes inflicted by the expanding Covid-19 global crisis. The pandemic was caused by a coronavirus that causes the disease Covid-19, an infectious and potentially deadly disease that spreads readily through the air and on surfaces via expelled droplets from infected persons. As a precautionary measure, briefings were decentralized, and non-essential training and gatherings were canceled.

The Department recognizes that the vast majority of public demonstrations do not involve riotous or unlawful activities. Whenever possible, the Department uses crowd control strategies and tactics to mitigate the possibility of a lawful demonstration degrading into an unlawful assembly or a riot. Disorderly crowds are inherently volatile and, by their very nature, have the potential to cascade into acts of damage to property, injury or even death. Accordingly, the Department has an affirmative obligation to interdict civil disorder and to restore a lawful and safe environment for the community.

On May 28th, 2020, the Department became aware of a planned protest scheduled to take place in front of San Jose City Hall. That protest, like others in the country, erupted into a violent and chaotic chain of events. There were more than 70 protests in San Jose, beginning on May 29th, 2020, and continuing daily well into the month of July, most of which remained peaceful. This report will focus on the time period between May 29, 2020, and June 7th, 2020, which will be heretofore referred to as the Operational Timeline. Given the short time frame allowed to produce this report, the AAR Team focused heavily on the first few days of protests which drew criticism from some members of the public, media and City officials. A more comprehensive AAR would require more time allotted to view Body Worn Camera footage, conduct interviews, conduct research and review data.

2.1. Demographics

According to the U.S. Census Bureau, as of [2019] the City of San Jose's population was 1,021,795. The San Jose Police Department has strived to be a mosaic of diversity that reflects the community it serves. The Department recognizes the notion that officers should mirror the community in the makeup of race, color, ancestry and origin. The Department is committed to treating all people with dignity, fairness and respect, protecting their rights and providing equal protection under the law.

As of June 10th, 2020, the Department was made up of 41.84% of Caucasian, 23.86% Hispanic/Latino, 14.74% Asian American/Pacific Islander, 15.3% Not Specified, 3.42% African American, and 0.61% Native American. (Personnel, 2020)

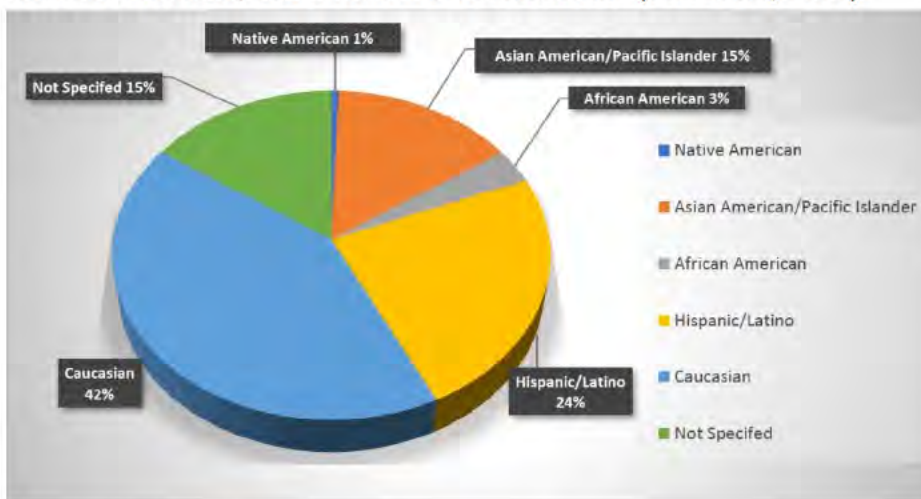


Table 1. SJPD Sworn Officer Demographic

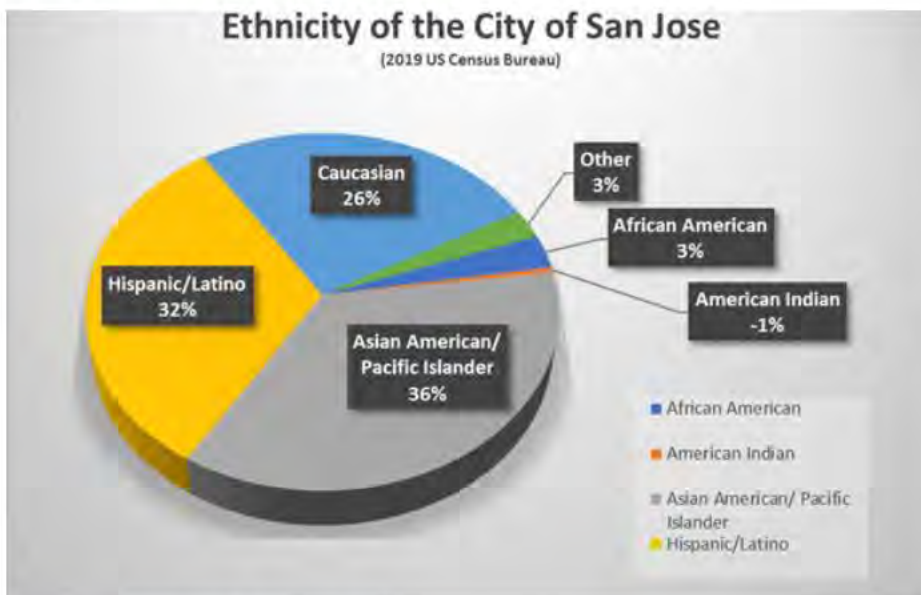


Table 2. Ethnicity of the City of San Jose

According to the 2016 FBI Uniform Crime Reporting program, the Department operates with one of the lowest officer-to-community member ratios per capita of any large city police department in the country, with only 9 officers per 10,000 population. While the Department has always “done more with less” over the years, significant events such as those detailed in this AAR reveal the real potential dangers of such anemic staffing. In critical incidents at scale requiring surge resources such as those analyzed in this Assessment there are simply not enough officers to simultaneously provide incident management and adequate field operations for the City.

In 2008, the Department had slightly more than 1400 officers, with more than 50% of the Department having more than ten years of experience. In the wake of the financial crisis that began in 2008, and subsequent voter-passed measures reducing pensions and benefits for officers, the Department experienced a major exodus as hundreds of officers left for more financially stable agencies, were laid off by the City, or retired. The Department has for the past several years pursued an accelerated hiring schedule, as it works to rebuild its ranks. As of July of 2020, the Department consisted of 1136 officers, of 1159 budgeted positions. Of those officers, 945 officers were rated as “available for duty.” As a result of the accelerated hiring programs, the patrol ranks are staffed with employees on average with significantly less tenure and experience than a decade ago. Currently, 55% of patrol officers have fewer than five years of experience and 38% of patrol officers fewer than three years of experience.

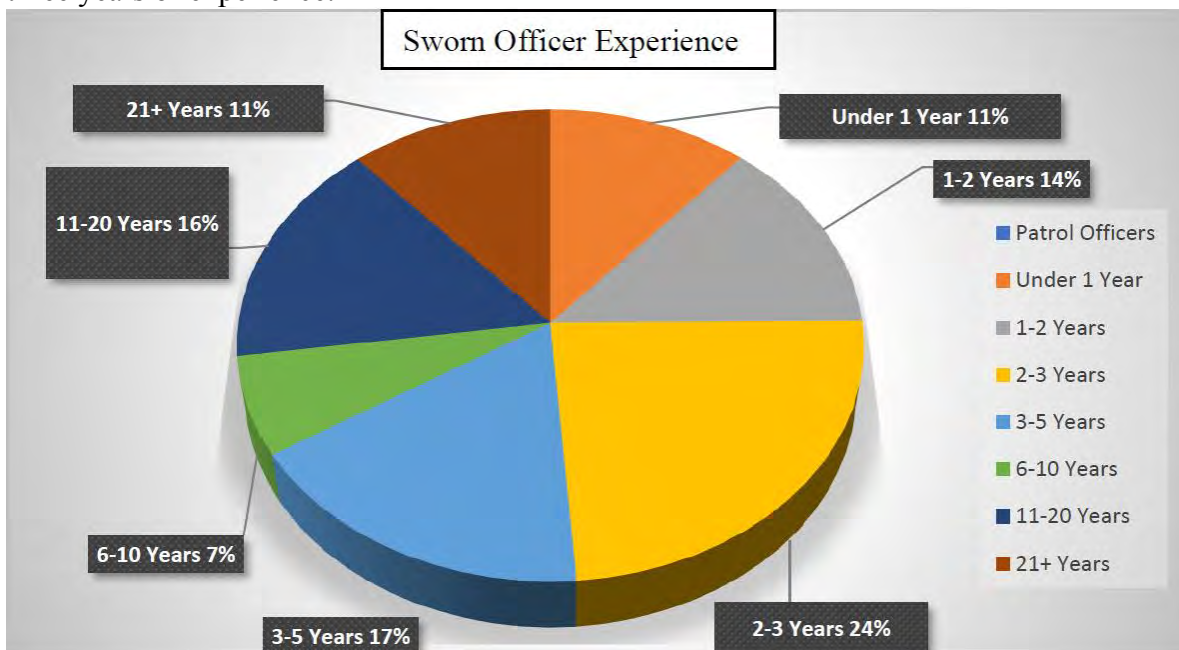


Table 3. SJPD Sworn Officer Experience

Similarly, the Department has resumed promotions to fill supervisor ranks, resulting in a significant number of supervisors who also lack tenure and experience in their ranks. One-third of the patrol lieutenants have less than one year of experience in their rank. The majority, 56% have fewer than two years of experience in their rank. The rank of sergeant closely parallels these numbers. One-third of patrol sergeants have less than one year of experience, while 36% have fewer than two years of experience in their rank.

The Department has three patrol shifts each day. Day shift (Watch 1) hours are 0630 hours until 1630 hours. Swing shift (Watch 2) hours are 1500 hours until 0100 hours. Midnight shift (Watch 3) hours are 2100 hours until 0700 hours. During the Operational Timeline, the majority of the officers who were dispatched to the downtown area in response to the protest were swing shift officers. 69% of these officers had less than 5 years of experience with the Department.

(For officer experience on each shift reference Appendix 29.2, 29.3, 29.4)

2.2. Findings

As a result of economic cycles and historical hiring trends, the Department is challenged with a large number of its sworn staff having less than three years tenure in their roles. As a young Department it is working to rebuild the institutional knowledge and experience it once had as a more seasoned force. Most officers have never experienced a large-scale event involving civil unrest, mutual aid, or implementation of ICS. Academy training and the mandated annual training is insufficient for ensuring staff are the highly trained operators expected by the public.

In prior years with more robust staffing, officers received internal Department training on staffing overlap days, commonly known as “hole days.” Hole days occur every two weeks, when two teams in a particular district overlap. The overlapping officers are dispersed throughout the city to fill “holes” in the watch left by officers out sick, with a day off, etc. In times when resources permitted, these hole days allowed for several hours of training without significantly impacting patrol operations. When staffing levels drastically decreased, officers working their hole day were too critical to maintain minimum patrol operations to allow training time.

As shown in the San Jose Police Department ethnicity table, the Department should continue to work on diverse and ethnic recruitment mirroring and potentially exceeding the ethnic make-up of the City.

Prior to the Covid-19 pandemic, each patrol shift would begin with roll call and briefing. These briefings typically last between a few minutes and up to 30 minutes or more. They provided an opportunity to disseminate information and training and to allow teams to meet with their supervisors. Covid-19 social distancing protocols prohibiting group gatherings meant that officers had not attended briefings since mid-March. Most communication with personnel was done individually, in small groups with sergeants, and via electronic communications.

2.3. Recommendations

- a. As increasing staffing permits return to prioritizing training on overlap days.
- b. Formalize training to be delivered on a consistent basis during briefing.
- c. Develop a process by which off duty officers can be electronically notified of large-scale events to help bolster staffing.
- d. Continue diverse and ethnic recruitment.

2.4. Recent History of Crowd Control in San Jose



Figure 2. SJPd Crowd Control circa 1968

Crowd Management and Crowd Control are often misused synonymously but are actually distinct concepts. Crowd Management is defined as "...strategies and tactics employed before, during and after a gathering for the purpose of maintaining the event's lawful activities." These strategies include but are not limited to: communicating with leaders before and during the event, police presence and event participation, blocking traffic to facilitate a march, and bicycle officers monitoring the crowd.

Crowd Control is defined as "law enforcement response to a pre-planned event or spontaneous event, activity, or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd."¹ These strategies include but are not limited to: skirmish lines, mobile field force techniques, targeted and mass arrests and the use of force generally.

The Department introduced the Rapid Deployment Team or RDT model of crowd control in the early 1990s. This system of training is similar to the crowd control system currently utilized, however there are some differences when it comes to tactics and nomenclature.

RDT refers to teams of officers who were trained in crowd control techniques and would respond to critical incidents that were pre-planned or spontaneous. Typically, officers on swing shift were provided this additional training and then utilized as RDT for pre-planned events such as Cinco de Mayo and Mardi Gras. These officers would be designated as RDT officers at the beginning of their shift and then when called upon, they would "rapidly deploy" as a team.

RDT tactics were derived from best practices in law enforcement at the time and with a foundation in military-style formations and marching. Officers were issued 42-inch batons and special crowd control helmets with face shields. As RDT training progressed into the early 2000's, tactics and nomenclature also changed. This was due to changes in best practices, POST Standards and implementation of the ICS into Crowd Management tactics.

Officers trained under the RDT system of training would have been taught tactics such as skirmish line formations, lateral support teams, marching and movement, arrest teams, and encirclements. In each of these tactics the main theme was a "follow the leader" type of system. A sergeant or supervisor would provide direction to an officer at the front of a line

¹ CA POST Guidelines - Crowd Management, Intervention, and Control p. 47
https://post.ca.gov/Portals/0/post_docs/publications/Crowd_Management.pdf

of officers and that officer would move into position. The officers behind the lead officer would follow behind the officer in front of them. This training included use of the 42-inch baton in a port-arms position for crowd movement and two-handed baton strikes.

During this time, the City of San Jose did not suffer from large scale incidents of civil unrest. Most of the crowd control incidents that faced the Department were rooted in celebrations of holidays such as Cinco de Mayo or Mardi Gras. During these events, large crowds would gather, and a “cruise” would often occur through the downtown core and East San Jose. These celebrations would attract thousands of young people. The crowds would often become unruly, take over streets and intersections, as well as destroy property. If left unchecked, these crowds would often descend into violence. The Department used the RDT system to deploy mobile teams of officers into these areas and disperse the crowds. Additionally, a traffic diversion would often be implemented to keep traffic moving and force vehicles onto the highway and out of the areas where crowds were congregating. The methodology was to disperse the crowd to prevent property damage and violence and to keep the vehicles moving to prevent reckless driving and “sideshows.” Arrests and enforcement action were often reserved for acts of violence or extreme property damage only.

2.5. Crowd Control from a Training Perspective

In 2014, a patrol lieutenant took over as the RDT Commander and began implementing tactics and strategies from ICS and from the POST Guidelines on Crowd Management, Intervention and Control². The name RDT remained, but some of the tactics began to change. The RDT Commander introduced concepts such as “plain English” commands versus older military-style commands such as “route step” or “counter column.” Also, the concept of every officer hearing a command and then repeating the command was introduced. This was to ensure that every officer had at least a basic understanding of what was happening instead of utilizing the “follow the leader” methodology.

New case law pertaining to the use of force was included in the training. Officers were introduced to the concept of “passive non-compliance” and “active resistance” as defined by the courts in *Young v. County of Los Angeles* (*Young v. County of Los Angeles*, 2011)³.

Officers were provided tactics to deal with “passive resisters” such as the “shoulder spin” and “arm drag”. Officers were also trained on appropriate levels and types of force for “active resisters” to include baton strikes and takedowns.

In 2016, The City of San Jose hosted a rally for then Presidential Candidate Donald Trump. The Department utilized RDT, mutual aid, and the ICS system to prepare for and respond to this event. Several acts of violence between opposing groups of political protesters occurred during this event. The Department faced national criticism, and ultimately a lawsuit, which

² https://post.ca.gov/Portals/0/post_docs/publications/Crowd_Management.pdf

³ *Young v. County of Los Angeles*, 655 F.3d 1156, 1163-1166 (9th Cir. 2011) County of Los Angeles

claimed the Department's response to the acts of violence was "tepid and tardy" and accused Mayor Liccardo of ordering the Department to "stand down." (Gonzalez, 2016)⁴

In the years that followed, several politically divisive events occurred throughout the United States. These events resulted in increasing civil unrest in San Jose and throughout the Country. Due to this rise in civil unrest, the Department re-evaluated its tactics, strategies, and crowd control practices. Part of this re-evaluation was to reach out to, meet with and learn from other agencies throughout California as well as agencies in Washington and Oregon. In addition to this, the Department contracted Modern Tactical Services⁵ to provide the following training classes for the Department's crowd control trainers and command staff:

- Command Staff Strategies for Crowd Management and Control
- Mobile Field Force Squad Leaders, Tactics and Critical Decision Making

As a result of this evaluation and training the Department implemented several changes to its crowd control practices. These changes included the elimination of RDT terms and practices and the implementation of Mobile Field Force (MFF). MFF was not just a crowd control tactic, but rather a means of deploying large numbers of personnel and resources in response to critical incidents whether they are pre-planned or spontaneous. MFF provided training and tactics to deploy quickly and efficiently.

In addition to these deployment tactics, new crowd control tactics were implemented. These tactics included the elimination of "Lateral Support" and implemented "Columns of Two," "Cross Bow" and "Roll Out" in order to clear and hold intersections, make arrests or rescues, and move with speed and agility. Also implemented was the "Baton Ready" position which replaced the "Port Arms" position. This tactic was implemented to allow more space between the crowd and officers on the skirmish line. Also, implemented was the "Ready Position Push" which utilizes the tip of the baton to move a crowd versus officers utilizing a cross-check or similar baton strike. Use of force training was also expanded upon and additional case law was introduced (*Headwaters Forest Defense v. County of Humboldt*). *Reference Appendix 29.18 for complete court case.*

The Department also explored additional tools and training for less-lethal impact weapons, which afford officers alternatives to the limits of body weapons and batons. The use of the 37mm less-lethal launcher along with a multi-foam baton round were implemented for crowd dispersal. The 40mm Frangible Oleoresin Capsicum (OC) round was also implemented by Special Operations to both directly and indirectly target violent protesters and disperse OC powder into the area of violent rioters within the crowd. OC Blast Grenades were also introduced as another means of dispersing violent crowds without the utilization of projectile impact weapons. Special Operations implemented new practices in personnel deployment via a utility van with personnel skids. A Long-Range Acoustic

⁴ <https://www.nbcbayarea.com/news/local/trump-supporters-sue-san-jose-for-after-rally-attacks/116712/>

⁵ <http://moderntacticalservices.net/index.html>

Device (LRAD) was procured and utilized in order to provide clear and articulate dispersal instructions to large crowds. These munitions and equipment are described in greater detail later in this report.

In addition to these tactics and tools, a new philosophy was adopted. The implementation of command and control was emphasized. Foreseeable contingencies were planned for in advance, operational plans put the protesters' First Amendment rights at the forefront of tactics, and additional contingencies such as mass arrests and mass casualties were anticipated and included in planning. When possible, protest organizers were contacted in advance and the Department coordinated with them in order to ensure a safe environment for all in attendance.

A new strategy of zero tolerance for violence or property damage was implemented with an emphasis on targeting specific individuals responsible for these criminal acts. Taking directed enforcement action against criminal actors was emphasized, thus allowing peaceful protesters to continue engaging in their lawful activities. The overall philosophy was that one or more inciters did not make for an unlawful assembly. Rather, when violent actors in a crowd were too numerous or were able to motivate the crowd in general to commit violent or destructive acts, then the protest would be considered an unlawful assembly.

The Department also began implementing practices such as the deployment of armored vehicles, overwatch snipers, and tactical REACT teams to crowd control events. These changes to the deployment model were in direct response to mass casualty events that occurred throughout the United States. These events included vehicle-borne, active shooter, and sniper mass casualty incidents that occurred during large crowd or protest events.

2.6. Crowd Control Training in the Basic Police Academy

The Commission on Peace Officer Standards and Training (POST) has established guidelines⁶ and training for law enforcement's response to crowd control. These guidelines provide information for law enforcement to consider when addressing the complexities and broad range of issues related to crowd control. The guidelines are not meant to constitute policy, nor are they intended to establish a statewide standard. They are solely intended to be a resource for law enforcement leaders to provide guidance for the facilitation of First Amendment rights while allowing discretion and flexibility in the development of individual agency policies.

All officers are provided a four-hour block of instruction on crowd control techniques in the Basic Police Academy, with the learning objectives outlined in Learning Domain 24. The four-hour block includes lecture and practical application. Once officers graduate the Academy, there is no POST requirement for ongoing crowd control training.

2.7. Ongoing Training for Patrol Officers

The Department assigned a patrol lieutenant as the coordinator for MFF Training. Since the Trump Rally in June of 2016, the coordinator arranged two training sessions with Modern Tactical Services, a company that specializes in crowd control training. The first training occurred in September of 2016 and was a 3-day class titled, "Crowd Management Strategies for Command Staff." Of the sixteen class attendees, only three were working during the period analyzed: one Deputy Chief, one captain, and one sergeant. The second 3-day class, "Mobile Field Force Leader and Squad Leader Training," was provided in April of 2017. Of the sixteen class attendees, only three were working crowd control during the period analyzed: one Special Operations officer, one Special Operations sergeant and one Motor sergeant.

In January 2017, both day shift and swing shift patrol personnel were trained in anticipation of President Trump's inauguration. These training sessions were approximately 45-minutes long and included the new tactics referred to above. Additionally, swing shift patrol received 45-minutes of MFF training in November 2018. With this limited amount of training time, training primarily consisted of refresher training in the police garage. Topics covered included recognizing the difference between passive non-compliance and active resistance, as outlined in the case law decision in *Young v. County of Los Angeles* (*Young v. County of Los Angeles*, 2011)⁷ basic formations & movements, baton techniques, and arrest tactics. The AAR Team compared the list of officers who received the most recent MFF training in December 2018, or who had received Basic Academy MFF training since

⁶ https://post.ca.gov/Portals/0/post_docs/publications/Crowd_Management.pdf

⁷ *Young v. County of Los Angeles*, 655 F.3d 1156, 1163-1166 (9th Cir. 2011) County of Los Angeles

that time, with the watch lists for the swing shift officers who were working during the first three days of the Operational Timeline when the bulk of the conflict occurred. The AAR Team determined that only approximately 50-52% of the swing shift officers assigned to the crowd control events had received the 45-minute training provided in 2018. All officers received the 4-hour block in the Academy.

While Special Operations trains in MFF tactics at least quarterly, patrol officers have not been provided any MFF training since December 2018, unless they happened to graduate from the Academy since that time.

2.8. Countywide Training

In 2016, the Santa Clara County Sheriff's Office began inviting outside agencies to participate in their MFF training in preparation for Santa Clara County Mutual Aid Mobile Field Force (SCCMAMFF) agreement. This agreement was finalized and signed by the county chiefs in January of 2018. (*Reference Appendix 29.17 for complete details*).

Since that time, county mutual aid MFF training consisted of 24-hours of Managing Civil Actions in Threat Incidents (MCATI). The MCATI training was broken down into three 8-hour training sessions. The MFF coordinator, a lead Academy instructor, and an officer instructor attended all the required training and received MCATI training certificates. The most recent training they attended was in August of 2019.

2.9. Findings

While officers develop a familiarity and skills handling the types of events that occur daily in a patrol assignment, even critical incidents, most officers have never worked through an event of significant civil unrest at all, let alone on the scale experienced during the Operational Period. Most of the officers working during the Operational Period possessed fewer than five years of experience as police officers. Very few had ever been confronted with an event of this type or scale.

The Department would benefit from increased focus on training for unusual and unpredictable events such as large-scale civil unrest. Operational personnel need to understand and have confidence executing the law, policy, tactics and mission objectives. Officer discipline and restraint are essential components in successfully managing crowds, and an integral part of developing such discipline and restraint is receiving regular, realistic and relevant training.

While some command staff have received training in crowd control, few of those trained were involved on the ground during the Operational Timeline. While sixteen Department

personnel have received Squad Leader training, most were not part of the personnel working the events during the Operational Timeline.

2.10. Recommendations

- a) Mandate a minimum number of Mobile Field Force (MFF) training annually for all sworn personnel, to include practical scenarios.
- b) Ensure designated personnel attend Santa Clara County Managing Civil Actions in Threat Incidents (MCATI) bi-annual training.
- c) Maintain detailed training records to include rosters and curriculum outlines.
- d) Training should include regular tabletop critical incident or event exercises involving mutual aid responders, other first responders and key community leaders.
- e) Designate patrol Specialists as MFF squad leaders and provide them the relevant training.

3. Intelligence Before Protests Began

It is important to contextualize the mindset of the officers in the days leading up to and throughout the civil unrest. In the days leading up to and throughout the period of protests, the Department received numerous intelligence bulletins from Northern California Regional Intelligence Center (NCRIC) warning of criminal activity, looting and crowd violence erupting from initially peaceful protests occurring throughout the country. NCRIC also warned that there had been several instances of protest activities having been infiltrated and co-opted by violent political extremists, including identified domestic terrorist groups and organized looters. In addition to the dozens of officers injured by violence, there were several instances in which law enforcement officers were specifically targeted with premeditation for assault and murder.

The Department received shared bulletins from DHS, FBI, Cal OES, law enforcement agencies, and other local authorities. The following are excerpts from some of those bulletins in the days leading up to May 29th, 2020.

- “Domestic terrorists could exploit ongoing unrest to engage in violence against law enforcement and others engaging in protected activities.”
- A Federal Security Officer at the Federal Building in Oakland was murdered during a protest.
- “The types of people or groups seeking to carry out violence in response to the death of George Floyd in Minneapolis has shifted in many cities. The initial violent looters and protesters were believed to be organic members of the local communities. However, domestic violent extremists are attempting to structure the protests to target specific symbols of state, local, and federal authority.”
- “DHS anticipates armed individuals will continue to infiltrate the protest movement. DHS assesses with high confidence during the period of darkness from 30 to 31 May the violent protest movements will grow and DVEs and others will seek to take over government facilities and attack law enforcement. DHS further assesses civil unrest following incidents involving law enforcement’s use of lethal force pose a high risk of escalating to both premeditated and random attacks targeting law enforcement officers nationwide.”
- “...a possible incendiary transfer device located at an identified auto parts store in Minneapolis, Minnesota, as of 30 May 2020.”

- “DHS assesses that illicit actors seeking to incite violence at otherwise lawful protests probably are monitoring local law enforcement communications to identify vulnerabilities in their operational security posture. The emergence of publicly accessible applications allows users to search and listen to law enforcement channels streaming online, potentially providing illicit actors insight into operational planning and response efforts. Some technically advanced actors may seek to undermine law enforcement’s situational awareness and ability to coordinate operations by disrupting or interfering with law enforcement communications.”
- “We received an unconfirmed report that a large group attempted to rent multiple U-Haul vans one-way from Napa to San Francisco this afternoon. Unknown if this occurred elsewhere as well. This may be indicative of a tactic that could be employed to deliver weapons, IEDs, or threat actors into our AOR...or to carry away loot.”
- “DHS assesses that while the strengthened state and local force posture will deter some violent opportunists from participating in unlawful activities, more organized groups are likely to continue to incite and conduct violence and use social media to amplify media coverage of law enforcement reactions to violent protests and coordinate further illicit violent activities.”
- “Since Friday 29th May 2020, at least 100 law enforcement officers (LEOs) have been injured while responding to protests and riots around the nation, most commonly by projectiles and physical assaults along skirmish lines, while defending property, or in vehicles, but also by vehicular assaults, shootings, and edged weapon attacks, according to open-source reporting. LEOs should be aware of the tactics, techniques, and procedures employed by criminally-minded actors to devolve peaceful protests into violence.”
- “As the protests persist, DHS assesses that organized violent opportunists—including suspected anarchist extremists—could increasingly perpetrate nationwide targeting of law enforcement and critical infrastructure. These efforts are also likely to increase in complexity as violent opportunists adjust tactics in response to law enforcement operations. DHS lacks detailed reporting indicating the level of organization and planning by some violent opportunists and assess that most of the violence to date has been loosely organized on a level seen with previous widespread outbreaks of violence at lawful protests.”

- “...movements associated to the in-custody death of George Floyd focus on LE. And similarly, protests associated to the tragic event in Minneapolis are rapidly being usurped by criminals and instigators attempting to take advantage of the anger and strained public resources. Most protests, rallies, and marches are protected forms of expression and assembly. Like your agencies, the NCRIC is dedicated to providing a safe environment for exercise thereof. Much of the recent civil unrest, criminality, and violence is being perpetrated by threat actors who merely want to take advantage of the prevailing situation for their own ends by leveraging legitimate protest.”

While the Department was aware of these events happening throughout the country, there was no specific intelligence to indicate the protest planned for May 29th would become a large-scale incident. Once violence erupted, it was evident that San Jose was facing the challenges of rioting, looting and vandalism experienced throughout the nation.

3.1. Media Coverage Before Protests

In the days leading up to the protest activities in San Jose, other cities experienced significant damage and violence related to civil unrest. The media was saturated with images from events throughout the country depicting peaceful protests that erupted into uncontained violence and looting. Cities like Minneapolis, Seattle, Los Angeles and New York City experienced so much violence that National Guard units in nearly half of U.S. states were mobilized to help major cities manage the riots.

- George Floyd riots escalate nationwide, carnage near the White House (Fox News, n.d.)⁸
- Seven shot in Louisville as protests turn violent nationwide overnight (The Washington Post, n.d.)⁹
- Protests, fires rage through the night in Minneapolis (The Washington Post, n.d.)¹⁰
- Protests in George Floyd's death turn violent in Brooklyn; cops injured; hundreds arrested (ABC 7, n.d.)¹¹
- Damage Left Behind at Colorado Capitol After Protest Which Turned Violent (4 CBS Denver, n.d.)¹²
- National Guard support requested by city to combat violent protests in south Minneapolis (Eyewitness News, n.d.)¹³



Police stand near an overturned vehicle and a fire as demonstrators protest the death of George Floyd, Sunday, May 31, 2020, near the White House in Washington



Seven people were shot during protests in Louisville on March 28 over the killing of Breonna Taylor, a black woman fatally shot in her apartment in March. (Reuters)

⁸ <https://www.foxnews.com/us/george-floyd-riots-escalate-nationwide-carnage-near-the-white-house>

⁹ <https://www.washingtonpost.com/nation/2020/05/29/seven-shot-louisville-police-brutality-protests-turn-violent-nationwide-overnight/>

¹⁰ <https://www.washingtonpost.com/nation/2020/05/28/minneapolis-protests-george-floyd-death/>

¹¹ <https://abc7ny.com/foley-square-protest-gwen-carr-union-eric-garner/6218834/>

¹² <https://denver.cbslocal.com/video/4570033-damage-left-behind-at-colorado-capitol-after-protest-which-turned-violent/>

¹³ <https://kstp.com/minnesota-news/lake-street-target-looted-as-protests-continue-in-minneapolis-may-riots-george-floyd/5743072/>

4. May 29th, 2020 (Day 1)

On May 28th, 2020, in the late afternoon, the Special Investigations Unit discovered a flyer on social media detailing a protest that was scheduled to occur the following day. Special Operations developed an operational plan and passed the event information to patrol so MFF teams could be designated should the need for police response arise. There was no intelligence to suggest this would be a large-scale event that would be resource intensive.

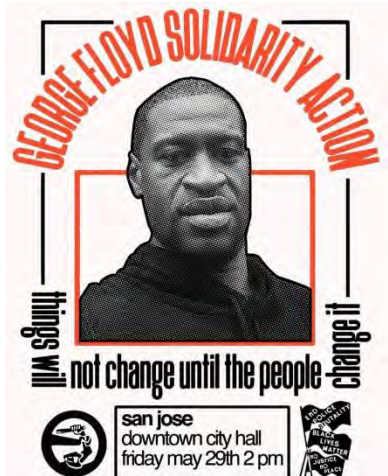


Figure 3. Social Media Flyer

The Department recognizes the fundamental role of law enforcement to protect the rights of all people to peaceably assemble, demonstrate, protest or rally. The Department also recognizes it bears responsibility to protect the lives and property of all people and maintain public safety. These are often competing goals. With these goals in mind, the Department developed an operational plan with the stated objective of managing the crowd, protecting First

Amendment rights of all involved, and ensuring the safety of persons and property around the event. On Friday, May 29, 2020, dayshift patrol was informed that a planned protest was to occur at San Jose City Hall with a start time of 1400 hours, and two MFF teams (ten officers and one sergeant per team) were identified.

Pursuant to the operational plan, Special Operations established two Strike Teams to be utilized as needed, supervised by the Tactical Commander, and patrol designated two additional swing shift MFF teams in anticipation of dayshift going home at the end of their shift at 1600 hours. A MFF Team typically consisted of a sergeant and 8-12 officers. A Strike Team consisted of a sergeant and 4-6 officers. Each MFF team was assigned a sergeant to supervise and direct the officers. The MFF teams remained in service handling their routine patrol duties but were advised they could be pulled from their patrol positions if the need arose. The primary difference between the MFF teams and the Strike Teams was their mobility. MFF teams were transported by the Sheriff's Department people mover vans to avoid having patrol cars parked and potentially damaged, whereas Strike Teams were mobile in patrol cars and ready to be deployed quickly to make arrests or supplement the MFF teams as needed.

The protest began at 1400 hours and initial reports by officers assigned to work foot patrol at City Hall indicated the protest was peaceful. Between 1400 hours and 1510 hours, the crowd remained peaceful and marched through the downtown corridor around City Hall and Cesar Chavez Park. Eventually, the crowd made its way eastbound on Santa Clara Street, taking over all eastbound traffic lanes. The Tactical Commander observed from a distance, broadcasting updates on the crowd's movements, and while the Tactical Chief observed law violations such as public urination, blocking streets, and municipal code

violations, he and the Special Operations captain agreed enforcement of these minor offenses would not serve the interest of protecting the group's right to protest. None of the Strike Teams or MFF teams were deployed.

The day shift Incident Commander observed the crowd from her vehicle parked near City Hall and realized the animosity of attendees were directed at police when they directed insults and epithets at her as they walked toward City Hall. Fearing the crowd could become violent, she requested the day shift MFF teams to report to meet with her downtown at approximately 1443 hours. Once she realized the crowd was marching eastbound on Santa Clara, the Incident Commander relocated to San Jose High School and established the initial Command Post.

It is important to note that the crowd was allowed to march uninterrupted and unimpeded by police. The group was not escorted by police, but the Tactical Chief followed in an unmarked vehicle to observe the group's behavior. The Tactical Chief explained that he believed the presence of marked patrol cars could incite the crowd, and it was best to allow them to protest without police presence.

4.1. Santa Clara Street and Hwy 101

At 1510 hours, a crowd estimated at 250 participants entered the onramp to southbound Highway 101 from Santa Clara Street. Within five minutes, the group had blocked both northbound and southbound lanes of Highway 101, trapping several motorists in their vehicles as they were enveloped by the crowd. Highway 101 is one of the busiest highways in San Jose, and the crowd's presence on the roadway posed a significant hazard to motorists and demonstrators alike.

The Tactical Chief and Special Operations BFO Chief discussed their strategy and decided they would not deploy resources to the freeway unless California Highway Patrol (CHP) asked for assistance. Shortly thereafter, CHP made such a request. Officers were dispatched to block the onramps of Highway 101 from Santa Clara Street with the intention of preventing additional vehicles from entering the freeway and potentially hitting pedestrians or becoming encircled by the volatile crowd. Since the freeway is (CHP) jurisdiction, San Jose Police officers were not dispatched to the freeway for enforcement purposes, only to prevent additional ingress onto the freeway and to stop oncoming traffic on the freeway.

CHP broadcasted some of the subjects possibly had guns in their waistbands. Some



Figure 4. Example of Damaged SJPD Patrol Car

individuals in the crowd encircled the motorists' vehicles on the freeway, jumped on top of vehicles and began smashing them with crowbars. Additional officers were dispatched to assist and made their way to Santa Clara at the Highway 101 overpass where they were quickly encircled by the crowd, some of whom were hostile toward the officers. A number of police vehicles had their windows smashed out with rocks and other weapons, while at the same time they were spray painted with anti-police slogans.

Officers arriving at Highway 101 overpass immediately called for additional officers as they were unable to safely control the crowd and preserve their own safety. A second contingent of officers was dispatched from the Command Post at San Jose High School to the overpass at Highway 101. The officers responding to the overpass attempted to use the Julian Street off ramp onto southbound Highway 101 and then back to Santa Clara Street. Vehicles began to purposely block their ingress. As a result, the officers were forced onto the freeway. Once there, they liaised with a contingency of CHP officers who were blocking all lanes of southbound Highway 101. The crowd, which had previously crossed all lanes of Highway 101, was on the overpass headed towards the downtown area. As the crowd moved along the overpass, they began to throw rocks, bottles, hubcaps and tire irons at the officers below on the freeway. The officers below retreated backwards to avoid being struck by the objects.

Once it was relatively safe to do so, officers drove under the overpass and entered Santa Clara Street and joined the officers who had originally called for assistance. The crowd continued to yell and shout at officers and more patrol vehicles were spray painted by individuals within the crowd as they moved west on Santa Clara Street. The officers on the overpass utilized their patrol vehicles and created a circle around the intersection. The officers stood inside the circle to protect themselves.

The officers on Santa Clara Street at Highway 101 were significantly outnumbered. Members of both groups of officers (on the freeway and on the ramps) reported individuals within the crowd were throwing rocks, bottles, cinder blocks, pipes, fireworks, and other heavy items at the officers. Despite the officers being pelted with barrages of dangerous objects, officers refrained from any use of force.

Special Operations Strike Teams were dispatched to that location to assist and, at 1631 hours, dispersal orders were issued to the crowd via a Long-Range Acoustic Device (LRAD) mounted on top of a vehicle. The crowd began to make its way back toward City Hall, westbound on Santa Clara Street. The MFF and Strike Teams regrouped and traveled westbound Santa Clara Street, catching up to the crowd at 8th Street and Santa Clara. While pacing the crowd on Santa Clara Street, a Special Operations officer made repeated

dispersal announcements via the LRAD as the group traveled from the Highway 101 ramps to 9th Street (approximately 30 city blocks.)¹⁴ (For video of the above section refer to <https://youtu.be/IWVWkxiqt1I>)

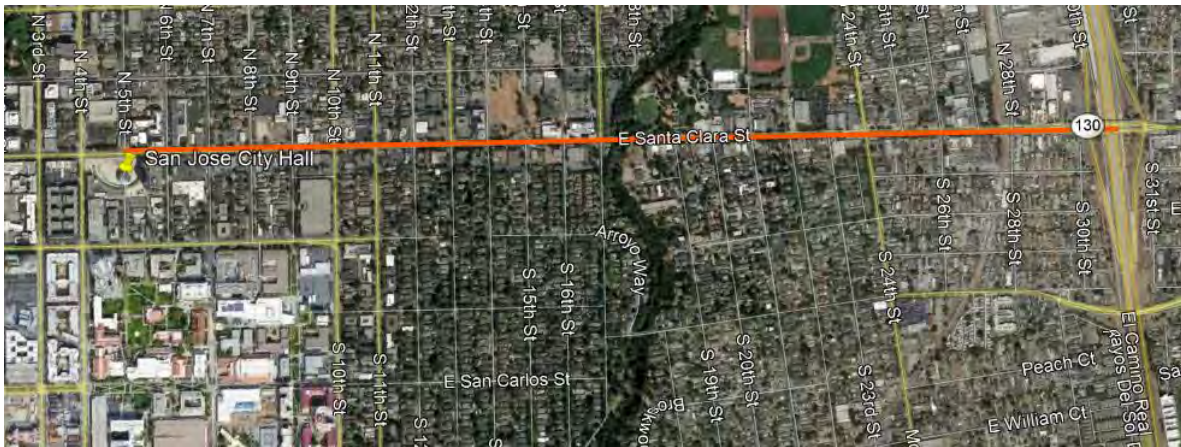


Figure 5. Orange Line Depicting Protesters Route from Highway 101 to City Hall

4.2. City Hall Area

At 1634 hours, a second crowd of approximately 200-250 people blocked the intersection at Santa Clara Street and 4th Street. The group that had been walking back from Highway 101 and Santa Clara Street joined this group and, by 1650 hours, an estimated 400 people were blocking lanes of traffic in front of City Hall. Officers using the LRAD issued unlawful assembly/dispersal orders to this group at 1659 hours.

At 1700 hours, the CHP fixed-wing airplane reported the group had grown to approximately 500 and, ignoring the lawful orders to disperse, instead began moving toward the MFF officers. The crowd had taken over Santa Clara Street from 9th Street to City Hall. The MFF officers created a skirmish line about half a block away from the group and continued giving repeated dispersal orders. The crowd, rather than dispersing, continued advancing on the officers. Within minutes, officers reported members of the surging crowd throwing rocks and other items at them, which triggered the deployment of another MFF to assist the now besieged skirmish line. (For video of the above section refer to <https://youtu.be/HBZTNhAHMqc>)

¹⁴ <https://www.nbcbayarea.com/news/local/demonstrations-in-bay-area-over-george-floyds-death/2298701/>

4.3. Assault on Officer

At 1706 hours, an officer broadcast there was an “officer down” and for nearly two minutes there were no updates on the condition of the officer or cause of the injury. At 1707 hours, a MFF sergeant indicated she had the unconscious officer in a patrol car and officers were driving him to the hospital. In the chaos, facing an increasingly hostile environment, officers were now confronted with the reality that at least some violent elements of the crowd were willing and able to inflict serious injury on them.



Figure 6. Downed SJPD Officer

Rioters in the crowd were throwing dangerous objects at officers, and the MFF teams began to use crowd control tactics in an attempt to push the crowd westbound on Santa Clara. When it became apparent the crowd would not comply with the lawful order to disperse and the rioters continued their assaults on the officers, the Special Operations captain authorized the use of 37mm less-lethal weapons and OC chemical agents. The objective was to disperse the crowd toward City Hall where their vehicles were likely parked in hopes they would use their vehicles to leave the area. Northbound and southbound streets were not blocked, at this point so the crowd had the opportunity and available routes to leave the area.

4.4. “Good Samaritan” Struck with Projectile Impact Weapon (PIW)

When the officer was knocked unconscious, a protester who witnessed the assault stepped in to assist officers in carrying the downed officer to a patrol vehicle. That same protester was later struck in the abdomen by a crowd control projectile and sustained a significant bruise on his abdomen. Media interviews of this person surfaced later. In at least one instance, it was reported that this individual said he was struck by a projectile fired by a known officer. Later, on June 5th, this individual sought out a sergeant at the Command Post to clarify that he never made the assertion the known officer fired the projectile. He provided the sergeant a description of the officer who did.

This AAR Team did not address whether the force used in this instance was reasonable and within policy as that analysis is currently being made as part of an ongoing Internal Affairs investigation. (Larsen, n.d.)¹⁵

¹⁵ <https://abc7news.com/society/exclusive-man-who-helped-injured-officer-in-sj-protest-later-shot-with-rubber-bullet-/6226298/>

4.5. Arrest and Use of Force on Protester

At 1711 hours, an individual suddenly advanced on one of the officers on the skirmish line. Officers responded with uses of force in the form of Projectile Impact Weapons (PIW), batons and blows as the protester fought them. He was brought behind the skirmish line where the struggle to arrest him continued, requiring additional officers to assist, depleting the skirmish line of much needed officers. The individual was ultimately taken into custody via use of force. He sustained injuries to his face, back, thigh and knee. His knee injury required surgery. This arrest was captured on several cameras from different angles. In his custodial statement, the individual said, “he got too close to the officers.”



Figure 7. SJPD Arrest and Use of Force

This AAR Team did not address whether the force used in this instance was reasonable and within policy as that analysis is currently being made as part of an ongoing Internal Affairs investigation. (Refer to <https://youtu.be/gwOF7hDTbhA> for video of the above section.)

4.6. VCET Officer Profanity and Body Language

Following the events of May 29th, video footage surfaced of a known Special Operations officer shouting profanity at protesters and demonstrating body language that made him appear cavalier and excited by the violence. The videos became national news, with media outlets describing the officer as escalating the already tense situation and appearing eager to deploy force. Community members also circulated a petition demanding the officer be terminated from the Department.

San Jose Police Duty Manual Section L 2302 DEPARTMENT RESPONSE TO DEMONSTRATIONS states:

Demonstrations are often highly emotional incidents. The demonstrators and others in the area are committed to their various causes and their rights, which may be in conflict. In such situations, officers will strive to remain objective in order to maintain effectiveness. Once an officer's objectivity is lost or even appears to be lost, the officer's mere presence at a demonstration may increase tensions and make the police task even more difficult. Officers assigned to the scene of a demonstration will strive to maintain an outward appearance of calmness, whether the task involved is simply standing by protecting demonstrators from hostile onlookers or making necessary arrests of violent demonstrators.

The Department recognized the perception of the known officer's loss of objectivity likely increased tension between the community and the Department. The officer was subsequently relieved of regular duties and placed in a non-enforcement assignment pending an Internal Affairs Investigation and review by the Independent Police Auditor. That investigation is ongoing.¹⁶ *(For video of the above section refer to <https://youtu.be/k8VcvJjABeQ>)*

4.7. Protester Struck in Genitals

On Friday, May 29th, at approximately 6:19 pm, a community member, reported that he had been struck in the genitals with a crowd control projectile despite peacefully protesting. The protester assisted teaching implicit bias training for the Department in the police academy and believed he may have been purposefully targeted for that reason. The officer indicated in his report that the man positioned himself between the skirmish line and rioters who were actively throwing dangerous objects at the officers in an attempt to shield the rioters from projectiles fired by officers in response. The individual has filed a lawsuit against the City regarding this incident.

This AAR Team did not address whether the force used in this instance was reasonable and within policy as that analysis is currently being made as part of an ongoing Internal Affairs investigation and lawsuit. *(For video of above section refer to <https://youtu.be/Jn1b7UMunnY>)*

4.8. Auto-Pedestrian

At approximately 1906 hours, at 3rd Street and Santa Clara Street, officers observed an SUV traveling erratically and at a dangerous speed toward pedestrians, and then possibly struck two pedestrians. The officer who documented the incident in his report stated the vehicle "seemed like it was out of control" and that he saw pedestrians "screaming and jumping onto the east sidewalk". The vehicle ultimately stopped after an officer fired a 40mm round into the windshield.

Numerous rioters began to attack the vehicle with heavy objects. Officers intervened, removing the driver from the vehicle, both to rescue him and take him into custody. The officers were forced to retreat due to being significantly outnumbered. The driver of the vehicle was arrested for reckless driving, transported to the Command Post booking area for processing, and was eventually released with a citation. It was later learned the driver had struck and backed over a pedestrian prior to the officers' encounter with him, and the

¹⁶ <https://www.mercurynews.com/2020/05/31/lets-get-this-motherf-ker-san-jose-officers-viral-protest-comments-draw-wide-condemnation/>

District Attorney's Office is reviewing the case for additional criminal charges. *(For video of the above section refer to <https://youtu.be/1w9uYsxSAaI>)*

4.9. Auto-Pedestrian Hit and Run/Officer-Involved Shooting

At approximately 2100 hours, an auto-vs-pedestrian collision occurred, resulting in an officer-involved shooting. The driver of the vehicle backed into several people and, as she pulled forward toward other pedestrians, a Sheriff's Deputy discharged his firearm. The suspect driver was not hit and fled the scene. She was later apprehended.

Command staff at both agencies determined that the Department would conduct the investigation into the Officer-Involved Shooting (OIS). An officer-involved shooting investigation itself is a resource-intensive event that even on the calmest of evenings would significantly deplete patrol resources. This was an OIS in the midst of large-scale civil unrest, involving witness officers from both agencies.

To properly investigate an OIS, a perimeter to contain the crime scene, a canvass for witnesses and evidence, evidence collection, transportation and interviewing of witnesses, and other critical tasks would need to be performed. On this night, the Department's resources were already critically taxed, and this incident further depleted available resources. *(For video of the above section refer to <https://youtu.be/Y0f1iwFb3oc> or <https://youtu.be/R5FYn0Veo6s>)* This investigation is still ongoing by the Department's Homicide Unit.

4.10. Violence and Criminal Activity

Substantial civil unrest persisted between 1631 hours, when the first dispersal order was issued, until 2332 hours when officers were finally able to disperse the crowd. During those hours, the volatile and unpredictable crowd remained, refusing to disperse after repeated, ongoing lawful dispersal orders from the LRAD and police helicopter (Air3). These hours were punctuated by violence and criminal behavior including the following:

- Numerous incidents of arson involving dumpsters, trash cans, trees, furniture and vehicles.
- Mortars and fireworks were fired and/or thrown at officers.
- A UPS truck was looted and its contents were lit on fire.
- A Motors officer was assaulted by a protester with a crowbar, which disabled his motorcycle.
- Widespread vandalism and looting of downtown businesses.
- Individuals in elevated positions (apartments, balconies) threw a variety of dangerous and noxious objects onto officers.

4.11. Tactics Used by Rioters

While it is evident that many of the initial protesters intended to participate in a peaceful protest, it is equally clear that there were many rioters in attendance who sought to ignite the protest into violent unrest. Many of these rioters launched violent assaults and engaged in tactics to enable lawlessness. Some of the tactics observed and documented include the following:

- Rioters used large items to build barricades to hide behind while assaulting officers. Examples include vehicles, a refrigerator, newsstands, dumpsters and fencing materials.
- Rioters used heavy and dangerous objects as weapons to throw at officers. Examples include: fire extinguishers, mortars and fireworks, hammers, crowbars, pieces of wood, cinderblock, rocks, frozen water bottles, frozen fruit, and various unknown (and potentially noxious) fluids, including body fluids.
- Rioters used peaceful protesters as human shields, while throwing dangerous objects at officers from deep in the crowd. For example, at 1745 hours, while a large number of protesters were kneeling in front of the skirmish line, rioters deeper in the crowd were throwing items at the officers.
- Inciters purposefully positioned themselves to use themselves as human shields to protect the rioters from force or arrest.
- Rioters started numerous arson fires, requiring additional police resources to protect fire personnel.
- Rioters engaged in looting and vandalism of downtown businesses.
- Rioters threw commercial-grade (large) fireworks and live tear gas canisters at officers.
- At least one individual used a laser to strike AIR3. This is a federal crime, and a safety concern for pilots who can be blinded by the lasers.
- Rioters engaged in violence moved from place to place, launching attacks on officers from various locations.



Figure 8. Rioters Utilizing Vehicles to Barricade Against Police

4.12. Command and Control

Special Operations commanders expressed concern that without patrol commanders in the field, their span of control was unmanageable. When patrol resources were dispatched to assist, there was often a significant delay in the resources arriving. This was because the Sheriff's Office people mover vans were not equipped with lights and sirens and could not transport the resources through the traffic and crowd quickly enough. Eventually, the Command Post was able to identify patrol vehicles to escort the people movers to get officers deployed more quickly.

Another concern expressed by Special Operations commanders is that once patrol resources arrived, the situation had rapidly evolved, and the location where they were needed changed. This created confusion and, at times, MFF sergeants began making independent decisions about where to move the crowd without unity in command and full understanding of the mission.

4.13. Ending the Night

The civil unrest and rioting continued, and at 2153 hours, the Department helicopter (AIR3) again gave multiple dispersal orders to the crowd. Officers formed a skirmish line and began moving the crowd south on 4th Street from Santa Clara Street. Again, individuals within the crowd threw objects at the officers. At 2207 hours, Special Operations, after conferring with the Assistant Chief, deployed CS gas devices. At 2224 hours, rioters in the crowd were lighting trash cans and other objects on fire and using accelerants to increase the flames as they moved southbound on 4th Street. This prompted the use of PIWs on those subjects. The Department was finally able to clear the downtown area at approximately 2345 hours.

4.14. Friday May 29th, 2020 Timeline

TIME	RESPONSE
2:05 p.m.	First reports of crowds forming to protest. The crowd was peaceful and there was no law enforcement response.
3:10 p.m.	Protesters block US 101 at Santa Clara St.
4:00 p.m.	Protesters begin throwing objects at San Jose PD at 101 and Santa Clara St. No force is used by San Jose PD.
4:25 p.m.	Protesters block South 280 at 4 th St. and Reed St.
4:31 p.m.	First dispersal order given at the overpass of Santa Clara St. and US 101.
5:00 p.m.	First Use of Force by San Jose PD. Starbucks on the 100 block of Santa Clara St. is looted.
5:03 p.m.	A San Jose PD officer is assaulted and knocked unconscious, mid-block at Santa Clara St. and 8 th St.
5:11 p.m.	Subject aggressively fighting San Jose PD at Santa Clara St. and 7 th St.
5:20 p.m.	Crowd is hostile and continues to throw objects at San Jose PD. San Jose PD responds with less lethal projectiles.
5:20 p.m.	San Jose PD moves the crowd to 6 th St. and Santa Clara St. A number of subjects use a portable traffic signal trailer as a battering ram and shield.
5:30 p.m.	A large number of subjects continue to throw multiple items at San Jose PD. San Jose PD responds with less lethal projectiles.
5:40 p.m.	Subjects light a garbage trash can on fire.
5:44 p.m.	Motors officer is struck with a hammer.
5:45 p.m.	A large number of protesters are kneeling in front of San Jose PD, while subjects behind them throw objects at San Jose PD. The skirmish line is slowed.
5:46 p.m.	Officer Incident (Refer to Section 4.6)
5:47 p.m.	The Command Post is moved from San Jose High to the SAP Center.
5:54 p.m.	Subjects continue to throw objects at San Jose PD. San Jose PD responds with less lethal projectiles.
6:10 p.m.	Another garbage trash can is lit on fire.
6:12 p.m.	Subjects continue to throw objects at San Jose PD, including fireworks.

6:15 p.m. San Jose PD moves the skirmish line to 5th St. and Santa Clara St.

6:19 p.m. Community member use of force incident.

6:20 p.m. Vehicle arrives near the skirmish line and off loads supplies for protesters to throw at San Jose PD.

6:21 p.m. Assistant Chief of Police calls a CODE 30.

6:28 p.m. Protesters begin looting a construction site at 5th St. and Santa Clara St., arming themselves with tools, shovels, and long pieces of wood.

6:33 p.m. Tear Gas is deployed at 5th St. and Santa Clara St.

6:39 p.m. Vehicle is moved into place mid-block at 5th St. and Santa Clara St., a barricade for protesters is quickly built around it. Protesters begin to throw objects at San Jose PD from behind the barricade.

6:42 p.m. Large fireworks are being thrown at San Jose PD. San Jose PD continues to use less lethal projectiles. Agitators move a large refrigerator to extend the barricade.

6:47 p.m. San Jose PD moves skirmish line to 4th St. and Santa Clara St. The crowd continues to throw multiple items at San Jose PD. San Jose PD responds with less lethal projectiles and Noise Flash Devices.

6:52 p.m. A number of subjects build a barricade mid-block on Santa Clara St. between 3rd and 4th Streets.

7:02 p.m. A large dumpster is lit on fire at 3rd St. and Santa Clara St.

7:06 p.m. A SUV comes speeding north on 3rd St, hitting a number of traffic barriers, loses a wheel and comes to stop at 3rd St. and Santa Clara St. Protesters begin looting the vehicle and light it on fire.

7:09 p.m. Gas is deployed at 3rd St. and Santa Clara St.

7:12 p.m. A UPS truck is looted mid-block 3rd Street between Santa Clara St. and San Fernando St. Items from the truck are thrown into a dumpster and lit on fire.

7:20 p.m. Large crowds form on San Fernando between 3rd and 4th Streets. San Jose PD deploys less lethal projectiles. Large groups at City Hall continue to clash with San Jose PD.

7:30 p.m. Multiple trash cans and dumpsters are being lit in the downtown core.

7:48 p.m. Large crowd forms on 2nd St near San Fernando St. The group is throwing rocks at San Jose PD. San Jose PD responds with less lethal projectiles.

8:16 p.m. Large unruly crowd forms at Cesar Chavez Park.

8:25 p.m. Another dumpster is set on fire at 3rd St and Paseo de San Antonio.

- 8:42 p.m. The crowd at Cesar Chavez Park begins to throw objects at San Jose PD. San Jose PD uses less lethal projectiles and begins to move the crowd south towards San Carlos.
- 8:49 p.m. Cinnaholic on the 100 block of San Carlos St. is looted.
- 8:54 p.m. A number of subjects form a barricade across San Carlos at 3rd St, using a chain-link fence and a dumpster.
- 9:02 p.m. San Jose PD pushes large majority of crowd to SJSU at San Carlos St. Subject is seen shining a laser at San Jose PD helicopter.
- 9:06 p.m. Officer involved shooting involving the Santa Clara Sheriff's Department at 6th St. and Santa Clara St.
- 9:10 p.m. Subjects light a number of mattresses and dumpsters on fire in the area of 4th and William St.
- 9:15 p.m. Group of 30-40 persons walk onto the on-ramp of NB 280 at Reed St. and 4th Street.
- 9:30 p.m. Grace and Deli located at 303 Almaden Blvd is looted by rioters.
- 9:35 p.m. A large group of approximately 50 persons forms at 4th St. and San Fernando St. Subjects begin throwing objects at San Jose PD.
- 9:53 p.m. BFO Deputy Chief asks San Jose PD Helicopter to give dispersal order to the crowd formed at 4th St. and San Fernando St. Multiple dispersal orders given.
- 9:57 p.m. San Jose PD forms a skirmish line and begin moving protesters south on 4th St.
- 10:06 p.m. Multiple objects are thrown at San Jose PD as they move the group south on 4th St.
- 10:07 p.m. San Jose PD deploys gas to disperse the crowd on 4th St. between San Fernando St. and San Carlos St.
- 10:24 p.m. Multiple fires are being lit by subjects moving south on 4th St. towards Williams. San Jose PD deploys less lethal projectiles at subjects.
- 11:32 p.m. Small group of subjects has formed near 1st St. and San Fernando St. San Jose PD moves into the area and the group disperses.
- 11:45 p.m. San Jose PD clears the downtown core area.

5. May 30th, 2020 (Day 2)

In the aftermath of civil unrest and violence on May 29th, the severity of which had not been experienced in San Jose for decades, many in the community were stunned and outraged by what they perceived as unnecessary and unreasonable violence against peaceful protesters. Special Operations commanders discussed the events of the previous night, and fully implemented the Command Post and ICS system in order to be prepared for the likelihood the events of the previous night would recur.

By approximately 1600 hours on Saturday May 30th, demonstrators began to form on the north-east corner of City Hall. Police observers reported the size of the demonstration to be approximately 500 persons. At this time, the demonstrators were peaceful, carrying signs and chanting. The Department's objective, as expressly stated in its operational plan, was to preserve and facilitate First Amendment rights, and allow for peaceful demonstrations while managing crowds and reducing any disruption on surrounding neighborhoods and businesses.

By 1613 hours, police began to form a skirmish line along Santa Clara Street near the intersection with 5th Street. There were approximately 25 officers in the intersection who had formed a quarter circle skirmish line from the north-east corner to the south-west corner. The demonstrators quickly moved toward the officers, closing distance between the crowd and the skirmish line. Additional officers were dispatched to City Hall to expand the skirmish line along Santa Clara Street between 4th and 6th Streets. This contingent of approximately 100 officers was instructed to monitor and manage the crowd and prevent the crowd from taking over Santa Clara Street as they had the previous day. Because of the previous day's delays in getting officers transported quickly, having the officers on scene and ready rather than waiting at the Command Post appeared to be a more tactically sound option should violence erupt.



Figure 9. Stash of Water Bottles at City Hall

Within just minutes, the demonstration swelled to approximately 700 participants. Soon after this core group formed, a large contingent of protesters began to march around the downtown core, while some remained at City Hall. Although many continued to peacefully protest, numerous inciters in the crowd at City Hall became aggressive and threw objects at officers.

Officers targeted these individuals with PIWs. Embedded observers reported there were instigators within the crowd who were actively inciting violence, goading others to launch attacks on the officers. Some of these instigators carried bags of frozen water bottles and frozen fruit, clearly intended to be used as projectiles targeting police. Some were armed with slingshots and homemade wooden shields. At least one person used a potato gun to fire objects at officers.



Figure 10. SJPD Anti-Vehicle Barricades

At 1730 hours, San Jose Motors Officers placed unanchored steel mobile vehicle barricades along Santa Clara between 4th and 6th Streets to mitigate hostile vehicle actions against police and demonstrators.

At 1849 hours, a group of demonstrators estimated to be approximately 150 persons arrived at City Hall and joined the existing group. Officers observed many people in this group were actively inciting violence. Embedded officers in the crowd reported these individuals were

encouraging others to throw objects at police, vandalize and burn property. Furthermore, many of these individuals armed others with items to be thrown at police. In fact, officers observed these items arriving in the area by the carload, unloaded and distributed among elements of the crowd that clearly had nefarious intentions towards the police. A few blocks away, at 3rd Street and San Carlos Street, rioters lit a dumpster on fire, creating a significant hazard.

Law Enforcement continued to maintain skirmish lines in front of City Hall as the majority of the demonstrators remained at that location. Multiple objects were thrown in the direction of law enforcement who, in response, used targeted less lethal projectiles to stop the assaults. Although the demonstrations throughout the day had been largely peaceful, as it became darker, there was a dramatic shift towards civil unrest and violence. Law Enforcement began to see increasing acts of vandalism, looting, and assaults on both civilians and police.

At 1919 hours, in response to sustained and concentrated barrage of dangerous objects being thrown at officers on the skirmish line, Special Operations responded to City Hall and declared an unlawful assembly. Special Operations began to issue dispersal orders to demonstrators in the area of City Hall using the LRAD. A number of inciters had been distributing fruit, frozen water bottles, rocks, bottles filled with various (possibly noxious) liquids used by rioters to assault and injure officers. Although many of the

demonstrators from City Hall began to disperse after an unlawful assembly was declared using the LRAD, smaller groups formed in various locations in the downtown area.

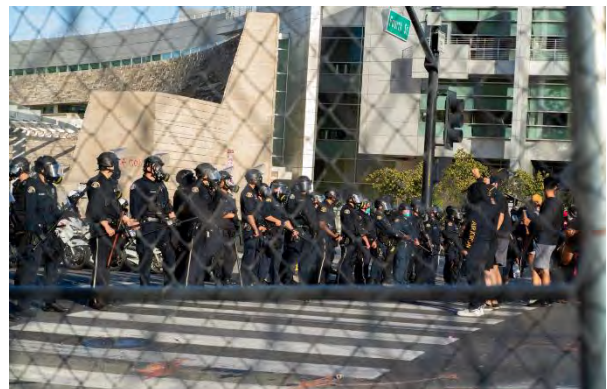


Figure 11. SJPD on Skirmish Line

At 2015 hours, a number of rioters that splintered off from the main protest broke into the Mezcal Restaurant at 25 W San Fernando St. They smashed the front windows, breaking into the business and looting the restaurant of laptop computers and a reported \$8,000 worth of alcoholic beverages.

Simultaneously, a group of 30-40 participants formed at the intersection of San Fernando and 2nd Street, taunting passersby and blocking vehicles in the roadway. Some began throwing bottles at passing vehicles. Strike Teams were dispatched to the various locations where these smaller groups of inciters began to form for the purpose of making arrests. Officers continued to issue repetitive dispersal orders to groups who were engaged in crimes and attempting to incite further violence.



Figure 12. SJPd Officers in Front of City Hall

For the next few hours, officers continued to attempt to disperse the groups to no avail. With the lawful dispersal orders being ignored by riotous groups, and containment of several roving mobs of various sizes becoming difficult to maintain, Special Operations deployed tear gas and armored vehicles to help shield officers from incoming projectiles.

At 2345 hours, officers were stationed outside the apartment building at 235 E Santa Clara St. as part of a perimeter around City Hall. As they had done on the previous day, one or more subjects in an apartment on the third floor began throwing objects, including bottles, out of an open window and onto the officers below. AIR3 video captured the objects being thrown from the window. Special Operations Officers standing below the window responded by launching less lethal projectiles, including 40mm OC rounds, into the window from which the objects were thrown. Officers went to the

offender's apartment and attempted to contact the occupants, but those subjects inside of the residence refused to speak with Officers. Officers determined, based on their interaction through the door with the occupants of the apartment, that they did not need medical attention. It was then decided that officers would not force entry into the apartment and risk an armed confrontation. Officers documented the incident in a General Offense Report, and it was later investigated by the Assaults Unit.

5.1. Looting

At 2350 hours, police received reports of looting at the T-Mobile store located at 100 E. San Fernando St. A number of looters were observed going into the store and leaving with items. AIR3 spotted the looters walking along the street and getting into a vehicle before driving away. AIR3 updated units on the ground who were able to intercept the suspects as they parked their vehicle in a lot near the Fairmont Hotel. Officers found items belonging to the T-Mobile store as well as items taken from a number of other businesses.

By 0100 hours, violence and unrest in the downtown area had abated and crowd control operations ceased. The Command Post was decommissioned, and policing returned to standard patrol team configuration.

5.2. Saturday May 30th, 2020 Timeline

TIME	RESPONSE
4:06 p.m.	A large group of protesters has begun to form at 6 th St. and Santa Clara St. The crowd is estimated to be over 500 persons.
4:08 p.m.	A second group has broken off and begins to march around City Hall.
4:13 p.m.	San Jose PD forms a skirmish line, comprising of approximately 25 officers at 5 th St. and Santa Clara St. No force is used by San Jose PD.
4:17 p.m.	Santa Clara County Sheriff's Office deputies arrive on scene and a skirmish line from 4 th to 6 th Streets on Santa Clara St. is formed.
4:21 p.m.	The crowd is estimated to be approximately 700 persons.
5:08 p.m.	Protesters are seen handing out ear plugs and bottles of water to people in the crowd.
5:09 p.m.	Bottles are thrown at police. One subject is taken into custody.
5:11 p.m.	More bottles are thrown at police.
5:12 p.m.	San Jose PD responds with Less Lethal Projectiles. As a result, the crowd runs back towards City Hall. Bottles continue to be thrown at police.
5:30 p.m.	Motors Officers arrive at City Hall and place vehicle barricades to prevent traffic from driving on Santa Clara between 4 th and 6 th Streets.
6:00 p.m.	Protest has remained primarily peaceful. Police continued to hold a skirmish line on Santa Clara St.
6:49 p.m.	A group of approximately 100-150 persons arrive at City Hall and are attempting to agitate people in the crowd.
6:58 p.m.	A dumpster is lit on fire on 3 rd St. between Santa Clara and San Fernando Streets.
7:18 p.m.	A dispersal order is given to protesters who have now become aggressive agitators.
7:19 p.m.	Multiple objects are thrown at police in front of City Hall.
7:19 p.m.	Special Operations Units respond to City Hall.
7:52 p.m.	Dispatch advised officers there are reports of frozen water bottles being passed around.
8:00 p.m.	Subject walking around 4 th St. and Santa Clara St. passing out oranges to throw at police.

8:12 p.m. Subject is seen wearing a paintball mask and carrying a number of frozen water bottles.

8:15 p.m. Mezcal Restaurant at 25 W. San Fernando St. is looted. Windows are smashed and numerous items are looted.

8:16 p.m. Group of approximately 30 to 40 persons forms on San Fernando St. at 2nd St. Subjects are throwing bottles at passing vehicles.

8:30 p.m. Group of approximately 60 persons forms at Cesar Chavez Park. San Jose PD forms a skirmish line.

8:52 p.m. Rocks and bottles are thrown at San Jose PD on Santa Clara St. between 4th and 5th Streets.

9:52 p.m. San Jose PD maintains a skirmish line on Santa Clara St. Multiple objects are thrown at police. San Jose PD responds with less lethal projectiles.

10:45 p.m. San Jose PD deploys CS tear gas at City Hall.

10:51 p.m. Multiple potato guns are being used against San Jose PD on 3rd St. at San Fernando St.

11:30 p.m. Multiple subjects are seen spray painting City Hall. A subject is located and arrested for vandalism.

11:42 p.m. Fireworks are being set off on 2nd St. at Fountain Alley.

11:45 p.m. Subject throws objects out of their apartment window onto San Jose PD at 235 E. Santa Clara St.

11:50 p.m. T-Mobile on the 100 block of E. San Fernando St. is looted.

1:00 a.m. San Jose PD clears the downtown core.

6. May 31st, 2020 (Day 3)

The third day of protests in San Jose were markedly different than the two previous days. San Jose city officials enacted an 8:30 p.m. (2030 hours) curfew, and incident commanders were cautiously optimistic this curfew would help quell the violence of the previous two days. Incident commanders conferred and adopted a different approach. Rather than deploying officers to a skirmish line as soon as the crowd began to form, incident commanders observed the gathering crowd via AIR3 downlink and Department of Transportation (DOT) cameras and utilized embedded officers to report on crowd conditions.



Figure 13. SJPD and Santa Clara County Deputies at City Hall 5-31-2020

By 1345 hours, protesters had begun to assemble in front of City Hall. By 1500 hours, the group had grown to about 300 people, and a large group of demonstrators began to march around the blocks surrounding City Hall. A second large group remained at City Hall itself, and the protest was largely peaceful.

At 1600 hours, the Department again deployed officers to form a skirmish line on Santa Clara Street between 4th and 6th Streets.

Like the previous day, the intention was to monitor and manage the crowd and maintain order. Santa Clara County Sheriff's Deputies were included in this skirmish line.

Officers stood on the skirmish line for several hours. Periodically, individuals among the protest threw objects at officers on the skirmish lines. As part of MFF training, officers are taught not to engage in conversation, debate or expressing opinions when on a skirmish line. Officers are instructed to remain politically neutral and focus their attention on potential threats in the crowd. Protesters seemed to target the Department's minority officers. They grouped around officers and delivered a barrage of insults, threats and verbal demands. The protesters in the crowd appeared to become angry and frustrated at the officers' lack of verbal engagement. As the angry protesters became louder in their attempts to provoke a response from the officers, more and more people would gather around individual officers. MFF sergeants worked to remove those officers from the skirmish line to allow them to decompress.

Many cities in the Bay Area had seen businesses looted the previous night. Social media posts and intelligence gathered by the Department's Special Investigations Unit indicated

several locations that were intended to be looted that evening such as Santana Row, Valley Fair Mall, Oakridge Mall, and various stores throughout the city. At 1924 hours, the Department received reports of looters gathering near Santana Row. Incident Command dispatched Strike Teams to Santana Row as a deterrent. While this was successful in preventing looting at Santana Row and Valley Fair Mall, the BevMo across the street, in the City of Santa Clara, was looted. An hour later, the Target on Story Road reported numerous offenders looting the store. AIR3 spotted offenders running out of the store carrying items from inside the store. AIR3 followed one of the vehicles with three offenders inside, directed ground units into the area who were able to apprehend the offenders without incident.

At 2030 hours, the City curfew went into effect, prohibiting people from being on a public street, avenue, park or other public place within the city limits until 0500 hours the following morning. At 2044 hours, Special Operations utilized the LRAD to announce the curfew was in effect and protesters at City Hall began to leave the area. A few small groups remained and began running up and down various streets in an attempt to avoid being apprehended.

6.1. Pedestrian vs. Traffic Enforcement Unit (TEU) Motorcycle Officer

At 2130, officers received reports of looting at the Chase bank at the intersection of 3rd St. and San Fernando St. Motors units responded to the area. As they arrived at the intersection, a number of subjects were seen running from the area. One of these individuals collided with a Motors Unit motorcycle while running and was subsequently arrested. This incident was documented by TEU on a CHP form 555 as a vehicle vs. pedestrian accident. A social media post containing the moment of the collision surfaced, leading to allegations the Motors officer intentionally collided into the man. (For video of the above section refer to <https://youtu.be/ACdQYtoVeLo>)



Figure 14. SJPD Motors Units

By 2145 hours, most of the crowd had dispersed and left the area, and officers demobilized back to the Command Post.

6.2. Sunday May 31st, 2020 Timeline

TIME	RESPONSE
1:45 p.m.	Protesters begin to form up at City Hall.
3:00 p.m.	Protest has approximately 150 people, people are still gathering. A second group of protesters have been marching around City Hall, estimated to be 300 persons.
3:12 p.m.	No skirmish lines have been formed; protest remains peaceful.
4:00 p.m.	Police form a skirmish line along Santa Clara St. in front of City Hall.
4:45 p.m.	Mutual Aid is requested.
5:00 p.m.	Multiple objects were thrown at police near Santa Clara St. and 6 th St.
5:13 p.m.	Subjects are in the crowd are lighting objects on fire.
7:24 p.m.	Reports of looting near Santana Row, BevMo in Santa Clara is looted.
8:00 p.m.	As the protest march moves along westbound Santa Clara St., multiple subjects are seen spray painting business store fronts.
8:12 p.m.	Bottles and other objects are thrown at police and businesses near the area of Santa Clara St. and 1 st St. San Jose PD sends multiple strike teams throughout the downtown core to prevent agitators
8:21 p.m.	Multiple persons are at Target on Story Rd. looting the store. A number of subjects are located and arrested.
8:30 p.m.	Curfew goes into effect.
8:31 p.m.	Agitators are removing plywood from the bank at San Fernando St. and 3 rd St.
8:44 p.m.	Long Distance Acoustic Device (LRAD) was utilized to broadcast dispersal orders and advise there was a curfew in place.
9:00 p.m.	Multiple groups of agitators are running around the area of San Fernando St. and 10 th St., causing numerous disturbances. San Jose PD attempts to quell the unrest. Multiple arrests are made.

9:30 p.m. Reports of looting from the bank at San Fernando St. and 3rd St. Subjects seen running from the area. San Jose PD deploys less lethal projectiles. One subject ran into a San Jose PD motorcycle and was subsequently taken into custody.

9:45 p.m. San Jose PD clears the downtown core.

7. Monday June 1st, 2020 (Day 4)

On June 1st, incident commanders conferred about the previous day's events. The commanders agreed that, while there were still incidents of violence and property damage occurring nightly, there was slight progress in restoring order with each passing night. Due to this observation, the incident commanders decided to assume a more reactive posture. Resources were organized and staged at the Command Post but would only be dispatched if acts of violence or significant property damage occurred. The crowd began to form just before 1300 hours.

Incident commanders remained at the Command Post, monitoring the protest activities through AIR3's video downlink, DOT traffic cameras, embedded officers, and social media



Figure 15. Protesters in Front of City Hall

live stream footage. To this point, the protest remained largely peaceful. Eventually, the crowd began to march along the streets surrounding City Hall. By 1528 hours, many had returned to City Hall to participate in a, "die-in," where they lied down for eight minutes and forty-six seconds, representing the time former Minneapolis Officer Chauvin had his knee on George Floyd's neck.

By 1738 hours, the crowd began spilling into the eastbound lanes of Santa

Clara Street that was still open to vehicular traffic. Officers were dispatched to form a skirmish line on Santa Clara Street, between 4th and 5th Streets. The crowd began to increase to approximately 100-150 participants. At 1823 hours, officers reported individuals in the crowd throwing objects at them. The majority of the protest participants remained peaceful, but still directed profanity-laced verbal taunts and threats toward the officers.

At 1926 hours, a second large group formed and took over Cesar Chavez Park. Motors officers observed them from a distance, and when the crowd appeared to focus on their presence, they moved to a position out of sight and allowed AIR3 to observe the group from the air. Some individuals in the crowd were aggressively confronting other protesters, accusing them of belonging to law enforcement. The group began to move northbound, toward the Motors officers who had distanced themselves from the group. The officers remained at a distance, and the crowd marched back to the City Hall area. A number of individuals in the crowd vandalized buildings with spray paint along the way.

At 2030 hours, the curfew went into effect once again. Officers announced the curfew and gave a dispersal order, and most of the crowd dispersed. Those who remained began throwing fireworks in the area of 3rd Street and San Antonio Street. Using its public address systems, AIR3 gave a number of dispersal orders to the people still in the area. By 2100 hours, officers had arrested a number of offenders for vandalism, including curfew violations and other various offenses. By 2200 hours, the downtown area protest activities had abated, and officers returned to the Command Post.

7.1. Monday June 1st, Timeline

TIME	RESPONSE
12:49 p.m.	Approximately 80 persons peacefully protested at City Hall.
1:39 p.m.	San Jose PD establishes a Command Post at the SAP Center.
3:00 p.m.	Protesters begin peacefully marching around City Hall. San Jose PD monitors from afar but are not involved.
3:28 p.m.	Protesters arrive back at City Hall and have a 'die-in,' lying down for 8 minutes and 46 seconds on the grounds of City Hall.
4:45 p.m.	Protest remains peaceful. San Jose PD observes from a distance and does not get involved. A large, second group, begins to march around City Hall.
5:38 p.m.	Police form a skirmish line in front of City Hall. The line is comprised of San Jose PD and the Santa Clara Sheriff's Office. The line is from 4 th to 5 th Streets.
6:16 p.m.	MTA advised they have shut down all transit in the downtown area.
6:23 p.m.	Police begin to have bottles thrown at them in front of City Hall. Protest remains largely peaceful.
7:26 p.m.	Large group forms at Cesar Chavez Park, a number of subjects in the group become agitated towards police.
8:00 p.m.	Crowd beginning to move back to City Hall, numerous businesses are spray painted as they walk back.
8:30 p.m.	Curfew goes into effect. Dispersal Order given. Majority of protesters leave the area.
8:36 p.m.	Subjects throwing fireworks in the area of 3 rd St. and San Antonio de Paseo. San Jose PD helicopter makes numerous curfew and dispersal announcements. Multiple arrests are made in the area.
9:00 p.m.	San Jose PD arrests multiple subjects throughout the downtown core for vandalism and various other crimes.
10:00 p.m.	San Jose PD clears the downtown core.

8. Tuesday June 2nd 2020 (Day 5)

In a pre-incident planning/briefing session, incident commanders conferred about the events of the previous night, and concluded: (i) the curfew was a critical tool in reducing the overall chaos, and provided a natural triage of the protesters, as peaceful protesters generally complied with the imposed curfew, while those intent on lawlessness remained;



Figure 16. SJPD Officer in Front of City Hall and Protesters

and (ii) longer distance/remote observation methods, i.e., DOT cameras and AIR3's video downlink provided the ability to monitor the crowd without a close visible presence that could cause an adverse/hostile reaction with some protesters looking to direct their anger at officers.

By early afternoon, approximately 350 protesters had gathered at the City Hall Rotunda. At

about 1524 hours, the majority of the crowd began to march around the streets surrounding City Hall and remained peaceful. For the first time, the crowd marched to the San Jose Police Department, the District Attorney's Office, and the Sheriff's Office, all several blocks north of the downtown core. Officers were instructed to allow the crowd to move unimpeded. The march remained peaceful, and aside from periodically setting-off fireworks, and eventually circled back to City Hall without incident.

At 2030 hours, the curfew went into effect and, as the night before, most of the crowd dispersed. Those who remained were mostly orderly, although some set off fireworks in the area.

8.1. Reckless Driver/Officer Involved Shooting

Between 2100 and 2105 hours, a vehicle started doing a sideshow in front of City Hall. The driver of the vehicle fled the scene, continued to drive recklessly and in doing so struck a person who was riding on a motorized scooter, causing injury. A Traffic Enforcement Unit (TEU) sergeant attempted to apprehend the driver, who subsequently rammed the sergeant's motorcycle with her vehicle, knocking it over and injuring the sergeant's knee.

The driver again fled the scene in the vehicle. Another TEU officer located the driver a short time later, and in the course of the apprehension, the officer discharged his firearm, striking the driver. Again, the Department was tasked with investigating an officer involved shooting relating to the lawlessness associated with the rioting downtown.

At 2144 hours, officers were dispatched to form a skirmish line at City Hall to move a large, unruly crowd out of the area. By 2300 hours, the majority of downtown was clear of protest activity, and the assigned officers returned to the Command Post.

(For video of the above section refer to <https://youtu.be/bFQDpV00i5Q>)

8.2. Tuesday June 2nd, 2020 Timeline

11:33 a.m.	Small group of protesters begin marching from Market St towards City Hall.
1:42 p.m.	Approximately 300-350 protesters have formed near the Rotunda at City Hall. Protesters are peaceful.
3:24 p.m.	250-300 protesters begin to march around the City Hall area.
4:38 p.m.	Protesters return to City Hall.
5:00 p.m.	The majority of protesters begin to march towards the San Jose Police Department and the Santa Clara County Sheriff's Office.
5:22 p.m.	Protesters arrive at San Jose PD.
7:00 p.m.	Majority of protesters return to City Hall.
8:30 p.m.	Curfew goes into effect.
8:37 p.m.	Subject in the area of 10 th St. and San Salvador St. throwing fireworks and setting off roman candles.
9:00 p.m.	A large crowd was moving north towards City Hall from San Carlos St., approximately 20 vehicles were following the crowd.
9:05 p.m.	Side Show occurred at 5 th St. and Santa Clara St.
9:34 p.m.	Officer Involved Shooting at 8 th St. and Mission St.
9:44 p.m.	San Jose PD forms in the area of City Hall to move a large unruly group away.
10:34 p.m.	Group of approximately 10 agitators are arrested in the areas surrounding 4 th St. between St. John St. and Santa Clara St.
11:00 p.m.	San Jose PD clears the downtown core.

9. Wednesday June 3rd & Thursday June 4th, 2020 (Days 6 and 7)

Both days were largely uneventful. Throughout the late afternoon and into evening, protesters gathered and remained peaceful. The protesters marched through the downtown corridor to the San Jose Police Department, the District Attorney's Office, and the Sheriff's Office before returning to City Hall. By 2200 hours on both days, the downtown area was clear of protest activity.

On these days, incident commanders remotely monitored the crowd from the Command Post.

9.1. Wednesday June 3rd, 2020 Timeline

TIME	RESPONSE
5:50 p.m.	Approximately 200 people are marching around City Hall, 60 to 70 people remained at City Hall. Protest is peaceful.
5:58 p.m.	Protesters who were marching arrive at Market St. and head to Cesar Chavez Park. The group has increased in size as people have joined the march.
7:34 p.m.	The protesters who had been marching return to City Hall, a group of approximately 200 persons remain at Cesar Chavez Park.
8:00 p.m.	A number of persons are seen spray painting graffiti on City Hall.
8:08 p.m.	The protesters at City Hall move onto Santa Clara St. and take over the roadway. Police are not at City Hall and do not contact people protesting.
8:30 p.m.	Curfew goes into effect. Protesters begin marching eastbound on Santa Clara towards 10 th St. and then south towards San Fernando St. Protest remained peaceful.
9:00 p.m.	Protest march returns to City Hall.
9:14 p.m.	San Jose PD gives a curfew dispersal order. People leave City Hall peacefully.
10:00 p.m.	San Jose PD clears the downtown core. Majority of police units are dispatched back to their districts.

9.2. Thursday June 4th, 2020 Timeline

TIME	RESPONSE
5:00 a.m.	Curfew for the City of San Jose is lifted and no longer enforced.
3:00 p.m.	Demonstrators begin to assemble in front of City Hall. Approximately 40 to 50 people are estimated.
3:30 p.m.	More demonstrators have come to City Hall, approximately 100 persons have assembled. Approximately half begin to march around City Hall.
4:30 p.m.	Large group of protesters march to San Jose PD.
5:40 p.m.	The demonstration moves to the Santa Clara Sheriff's Office. Estimated 150 people remained at City Hall.
6:00 p.m.	The demonstration begins to move back towards City Hall.
8:00 p.m.	The demonstration at City Hall has ended.
10:00 p.m.	San Jose PD shut down the Command Post, and units return to their districts.

10. Friday June 5th, 2020 (Day 8)

By approximately 1726 hours, approximately 2000 people had assembled at City Hall. A large group splintered off and began to march toward the San Jose Police Department's campus. At approximately 1800 hours, a group of about 1000 arrived at the campus and, within 30 minutes, the size of the crowd had doubled.

MFF teams were dispatched to the police campus to provide security with instructions to remain out of sight of the group and allow the protest to continue. The group remained peaceful and eventually returned to City Hall where they continued to demonstrate for several more hours. Incident commanders monitored the crowd's activity remotely from the Command Post.



Figure 17. Protesters in Front of City Hall 06-05-2020

At approximately 2120 hours, AIR3 reported a male on the City Hall quad was pointing a laser at the helicopter in violation of federal law. Laser strikes pose a significant risk to the safety of flight crew as it can cause temporary

blindness and/or cause pilots to lose their bearings. At the time of the incident, the bulk of the crowd was at Cesar Chavez Park, and the group remaining at City Hall was spread out among the campus.

Officers that had been staging at the Command Post were dispatched to City Hall with direction to arrest the suspect responsible for the laser strike. AIR3 remained overhead and directed the team of officers to the suspect's location. Almost immediately, the officers were surrounded by a hostile crowd who pelted them with bottles and red paint. The officers were forced to retreat while also protecting the laser strike suspect they had in custody. The outnumbered officers facing a violent crowd could not reach their vehicles safely, and the officers had to take shelter inside City Hall. Additional officers were deployed to rescue the trapped officers. Those officers too were met with a hostile crowd launching projectiles. One of the police vehicles had its tires slashed. The trapped officers and the rescue officers evacuated the area under a hail of dangerous objects being launched from the crowd.

The San Jose Fire Department had reported a number of agitators had been jumping on one of their trucks as they moved through the downtown area. Inciters in the crowd were seen passing out wooden shields, which indicated they intended to defend themselves against PIWs. In other areas of the country, individuals utilized similar shields while launching items at officers, and it was reasonable to expect the same from this group.

By 2230 hours, an inherently dangerous “side show” began at the intersection of 4th Street and Santa Clara Street. A number of cars took turns spinning circles in the intersection at high speeds, inciting a crowd of onlookers, both of which are a crime. Individuals in the crowd jumped on vehicles that happened to be passing through the intersection. Incident commanders, observing this activity from the Command Post, directed AIR3 to give a dispersal order to the increasingly erratic and rowdy group. AIR3 gave multiple dispersal orders which appeared only to embolden them.

Incident commanders dispatched MFF officers who formed two skirmish lines; one to move half of the crowd toward 6th Street, and one to move the remainder of the group south on 4th Street in an attempt to disperse them. Upon arrival, some individuals within the crowd threw objects, including glass beer bottles, at the officers. Officers responded by deploying several Noise Flash Devices. Officers arrested two protesters on the 6th Street side. Most of the agitators in the overall group ran south on 4th Street. As officers were preparing to move south on 4th Street to disperse the agitators, approximately five individuals approached the skirmish line. The Special Operations captain and MERGE lieutenant walked out and peacefully contacted the protesters and convinced them to leave the area along with the other agitators. This moment was captured on film and later broadcast by multiple media outlets. By 2330 hours, the side-show crowd had been dispersed, and officers returned to the Command Post.



Figure 18. Peacefully Dispersing Protesters on 4th Street 06-05-2020

10.1. Friday June 5th, 2020 Timeline

TIME	RESPONSE
3:46 p.m.	400 demonstrators form together at City Hall.
5:26 p.m.	Demonstration has been estimated to be 2000 people in front of City Hall.
5:34 p.m.	Approximately 400 demonstrators were blocking Santa Clara St. at 3 rd Street.
5:36 p.m.	Large contingency of demonstrators begins marching towards San Jose PD. City Hall begins to clear out.
6:00 p.m.	Approximately 1000 demonstrators arrive at San Jose PD.
6:30 p.m.	The demonstration in front of San Jose PD is estimated to have grown to approximately 2000 demonstrators.
7:00 p.m.	Many of the demonstrators begin to move back towards downtown and City Hall. A group of approximately 500 demonstrators stops in front of Santa Clara Sheriff's Office.
7:46 p.m.	The march of demonstrators arrives back at City Hall.
8:00 p.m.	Many of the demonstrators leave the demonstration at City Hall. Wooden Shields are seen being passed out at City Hall. A vehicle is seen recklessly driving in front of City Hall. A group of approximately 500 people march to Cesar Chavez Park.
9:20 p.m.	Offender shined a laser at San Jose PD helicopter at City Hall. San Jose PD takes the suspect into custody. Agitators encircle officers and begin to throw bottles and paint at them. The group of officers rush the offender to safety while the other officers take refuge in City Hall. San Jose PD sends additional officers to rescue the ones in City Hall. Multiple objects are thrown at police officers as they evacuate the area. A police vehicle has its tires slashed.
9:44 p.m.	Crowd has become hostile towards police and people in the area of Santa Clara St. San Jose Fire reports agitators jumping on their fire truck as they move through the area.
10:30 p.m.	A side show occurs in front of City Hall. Numerous agitators begin jumping on vehicles and take over the intersection at Santa Clara St. and 4 th St.

10:32 p.m. San Jose PD helicopter gives a dispersal order to the subjects involved in the side show at City Hall. The order emboldens them, and the show continues.

11:30 p.m. The side show had ended, but a group of agitators remained in the area of the intersection of Santa Clara St. at 4th St. San Jose PD forms a skirmish line at the intersection. Multiple dispersal orders given.

11:35 p.m. Multiple subjects throw items at police at 4th St. and Santa Clara St. 2 people are arrested in front of City Hall.

12:30 p.m. San Jose PD shuts down the Command Post and clear from the downtown core.

11. Saturday June 6th & Sunday June 7th, 2020 (Days 9 and 10)

June 6th and 7th were largely peaceful and uneventful. After assembling at City Hall, the group marched through city streets, stopped at various locations and returned to City Hall. Incident commanders monitored the crowd's activities remotely from the Command Post. Although sideshows and the lighting of illegal fireworks in front of City Hall began to be a nightly occurrence, the incident commanders continued their strategy of restraint and did not dispatch any officers.

11.1. Saturday June 6th, 2020 Timeline

TIME	RESPONSE
3:08 p.m.	Demonstration forms at City Hall, it was estimated to be approximately 100 persons.
4:16 p.m.	The demonstration increases in size to 600 demonstrators. Many of the demonstrators march around City Hall.
5:30 p.m.	The demonstration march of approximately 500 demonstrators moves towards the area of Market St. and Cesar Chavez Park. City Hall was estimated to still have 100 demonstrators.
6:30 p.m.	Demonstrators continue to march in the downtown core.
7:03 p.m.	An estimated 500 demonstrators are peacefully assembling at Cesar Chavez Park.
8:00 p.m.	Many demonstrators have gone home, those who remain are peaceful.
10:00 p.m.	Side Show occurs at City Hall. San Jose PD does not intervene. San Jose PD helicopter gives dispersal order to offenders.
11:00 p.m.	The side show continued, and fireworks are set off in front of City Hall.
11:30 p.m.	San Jose PD shuts down the Command Post and units return to their districts.

11.2. Sunday June 7th, 2020 Timeline

TIME	RESPONSE
4:00 p.m.	Approximately 200 demonstrators march on City Hall. The demonstration is peaceful.
6:00 p.m.	A group of demonstrators march to San Jose PD. They are peaceful.
6:30 p.m.	The demonstration moves from San Jose PD to the Santa Clara Sheriff's Department.
8:00 pm.	The demonstration is over, San Jose PD closes the Command Post and units return to their districts.

12. Incident Command System (ICS)

The Department uses the Standardized Emergency Management System (SEMS) to manage mutual aid. SEMS is a scalable incident management protocol that is utilized statewide to manage large scale incidents that require mutual aid. The use of SEMS is required by California Government Code for managing response to multi-agency and multi-jurisdictional emergencies. SEMS provides a common understanding of management protocols that would allow a jurisdiction to set up a temporary and organized response to a major event using outside agency mutual aid responders. Agencies responding to mutual aid requests are deployed into the field and managed based on these standardized practices.

(For additional information on Emergency Management refer to

<https://www.sccgov.org/sites/oes/Pages/home.aspx>)

The ICS is the prevailing model for managing response to critical incidents, including crowd control and civil demonstrations. Under ICS, field response consists of five primary Incident Command System functions: Command, Operations, Planning/Intelligence, Logistics, Finance/Administration. Ideally, there would also be enough resources to designate a Public Information Officer, a Safety Officer, and a Liaison Officer.

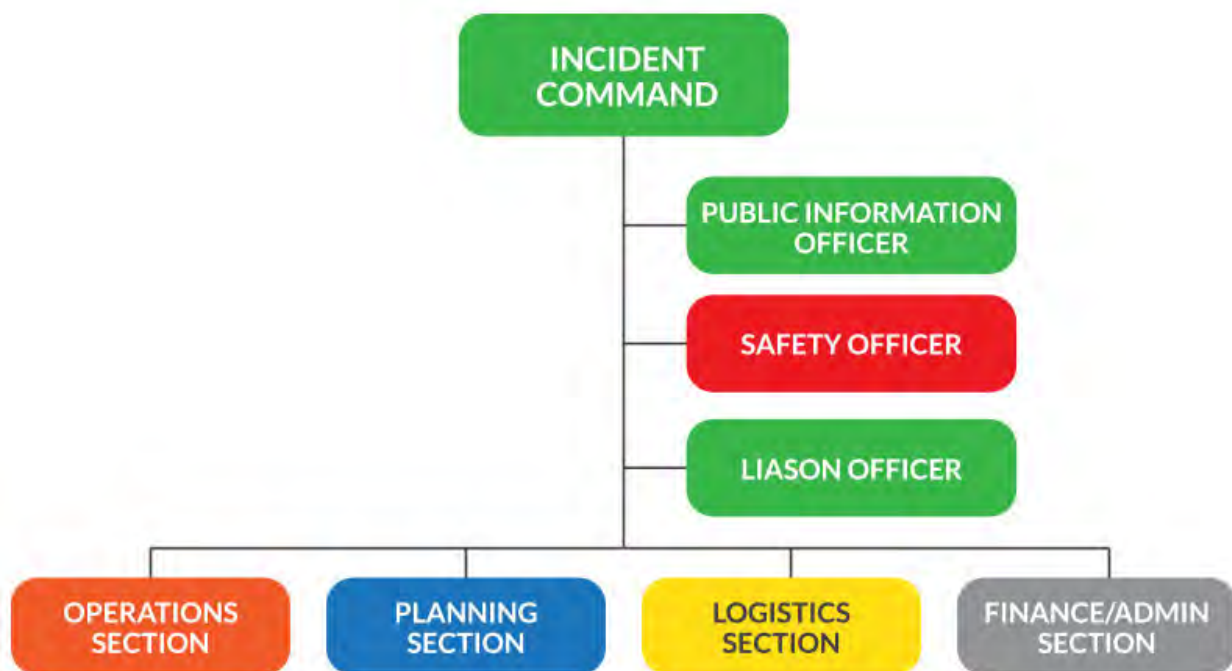


Figure 19. ICS Flow Chart

Every incident or event does not require a full ICS deployment. Spontaneous events may initially begin with only an Incident Commander. As the event continues, and more personnel arrive, a formal Command Post is established, and ICS positions can be filled as needed.

On May 29th, 2020, with less than 24-hours' notice, Special Operations developed an operational plan in the event the planned protest became disorderly or violent as had been witnessed in recent days in cities across the country. The ICS framework was established as part of that plan. A patrol lieutenant was designated as the Incident Commander to oversee the event, with a Special Operations Tactical Commander to handle the Operations branch of ICS. Each Mobile Field Force was designated a sergeant, and the Tactical Commander supervised the Special Operations Strike Teams.

During the first phase of the demonstration at City Hall, field intelligence reported that it was peaceful. As such, a Command Post did not appear to be needed, and incident commanders used the Chaplain's Office at Santa Clara Street and 10th Street as an initial staging area while monitoring crowd conditions. Designated MFF officers remained on standby in the field, working their usual assignments, while Department personnel observed the crowd from a distance (shadowing) along the route of their march. For the first hour and a half, the march was peaceful and unimpeded by police.

Later, as the event abruptly turned from a peaceful march to a dangerous freeway takeover, an initial Command Post was established at San Jose High School and resources staged there in the event their deployment became necessary. The Command Vehicle, a critical



Figure 20. SJPD Command Vehicle

asset specially designed to be used as a mobile command center for large scale events, was out of service for maintenance. The Command Vehicle is equipped to provide a centralized location for command collaboration, information gathering, technology, and resources.

Without access to the Command Vehicle, incident commanders initially operated out of the back of their SUV's, with only dry-erase boards and markers and two Community Service Officers (CSOs) as scribes to keep track of officer assignments. These antiquated tools proved cumbersome, and the rapid evolution of events and resource deployment was initially difficult to organize and track.

It quickly became evident this location would be too small to accommodate the scale of resources anticipated, and the Command Post was relocated to the SAP Event Center parking lot. The Command Vehicle Response Team was eventually able to retrieve the Command Vehicle from the City repair shop, and the van arrived at the Command Post at

1950 hours. The process of transferring information contained from the whiteboards to an electronic board, further impeded the flow of information and created additional difficulty keeping track of resource deployment.

A precise reconstruction of the Command Post organization is not possible because of the constantly evolving nature of the organization of the response to the swelling unrest. Optimal staffing would provide one patrol lieutenant per division, for a total of four lieutenants. Swing shift was staffed with the minimally required two patrol lieutenants. One was designated as the Incident Commander, and the other was to cover the entire City. Once it became apparent the protest would require a greater response than anticipated, both patrol lieutenants were tasked to the Command Post.

Ideally, there would be sufficient resources to allow for patrol lieutenants to designate responsibilities required in the ICS system and to provide supervision in the field. Because of insufficient staffing at the command level, the patrol lieutenants were unable to leave the Command Post to provide on-scene direction and oversight. While there were Special Operations commanders in the field, the patrol officers dispatched to assist presented a span of control problem.

Span of control can be defined as the total number of direct subordinates that a commander can control or manage. The number of subordinates managed by a commander varies depending on the complexity of the work. For example, a commander can manage 4-6 subordinates when the nature of work is complex, whereas, the number can go up to 15-20 subordinates for repetitive or fixed work. In this case, the work was extremely complex, if not chaotic. The span of control for the Special Operations commanders was such that they were unable to effectively command patrol resources in addition to Special Operation assets. MFF team sergeants were left to direct their teams consisting of 10 officers without the benefit of a perceived unity of command and a clear objective.

On May 29th, while the operational plan indicated a patrol lieutenant as the Incident Commander, in reality he was unable to devote his attention solely to that role as he was tasked with numerous responsibilities, including communicating needs to dispatch, acquiring personnel and resources, deploying those resources, planning logistics such as meals and officer relief, Command Post security, prisoner processing, and record keeping. According to SEMS, the Incident Commander has overall authority and responsibility for conducting incident operations and is responsible for the management of all operations at the incident site.

The patrol lieutenant would have been the appropriate person for this role for a smaller scale event, not unusual in day to day operations. However, once the event grew into large-scale civil unrest and upper command level officers arrived, the BFO Deputy Chief assumed the role of Incident Commander while the two patrol lieutenants divided the responsibilities (logistics, supplies, staffing, liaison with incoming agencies, etc.). This required delegating some tasks to the Command Vehicle Response Team Members and CSOs. In the initial hours of the rapidly unfolding event, there were insufficient resources to rapidly organize and delegate these tasks.

On May 30th, the ICS system was implemented more effectively with clearly defined roles, however there were still only two patrol lieutenants for swing shift managing the Command Post, so neither could be deployed into the field to oversee patrol teams and address the span of control concerns of the Special Operations commanders.

By May 31st, and throughout the remainder of the Operational Timeline, there were sufficient patrol commanders (lieutenants, captains, deputy chiefs) available to shoulder both the responsibilities of the Command Post and regular field supervision of patrol teams.

12.1. Findings

While the incident command was established, the SEMS ICS system was not fully implemented in the first two days, which inhibited coordination and response efforts.

While two patrol lieutenants are the minimum required for staffing levels on each shift, this staffing level is 50% of the optimal staffing levels currently required. It became apparent in the early stages of the Operational Timeline that this is insufficient to manage a large-scale event while still maintaining operational awareness in the remainder of the city.

Span of control for patrol was too wide to allow for effective communication and supervision during the chaotic events. Sergeants were assigned groups of up to ten officers, many of whom had no working relationship with one another and were assembled ad hoc. Upon arriving with their teams, there were no patrol lieutenants there to provide direction.

12.2. Recommendations

- a. Supervisors should receive Standardized Emergency Management System (SEMS) and Incident Command System (ICS) training, to include practical/tabletop exercises and scenario training.
- b. Review staffing models to determine if adjustments to the current model are needed to allow for sufficient command and control during large-scale events.
- c. Develop a plan to activate the Bureau of Administration and Bureau of Investigations personnel to supplement patrol during large-scale events, particularly in positions at the Command Post (prisoner processing, Mutual Aid liaison, logistics, etc.)

13. Mutual Aid

The Santa Clara County Law Enforcement Mutual Aid Manual (2009) provides for the coordination of law enforcement mutual aid operations at local or operational levels. The



Figure 21. SJPD and Santa Clara County Sheriff's Office

goals of the Mutual Aid Agreement are to establish procedures for law enforcement agencies dealing with major civil disturbances, riots, or unusual occurrences to follow for obtaining assistance when any single agency is unable to control a given situation utilizing only its own resources. During the Operational Timeline, mutual aid was required during the first three days.

The following excerpt is taken from the Santa Clara County Law Enforcement Mutual Aid Manual:

"...with regard to civil disorder, we have seen several different methods used over the years by law enforcement at the onset of these incidents. One method has been to attempt to

contain the affected area and let the disturbance "burn itself out." Another has been to commit manpower and equipment to the incident and suppress it.

Law enforcement has learned, from past experience, that it is next to impossible to contain a riot; participants can and will affect the guise of the non-involved and move out of the contained area only to commit further acts of violence or crime elsewhere. We recognize that standing by and letting a situation "burn itself out" does not resolve the problem but perpetuates it.

Based upon these observations, it is our policy that at the onset of civil disorder and riot, we will move immediately to suppress the outbreak through the judicious use of all necessary manpower and equipment and with such a lawful force as is necessary to accomplish this policy."

Early on May 29th, it was evident that this disturbance was not going to "burn itself out" and that the Department would not be able to manage the crowd using solely Department resources.

At 1759 hours on May 29th, the BFO Deputy Chief made the decision to request mutual aid pursuant to the County's Mutual Aid Protocol. A patrol captain contacted the Regional Mutual Aid Coordinator and asked that one-hundred officers be immediately dispatched to the Command Post at SAP Center to assist.

As a result of the Mutual Aid and Code 30 (*Reference 13.3*) requests, approximately 248 officers from outside agencies responded on May 29th, 2020. On May 30th, approximately 69 officers responded from outside agencies. On May 31st, approximately 114 officers responded from outside agencies. For the remainder of the Operational Timeline, the Sheriff's Department continued to provide personnel for transportation and booking but other agencies were not needed.

Santa Clara County Sheriff's Office (SCCSO) provided the majority of mutual aid resources. Some were correctional officers who handled prisoner processing and transportation, as well as the transportation for MFF Teams from the Command Post to their deployment zones. The remainder of the SCCSO resources served to assist on skirmish lines downtown.

Officers from the other listed agencies assisted with crowd control and traffic control points downtown and were also dispatched to businesses that were rumored on social media to be potential targets for looting. Due to recent radio upgrades which allow for interoperability among agencies, Department personnel were able to communicate with officers from other agencies, with few exceptions. In those exceptions, officers were provided with Department hand-pack radios. This allowed for deployed officers to communicate directly with the Command Post, rather than having no radio communications or having to relay through their own agency dispatchers

(For complete list of Agencies that responded to the Code 30/Mutual Aid request by SJPd refer to Appendix 29.16)

13.1. Findings

The supplemental resources from neighboring agencies provided much needed staffing to assist in the first few days of the Operational Timeline. Radio interoperability helped improve safety conditions and communications. However, critical components of a full implementation of the ICS system would provide for smoother operations. For example, a liaison officer who would be the point of contact for all incoming resources would allow for better tracking and relief of resources. Instead, the mutual aid officers were deployed, but at times were not relieved or re-deployed when their assignments were completed or the situation at their location stabilized.

13.2. Recommendations

- a. Consider working with the Police Chiefs' Association of Santa Clara County to review the Mutual Aid Protocol (2009) to determine what changes, if any, should be made to bring the protocol in line with current best practices. For future events, provide a mutual aid liaison solely dedicated to managing mutual aid resources.

13.3. Code 30

At 1821 hours, based on the ongoing violence and mushrooming crowd size, conferral among commanders led to the Assistant Chief's decision to call for a "Code 30." A "Code 30" is an emergency request by a law enforcement agency for every available officer to respond "Code 3" to assist the agency making the emergency request. In this case, the San Jose Police directed incoming units to the new Command Post at SAP Center for deployment. This "Code 30" further depleted resources from the patrol beat structure, which meant there remained only a small fraction of officers or supervisors available to respond to calls for service throughout the City. As officers arrived at the Command Post, they were assigned to a sergeant to create ad hoc MFF and Strike Teams which were dispatched into the field.

13.4. Fire/Medical



Figure 22. San Jose Fire Department Logo

Fire and Medical Supervisors responded to the Command Post as part of the unified ICS structure and remained there throughout the event. Ambulances were also staged at the Command Post to allow for quick response to any medical calls in the affected area. All fire and medical calls for service within the areas affected by the unrest required police escorts to provide protection for fire and medical personnel and equipment.



Figure 23. Santa Clara County Medical Logo

Fire and Medical supervisors staged at the Command Post along with police resources. Police escorts were designated to provide security for fire and medical personnel for each of these events. The Fire Communications Manager provided the following summary of the calls for service they responded to during the first three days of the Operational Timeline within the downtown area impacted by the protests. *(Note: Because the first three days were the days most impacted by the civil unrest, we focused on the data from these three days only.)*

13.5. May 29th, 2020

Medical (Protest Related)	10
Medical - Not protest-related but in protest zone	2
Garbage Can Fire	9
Trash Fire	4
Dumpster Fire	4
Mattress and Couch Fire	1
Couch Fire	1
Tree Fire	1

13.6. May 30th, 2020

Medical (Protest Related)	1
Medical - Not protest-related but in protest zone	3
Report on Conditions (unknown)	1
Dumpster Fire	1
Concern About Tear Gas in Building	1

13.7. May 31st, 2020

Medical (Protest Related)	1
Medical - Not protest-related but in protest zone	1
Garbage Can Fire	1
Unhoused Person with Controlled Fire	2
Tree Fire	1
Unknown Type Fire	1



Figure 24. Overview of the Command Post

14. Equipment

Between May 29th, 2020, and June 7th, 2020, various equipment was employed in crowd control and to quell violence directed at police. The following is a summary of the equipment and uniforms in use during the timeframe under assessment. Since multiple law enforcement agencies were involved, there is a variation in officer equipment. Variations also likely exist in training, duty assignment, specialty, and applicable policy and procedure across the spectrum of involved agencies. The following details the equipment and munitions deployed by the Department during the Operational Timeline.

14.1. Air Support

The Department currently has one police helicopter (AIR3). This is an Airbus H125 police helicopter. It is equipped with various systems, such as a loudspeaker for public address, cameras (night vision and daylight), and a downlink system that allows for live viewing of the camera system from the ground. AIR3 was utilized throughout the Operational Timeline to provide a bird's-eye view of the crowd's movements and behavior to the Command Post, and to make unlawful assembly announcements via loudspeaker to individuals on the ground.



Figure 25. SJPd AIR3 an Airbus H125

Throughout the Operational Timeline, the Department grappled with operational limitations in air support and aerial surveillance. Throughout the country, law enforcement agencies in comparably sized cities maintain larger aircraft fleets. The Department is equipped with only one helicopter. The nature of the events assessed provides another example of the consequences of insufficient air resources in a city the size of San Jose. Invaluable aerial

surveillance was not available during much of the Operational Timeline, to include critical periods. Even routine periodic refueling left the Department blind, without aerial observation capabilities for at least 45-minutes at a time, and often longer for the reason outlined below.

When AIR3 is unavailable, the Department relies on allied agencies for air support. During the Operational Timeline, CHP air support assisted on May 29th, but because of riots in Oakland and Sacramento and fuel rationing, they were unable to provide assistance throughout the remainder of the Operational Timeline. The Department was unable to rely on air support from Santa Clara Sheriff's Department as the agency only has one aircraft

that is operated two days a week, and it was unavailable during most of the Operational Timeline.

Further complicating matters, the Air Support Unit's (ASU) fuel truck was out of service due to a mechanical issue during the Operational Timeline, requiring use of a private refueling company. This added 45-minutes to standard refueling times. Despite extended down time for refueling, the Department was fortunate that AIR3 was available for part of the Operational Timeline as it is was scheduled to be out of service for mandatory FAA inspections and maintenance for several weeks in July. Had these events occurred in July, the Department would have had no air support.

Another factor complicating aerial surveillance was the presence of media helicopters and inbound commercial flights. This restricted AIR3's ability to maneuver or elevate to heights that would allow them to capture a wider field of view. The tall buildings downtown also obstructed their view.

While the Department previously had a fixed-wing aircraft, it was grounded in early 2020 for being dilapidated and unsafe. It has not been replaced. This leaves the Department at a tactical disadvantage. A fixed-wing aircraft has a longer flight time and can stay airborne for roughly six hours. A fixed wing is quieter, has a lower profile and generally more suitable for surveillance than a helicopter. It can provide high quality video live-stream to a Command Post. A fixed-wing could have flown at a higher elevation to get a wider field of view without building obstructions or encumbrance by news helicopters.



Figure 26. CHP Fixed Wing Aircraft

Nationally, fixed-wing aircraft are typically utilized for large events such as protests, parades and public events, for which uninterrupted air support is critical to assist incident commanders in logistical, operational and tactical planning. When working in conjunction with a fixed-wing that is responsible for observation and surveillance, the helicopter is more useful for broadcasting PA announcements, illumination with a high-powered spotlight, and directing officers during arrest scenarios.

Another challenge faced by incident commanders was the lack of the consistent video downlink from AIR3 to the Command Post. At times, the signal was intermittent, likely due to interference by tall buildings. Additionally, in the early stages of the Operational Timeline before the Command Vehicle was operational, incident commanders on the ground had no access to aerial video. Handheld downlink devices would have allowed for AIR3 footage to be live streamed to the incident commanders on the ground to inform tactical and operational decisions.

(For video of the above section refer to <https://youtu.be/SolVM0rAJdg>)

14.2. Unmanned Aerial System (UAS)

While the Department does have a UAS (drone) program, the program had not been fully implemented and pilots had not yet been trained. Therefore, no UAS's were used in connection with the protests during the Operational Timeline. These drones would have been useful in providing commanders with an aerial perspective. This would allow situational awareness regarding crowd size and behavior, ascertain the location of injured parties within the crowd to allow for ingress/egress of aid, and to gather useful footage for follow up investigation. While the Department helicopter (Air3) was utilized throughout these events, at times there were multiple locations of rioting and drones would have been a useful addition.

14.3. Findings

Throughout the Operational Timeline, incident commanders were frustrated by a lack of constant aerial surveillance. With uninterrupted air support coverage, more video footage and downlinked video to the Command Post would have been available for incident commanders to aid in dynamic situational assessments and resource allocation decisions. Consistent aerial surveillance would undoubtedly have helped the Department respond more effectively to the incidents of violence, vandalism and looting during the Operational Timeline.

Effecting an arrest within a large, unruly crowd can inflame some members of the crowd, posing risk of assault on officers. Uninterrupted aerial surveillance allows for tactical coordination with arrest teams, allowing for arrests to be delayed until the subject to be arrested is away from the crowd. The air crew can see the surrounding locations and allow prudent enforcement action when the area is safe to do so. Mitigating use of force incidents is critical. The aerial footage provides more transparency as it provides a different point of view than officers' BWCs. The footage is also a vital aid in efforts to prosecute and can contribute to refuting class-action lawsuit claims of unnecessary and/or excessive force.



Figure 27. SJPD AIR3 Overhead View



Figure 28. SJPD AIR3 Overhead Close-up

14.4. Recommendations

- a. Acquire a fixed-wing aircraft to provide critical aerial surveillance to provide commanders appropriate situational awareness.
- b. Acquire hand-held downlink devices in all command vehicles to receive the aerial surveillance feed from air support units.
- c. Fully implement the UAS program and utilize UAS for aerial surveillance in large scale civil unrest events.

14.5. Bearcat Armored Vehicles

The Department currently has two Lenco Bearcats. These armored vehicles are traditionally used to protect officers in situations with armed and/or barricaded suspects, to protect officers as they move in active-shooter environments, and to rescue community members or officers from harm's way should they be injured or otherwise in peril in a hazardous encounter. There are no special weapons attached to this vehicle.

The Department is aware of the critique that vehicles appear to some as excessively militaristic for use by a municipal agency, and accordingly the Department is sparing in their deployment, reserving them for situations when their use is necessary to the safety of officers and civilians in a critical incident or pre-planned tactical event. In fact, when the officer was struck unconscious, officers on the skirmish line dragged him to a nearby patrol vehicle to extricate and transport him to the hospital. A patrol vehicle could easily be surrounded and overwhelmed by a hostile crowd. A Bearcat would have been useful as a rescue mechanism in this situation; however, it had not yet been deployed.



Figure 29. SJPD Bearcat 2



Figure 30. SJPD Bearcat #1

Additionally, Bearcats are helpful tools in the event of an attack from elevated positions. This was a potential threat throughout the Operational Timeline as people in elevated positions threw dangerous objects down on officers below. Had the rioters gained access to the building under construction at Santa Clara and 5th Street, they would have been able to reach elevated

positions and potentially launch attacks on the officers below. The Bearcats are also useful assets to have on site in case there is an active shooter or other mass casualty incident.

The Bearcats were deployed as part of the operational plan on May 29th, and were utilized throughout the Operational Timeline. They were used to transport supplies and personnel, and to block streets as an anti-vehicle barricade. They were staged in strategic positions should a community member or Department member need to be rescued.

14.6. Cargo Van

The Department deployed a cargo van equipped with personnel skids and handrails allowing up to 20 officers to ride on the exterior of the van. This allowed METRO/VCET personnel to load onto the van, load the van with all the necessary less-lethal munitions and arrest kit supplies (e.g. zip ties,) and deploy into the field as a team.



Figure 31. SJPD Transport Van

A major concern during MFF deployment is leaving vehicles unattended in the field after transporting personnel. Unprotected vehicles are often vandalized or looted of critical police equipment. This van allowed METRO/VCET personnel to quickly respond as a team and keep critical munitions and supplies close by while moving a hostile and violent crowd. The van was also used as a platform to deploy the LRAD (described in detail below) to make unlawful assembly announcements.

14.7. Long Range Acoustical Device (LRAD X100 Public Address System)

This is a portable long-range acoustic device that can be mounted on any vehicle via magnetic mounts. The max decibel level reached with an X100 is 137 decibels. The maximum range is 600 meters or greater.



Figure 32. SJPD LRAD

The LRAD can be weaponized to transmit a high-pitched, acoustically directed noise for crowd control. This feature of the LRAD is prohibited by Department policy and was not used in this fashion.

During this event the LRAD was used to provide clear and concise dispersal orders. Providing a clear dispersal order that can be heard and understood throughout the crowd is a critical component of what the courts examine in the declaration of an unlawful assembly.

The LRAD was successful in providing the dispersal order in this manner where a normal PA system from a police vehicle would have been insufficient.

14.8. SJPD Traffic Enforcement Unit (TEU)



Figure 33. SJPD TEU Patch

Traffic Enforcement Officers (officers deployed on motorcycles) can be of extreme importance in crowd control situations. The maneuverability of the motorcycles allows TEU officers to respond quickly to problem areas and reinforce skirmish lines to stop crowds from advancing. They are also able to drive in areas inaccessible to patrol vehicles. A full contingent of TEU officers can quickly dismount their motorcycles to use them as obstacles, providing a mechanism of cover between the officers and the crowd. TEU units can respond faster than officers on foot, allowing them to establish a skirmish line until resources on foot can arrive.

TEU staffing was significantly depleted following budget cuts and as a result of the financial crisis in and around 2012. Once fully staffed with forty motorcycle officers, the unit now consists of only ten officers and one sergeant.

A full contingent of TEU officers would have been able to deploy independent of other personnel and would have been used to quickly clear crowds in multiple locations. Instead, because their numbers were too few, they were only able to act as a supplemental unit for MFF team skirmish lines. More TEU officers would potentially, as in the past, allow the officers to split and sufficiently handle two areas. When TEU had forty officers, they could control a major intersection without support from other officers.

14.9. Unlawful Assembly Dispersal Order

The decision to declare a crowd unlawful is based on reasonable and articulable facts. Penal Code Section 407 defines an unlawful assembly as, “whenever two or more persons assemble together to do an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner.” On May 29th, when the crowd blocked all lanes of the freeway and began damaging vehicles and throwing objects at the police officers, the peaceful demonstration had clearly and objectively transitioned to an unlawful assembly. Special Operations teams were deployed and began to organize with patrol MFF Teams. With the use of the LRAD mounted on top of a patrol vehicle, dispersal orders were repeatedly given.

A dispersal order contemplates a permanent dissolution of the unlawful assembly and the departure of the individual participants. It is not used or intended to merely move or redirect a crowd. POST Crowd Management, Intervention and Control¹⁷ guidelines recommend including a warning that force may be used which may inflict significant pain or result in

¹⁷ CA POST Guidelines - Crowd Management, Intervention, and Control p. 47
https://post.ca.gov/Portals/0/post_docs/publications/Crowd_Management.pdf

serious injury. The dispersal order must be given in a manner that is reasonably heard and understood by the intended audience.

POST provides the following example of a dispersal order: *“I am (peace officer’s name and rank), a peace officer for the (name of jurisdiction). I hereby declare this to be an unlawful assembly, and in the name of the People of the State of California, command all those assembled at (specific location) to immediately disperse, which means to break up this assembly. If you do not do so, you may be arrested or subject to other police action. Other police action could include the use of force* which may inflict significant pain or result in serious injury. Penal Code §409 prohibits remaining present at an unlawful assembly. If you remain in the area just described, regardless of your purpose, you will be in violation of Penal Code §409. The following routes of dispersal are available (routes). You have (reasonable amount of time) minutes to disperse.”*

The Department’s dispersal order, as outlined in Duty Manual Section L 2312, is the following: *(RANK AND NAME), A PEACE OFFICER OF THE STATE OF CALIFORNIA AND A POLICE OFFICER OF THE CITY OF SAN JOSE. I DO HEREBY DECLARE THIS AN UNLAWFUL ASSEMBLY, AND IN THE NAME OF THE PEOPLE OF THE STATE OF CALIFORNIA, I COMMAND YOU TO IMMEDIATELY DISPERSE.”*

14.10. Findings

The LRAD was effective in projecting the dispersal order, which was given repeatedly. Additionally, other devices were used to project the dispersal order (AIR3 PA system, patrol vehicle PA systems). Video footage from a variety of sources (media, social media, BWC) captures the repeated dispersal order clearly, indicating it should have been reasonably heard and understood by the crowd.

While POST recommends defining “disperse” for the crowd and includes an explanation of the consequences of not dispersing (arrest, force), the Department’s dispersal order does not include those points.

Multiple unlawful assembly dispersal announcements over the course of several hours seemed to create complacency among the crowd and even emboldened some as there were no immediate consequences for not dispersing.

14.11. Recommendations

- a. Revise the Department’s dispersal order script to include POST recommended language, including an explicit warning about force and gas.
- b. Pre-record dispersal orders in the three languages most likely to be encountered in San Jose: English, Spanish and Vietnamese.
- c. Coordinate with Emergency Operations Center (EOC) to acquire additional LRAD devices to ensure dispersal orders and announcements can be heard in all directions for several blocks.
- d. Incorporate into protocols a recommendation that unlawful assembly orders be repeated periodically once the Department is prepared to take enforcement action to avoid prolonged repeated announcements that may cause the crowd to become complacent.
- e. Unlawful assembly orders should be given repeatedly and then enforcement action taken soon thereafter so the crowd does not become emboldened or complacent.
- f. When dispersal orders are given, they should be published on various social media platforms and include instructions that the order applies to everyone present.

15. Public Concern with ‘Militarization’ of Policing

Nationally, concerns have been expressed about police uniforms, tactics, weaponry, and other equipment that some commentators consider too militaristic for the policing of civilian populations.

During the events under assessment, San Jose Police officers wore utility uniforms, those that officers usually wear in inclement weather. Utility uniforms can also be laundered/washed daily (whereas Class A/B uniforms are usually dry cleaned) making them a safer and more appropriate option for wear during the current Covid-19 crisis.

During the events under assessment, deployed officers also wore helmets with face shields. It is a common occurrence during episodes of civil unrest, that officers are targeted with rocks and bottles and other heavy items that could cause serious injury or death. It is also not uncommon during civil unrest for various fluids to be thrown at officers. In the course of the protests in San Jose, rioters struck officers with fluids including milk, urine, water and other unknown, potentially noxious liquids. A helmet and face shield are the minimum appropriate protective equipment required to keep officers safe while on the line.

Deployed officers were also instructed to carry their Department issued gas masks, which are strapped to their thighs in a small black bag. Given the unpredictability of crowds engaged in civil unrest, and the possibility of gas deployment as a needed crowd control tactic, it would be irresponsible to send officers into crowd control situations without this basic protective gear.



Figure 34. Non-SJPD Riot Suit

The 42” baton is used by the Department in crowd control situations. The extended length of the baton allows officers to use a variety of movements designed to move people away from officers and direct their movements. It is also used as an impact weapon in the event force becomes necessary.

San Jose Police Officers are not equipped with some of the heavier-duty protective equipment commonly used by other law enforcement agencies throughout the country. Full body riot suits are available for law enforcement which are designed to provide protection against weapon attacks, including explosives and flames, and sharp and blunt objects. (Example of a full body riot suit depicted to the left.)

Despite the availability of this enhanced equipment, San Jose Police Officers are not outfitted with full body riot suits. They do not wear shoulder armor, arm or hand protection, chest plates, back plates, groin protection, waist protection or leg and feet protection. They also do not carry individual shields commonly used by other departments.

The Department currently has multiple uniforms offered and authorized for duty wear. The following section catalogs the various uniforms that may have been utilized during the events under assessment.

15.1. Uniforms

Described below are the uniforms worn by San Jose Police Department personnel. Mutual Aid agencies who responded were all wearing uniforms distinctive to their agencies, including identifying patches, name tags, and badges.

15.2. SJPD Patrol Utility Uniform



Figure 36. SJPD Utility Uniform

The two-piece style utility uniform is the standard. The uniform is a two-piece navy-blue cotton blend. The shirt may be short or long sleeve but always neatly tucked into the trousers. White sergeant's chevrons are sewn on both sleeves in the same manner as the Class A/B uniform. Standard command officer insignia is worn on the shirt collar. There are cloth name and badge number tags with silver lettering and numbers on a black background and are sewn above the pockets as noted below.



Figure 35. SJPD Sergeant's Chevrons

15.3. SJPD Special Operations Utility Uniform:

The uniform is a two-piece utility uniform, black cotton blend with shoulder patches, cloth badge, a “police” patch on the back, and cloth name/badge number tags. The black utility uniform is only worn by Special Operations officers. The patches on the shoulder differentiate between VCET, METRO and MERGE operators.



Figure 38. SJPD MERGE Uniform



Figure 37. SJPD Motors Uniform

SJPD MERGE and Motors shoulder patches have the traditional San Jose Police patch.



Figure 40. SJPD METRO Uniform



Figure 39. SJPD VCET Uniform

SJPD METRO and VCET have specific authorized shoulder patches.

15.4. Body Worn Camera (BWC)

Specifications:

- Enhanced low-light performance
- Reduced motion blur
- Live Stream Capabilities
- Video Resolution: 1080.720H. 720L. 480
- Video Format: MPEG-4
- Battery Life: 14 hours
- Drop Test: 6 feet (Ambient); 4 feet (Cold)
- Storage: 64 GB



Figure 41. Axon Body Worn Camera. As Worn by SJPd.

SJPd currently deploys the Axon Body Worn Camera 3. All Department members were equipped with these cameras for the duration of the civil unrest. These BWCs are docked at locations at the San Jose Police Department. (*Refer to Appendix 29.13 for the complete SJPd BWC policy.*)

16. Use of Force

The Department's response to incidents of civil unrest should be consistent with Department use of force, arrest policies, and the law. The reasonableness of force used to effect an arrest is determined by balancing the nature and quality of the intrusion on the individual's Fourth Amendment interests against the governmental interests at stake. *Graham v. Connor*, 490 U.S. 386, 396-397 (1989).

In determining the governmental interest, the Court will examine three factors:

- The severity of the crime at issue.
- Whether the suspect posed an immediate threat to the safety of officers or others.
- Whether the suspect was actively resisting arrest or attempting to evade arrest by flight.

The Court noted that determining the objective reasonableness for the use of force must be a fact-specific analysis and established the following four considerations for determining reasonableness:

- Peace officers will constantly be faced with decisions of when to use force and to what degree it should be applied.
- The totality of the circumstances must be evaluated from the perspective of the officer at the scene, rather than from an outsider with the benefit of '20/20' hindsight. Reasonable force must be based on the facts and circumstances known to the officer at the time the force was used.
- The amount of force necessary for the situation is determined by the objective reasonableness as judged by a 'reasonable officer' standard.
- A reasonable officer is defined as an officer with similar training, experience, and background in a similar set of circumstances, who would react in a similar manner.

POST recommends departments periodically review use of force alternatives in response to potential actions encountered during crowd control and unlawful events. Under the POST crowd management guidelines.¹⁸

- Training should reflect reasonable use of force alternatives, so officers are prepared to consider the tactics/force options available; *Chew v. Gates*, 27 F. 3d 1432, 1443 (9th Cir. 1994).
- Peace officers need not use the least intrusive force option, but only that force which is objectively reasonable under the totality of the circumstances; *Scott v. Henrich* ,

¹⁸ https://post.ca.gov/Portals/0/post_docs/publications/Crowd_Management.pdf

39 F. 3d 912 (9th Cir. 1994), and *Forrester v. City of San Diego*, 25 F. 3d 804 (9th Cir. 1994).

- When feasible, prior to the use of a particular force option, officers should consider the availability of less-intrusive measures; *Young*, 655 F.3d at 1166; *Bryan v. McPherson*, 630 F. 3d 805, 831 (9th Cir. 2010).
- Warnings should be given, when feasible, if the use of force may inflict significant pain or result in serious injury; *Deorle v. Rutherford*, 272 F.3d 1272, 1284 (9th Cir. 2001).
- The force used must be objectively reasonable under the totality of the circumstances. *Graham v. Connor*, 490 U.S. at 397.

Any use of force by an officer in San Jose is regulated by Federal and State statute, and subject to the standards and directives of the Department Duty Manual. The Use of Force section and subsections of the Department's Duty Manual are composed (and amended) in collaboration with the Department's Use of Force Committee

The Department provides POST mandated training to all sworn personnel in what are considered perishable skills: tactical communications, firearms, driving, and defensive tactics. There is no POST mandated training regarding other use of force, however the Department provides Force Options Simulator training every other year, which incorporates review of force related policies and scenarios using a simulator.

Some media reports were critical of the Department's use of force throughout the Operational Timeline. The use of tear gas and projectile impact weapons (PIW) were particularly controversial. Allegations of indiscriminate use of PIW and chemical agents surfaced. The factors in any given use of force encounters are dependent on facts that must be thoroughly investigated through an Internal Affairs investigation. Accordingly, analysis related to individual uses of force is outside the scope of this report. For a detailed summary of Department Use of Force policies relevant to this report, please refer to Appendix 29.1 through 29.8.



Figure 42. Subject of Use of Force

On May 29th, the Special Operations captain authorized the use of 37mm PIW after it was clear the crowd did not intend to disperse, an officer had been assaulted and rendered unconscious, and the rioters within the crowd launched sustained assaults on the officers with dangerous projectiles. Special Operations personnel documented their actions in their daily reports.

Throughout the Operational Timeline, officers had authority to use 40mm PIW as defensive weapons against specific individuals who posed a threat of serious injury to the officers or others. Officers documented the use of these weapons and the reasons for their use in their police reports. Specific allegations that officers violated prescribed policy in their specific uses of PIW, including stunbag shotguns and 40mm launchers, will be investigated by Internal Affairs and is outside the scope of this report.

The Department's use of PIWs and chemical agents in the first two days of the Operational Timeline caused concern in the community. In response to these concerns, Chief Garcia directed policy changes governing the use of PIW during crowd control situations.

16.1. Findings

Certain aspects of the Department's tactical response, especially in the first few days of the protests (and related incidents of public disorder), drew pointed criticism from community advocates, some media outlets, and City officials. Of particular concern was the extent PIW munitions and CS gas (from a variety of delivery methods) were used, anecdotal comments in media interviews and social media posts indicated a public perception that the Department's use of force was excessive, directed against peaceful protesters. While the Department remains open to and is committed to transparency around the possibility that instances of force may have occurred that were not within policy, determination of such requires a full and complete investigation. Currently, Internal Affairs is investigating specific complaints of misconduct.

Their investigation will encompass critical additional elements, including interviews with involved parties, analysis of all video footage from all perspectives, analysis of policies when applied to the Department's force response, comparisons with other agency policies and procedures and a review of best practices.

The Chief has already committed to engage the community in a review of the Department's policies and procedures pertaining to crowd control. The Department is working with the City Manager's Office to implement all items that are outlined in the City's Police Reforms Work Plan. As discussed above, the Department has already updated policies regulating PIW weapons in crowd control situations, requiring, among other things, that they "only be used in situations where a person is actively attacking an officer or another person or when an armed agitator poses a threat to officers or other peaceful protesters."

The AAR Team also found the reporting of the number of less lethal rounds was difficult to quantify as many officers simply documented they fired "multiple" rounds. The unprecedented nature of this event does not justify the lack of accurate documentation and need to track the use of less lethal responses.

16.2. Recommendations

- a. Engage the community in a comprehensive review of the Department's policies and procedures applicable to crowd control events and use of force.
- b. Research whether the Department is equipped with the state-of-the-art crowd control tools.
- c. Provide additional training to sworn personnel regarding the use of force during crowd control situations.
- d. Establish a system to accurately record and document the deployment of less lethal weapons, to include the date, time, circumstances and number of munitions.
- e. Supervisors and commanders should ensure the accurate documentation of all events, facts and uses of force as soon as practicable after the event.

16.3. SJPD Patrol 40mm Launcher and Munitions



Figure 43. SJPD Patrol 40mm Launcher

The Department currently equips some officers (both in patrol and in Special Operations) with 40mm Launchers (also referred to as Projectile Impact Weapons or PIW). These single shot launchers are equipped with either fixed or foldable/collapsible stocks. The launchers may have quad-rail systems for accessories (lights, optics). The launchers have a push button safety. The launchers have a rifled barrel.

40mm Launchers are assigned based on inventory and availability. Once assigned a 40mm Launcher, range personnel provide officers with an overview of the 40mm Launcher features and functionality. After the overview, officers fire 3-4 rounds at a paper target. Officers are then provided with the printed Duty Manual Sections pertaining to use of the 40mm Launcher with instructions to read and understand the policies within. There are no ongoing 40mm Launcher training for patrol officers.

Patrol 40mm Launchers are equipped with a vertical handgrip which allows the user to steady the weapon in the front for stabilization and accuracy. The two-point sling allows officers to shoulder the weapon to free up their hands and better control the weapon so it is more difficult to be disarmed. Patrol 40mm Launchers are affixed with an iron sight system, which is an antiquated sighting system making acquiring a sight picture more difficult and increases the likelihood of inaccurate and ineffective placement of PIW munitions.

16.4. SJPD Special Operations 40mm Launchers

Special Operations 40mm are equipped with red dot optics and a flashlight, which increases the accuracy of the round placement by the operator. An illuminated red dot might make firing with both eyes open easier. This kind of aiming aids situational awareness and reduces 'tunnel vision'. Furthermore, a red dot can eliminate 'eye sprint,' the constant focusing and refocusing on the front sight, rear sight and target to get a properly aligned sight picture. A red dot allows the shooter to simply place the red dot on the target, which reduces tunnel vision for the operator and allows for more accuracy.



Figure 44. SJPD Special Operations 40mm Launcher

16.5. Target Locations for the 40mm Launcher

Use of the 40MM foam baton round is governed by defined target zones on the body.

Zone 1: Consists of large muscle groups. Where the threat level is appropriate and this zone is viable, it should be considered first. Zone 1 consists of the buttocks, thighs, and calves. The groin area should not be intentionally targeted.

Zone 2: Consists of medium muscle groups such as the abdominal area.

Zone 3: This zone carries the greatest potential for serious or fatal injury and should be avoided when possible. It should only be considered when maximum effectiveness is desired to meet a level of threat escalating to deadly force. Zone 3 consists of the chest (center mass), the spine, and the head and neck.

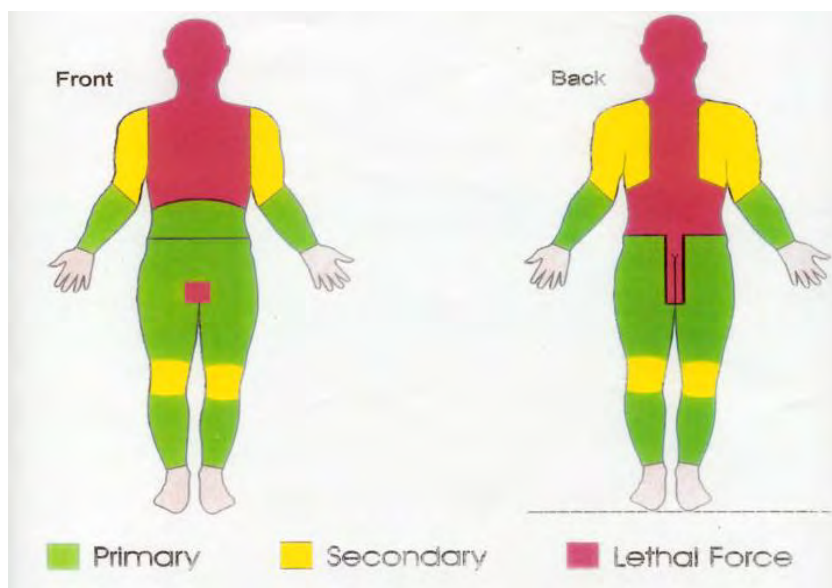


Figure 45. SJPD 40mm Strike Zones

Under current policy the Department is authorized to use the following munitions with the 40mm Launcher:

16.6. 40mm Foam Baton Round



Figure 46. CTS 40mm Foam Baton Round

This is a foam baton round utilized by Special Operations and patrol personnel as an impact projectile. It is used to precisely target individual suspects engaging in acts of violence in accordance with use of force criteria set forth in Duty Manual Section L 2629.

The CTS 40MM foam baton round is a Spin Stabilized Rubber foam impact round. The round is a smokeless powder cartridge. The round has a velocity of 240-260 FT/Sec. The minimum safe distance is approximately 10ft and the maximum effective range 150 FT.

The Table below indicates an estimated number of these rounds utilized over the course of the Operational Timeline. Determining the exact number is not possible as some officers only documented using “multiple rounds.”

Foam Baton Rounds	May 29	May 30	May 31	June 1	June 2	June 3	June 4	June 5	June 6	June 7
Special Operations	≈246	≈133	≈16	0	0	0	0	0	0	0
Patrol	Unk	Unk	Unk	Unk	Unk	Unk	Unk	Unk	Unk	Unk

Table 3. Foam Baton Rounds Fired by Patrol and Special Operations

Approximately 2 rounds of 40mm high-velocity foam baton rounds (CTS 4557HV) were utilized. These rounds use the same foam baton projectile as the standard issue 40mm foam baton round. The difference is the high-velocity round has a greater maximum effective range and was utilized exclusively on targets that were out of range of the standard issue 40mm foam baton rounds. These were only used to address the threat posed by objects being thrown from upper level windows at 235 E Santa Clara Street on May 29th and 30th.

Suspects had been throwing rocks and bottles down onto officers as they stood on the skirmish line beneath them. These high-velocity rounds were effective in accurately targeting these suspects and assured accurate round placement at extended range and elevation.

16.7. Frangible Impact Oleoresin Capsicum (OC) Round



Figure 47. CTS OC 40mm Round

The frangible Impact OC Round is projectile impact round that carries a payload of powder OC (pepper spray) and travels at a velocity of 290-320 FT/Sec. The maximum effective range is 50 yards. It is utilized for both direct impact and indirect impact in accordance with Duty Manual sections L 2609 and L 2629.

At various times during the Operational Timeline, this type of round was utilized to not only target violent individuals committing specific acts of violence but also to strike walls and other surfaces near rowdy crowds refusing to disperse after being lawfully ordered to do so. This possibly led to the perception by observers that officers were indiscriminately firing upon the crowd.

This round was effective in indirectly targeting groups of individuals who were trying to use trash dumpsters, walls, or vehicles as cover/concealment and then launch violent attacks against officers. In one instance these rounds were successful in thwarting a coordinated attack by a group of individuals attempting to push an electronic traffic-sign trailer into the skirmish line.



Figure 48. Protesters Utilizing Traffic-sign Trailer

The Table below indicates an estimated number of these rounds utilized over the course of the Operational Timeline.

Frangible OC Rounds	May 29	May 30	May 31	June 1	June 2	June 3	June 4	June 5	June 6	June 7
Special Operations	≈200	≈70	≈17	0	0	0	0	0	0	0
Patrol	0	0	0	0	0	0	0	0	0	0

Table 4. Frangible OC Round Deployment by Day

16.8. 37mm Projectile Impact Weapon

The Department authorizes use of 37mm launchers, a smoothbore single shot launcher system, for less-lethal munitions and tear gas projectiles. Only Special Operations officers have these launchers.



Figure 49. SJPD Special Operations 37mm Projectile Impact Weapon

16.9. Foam Baton Round (CTS 3555)



Figure 50. CTS 3555 Foam Baton Round

Currently, the Department uses the Multi 5-Foam Baton Round. This is a black powder round that carries a payload of 5 foam baton rounds. This round is skip fired at an angle onto the ground. This causes the projectiles to ricochet into the crowd for crowd dispersal in accordance with DUTY MANUAL L 2629. This projectile has a maximum effective range of 50ft. The cartridge material is aluminum. The munition has a muzzle velocity of 325 ft/sec but when skip fired off the ground velocity is greatly reduced.

At various times during the Operational Timeline this round was successfully utilized to repel crowds closing-in on the skirmish line, and enabled officers in the skirmish line to advance. Forward movement is imperative in preventing assaults on officers. When a skirmish line becomes static it allows a hostile crowd to congregate and provide cover for violent actors within the crowd to execute attacks against officers.

The table below indicates an estimated number of these rounds utilized over the course of the period analyzed.

37mm Baton Round	May 29	May 30	May 31	June 1	June 2	June 3	June 4	June 5	June 6	June 7
Special Operations	≈100	0	0	0	0	0	0	0	0	0
Patrol	0	0	0	0	0	0	0	0	0	0

Table 5. SJPD 37mm Round Deployment by Day

16.10. Stunbag Shotgun



Figure 51. 2581 Super Sock Round

The Department issues Remington 870 shotguns that are modified to only shoot less-lethal ammunition. While all officers are trained in the use of these shotguns, they are carried primarily by patrol officers. These shotguns, referred to as “stunbag” shotguns, fire 2581 Super Sock munitions. The 2581 Super Sock munition is a 12 gauge 2 ¾ inch shotgun round. The munition is a fabric bag filled with lead shot or silica. The overall weight of the projectile is approximately 40 grams resulting in 120-foot pounds of energy transfer to a target. The operational distance is 15ft-60ft.

The low-velocity ammunition expands to approximately one square inch after being fired. These rounds are considered to be less lethal as they are not designed to cause serious injury or death. They can potentially cause serious injury or death if they hit certain areas of the body such as eyes, throat, temple, or groin.

The table below indicates an estimated number of times these rounds were discharged over the course of the period analyzed. Exact numbers are not possible as some officers documented “multiple rounds” without providing an exact number in their police reports.

Stunbag Shotgun Rounds	May 29	May 30	May 31	June 1	June 2	June 3	June 4	June 5	June 6	June 7
Special Operations	≈ 2	≈ 6	0	0	0	0	0	0	0	0
Patrol	0	0	0	0	0	0	0	0	0	0

Table 6. Stunbag Shotgun Deployment by Day

16.11. DEFTECH 1095 / CTS 9594 OC Blast Stinger Grenade



Figure 52. CTS 9594
OC Blast Stinger
Grenade

The Special Operations division is equipped with DEFTECH 1095 / CTS 9594 OC Blast Stinger Grenades. These are hand-thrown less lethal grenades that utilize OC powder and/or stinger balls and a ‘flash-bang’ (startling light & concussive sound effect) to disperse a crowd. The blast is sufficient to project the rubber balls and chemical agents in a 50-foot radius. The device is 175 decibels loud at approximately 5 feet. It contains 8 grams of flash powder and approximately 4.2 grams of OC Powder. The purpose of these grenades is to deliver three stimuli for psychological and physiological effects (light, sound, and rubber pellets). This device is widely used in crowd dispersal. Being struck by one of the projectiles in the stinger grenade will typically produce a sting and possibly a bruise. Because of the noise these devices emit, these are sometimes confused by observers with stun grenades or flashbangs, however, they are not as loud and do not have the same concussive effect.

At various times during the Operational Timeline, this munition was successfully utilized to disperse violent crowds who ignored repeated lawful dispersal orders. They were also used when officers made arrests on the skirmish line and suspects attempted to break the skirmish line in order to free or otherwise unlawfully interfere with the arrest. The munitions also helped prevent the destruction of property by vandalism and arson by being thrown in the area of crowds as they were engaged in such acts.

Special Operations personnel feedback indicated these devices were one of the most effective tools utilized to disperse the crowd.

These devices were effective to disrupt individuals moving items of cover/concealment in place to shield suspects throwing objects at officers. Once subjects providing cover/concealment by creating makeshift barricades were dispersed by a grenade, the suspects throwing projectiles could be precisely targeted with projectile impact weapons (PIW).

The table below indicates an estimated number of these devices used during the Operational Timeline.

OC Blast Stinger Grenades	May 29	May 30	May 31	June 1	June 2	June 3	June 4	June 5	June 6	June 7
Special Operations	≈ 30	≈ 8	≈ 5	0	0	0	0	0	0	0
Patrol	0	0	0	0	0	0	0	0	0	0

Table 7. OC Blast Stinger Grenades Deployment by Day

16.12. Diversionary Device/Noise Flash Device (NFD) or “Flashbang”



Figure 53.
Diversionary
Device

Only Special Operations carries the Deftech Low Roll device, also commonly known as flashbangs. These devices are used to temporarily disorient anyone around it by producing blinding flash of light and an intensely loud "bang". This device contains 12 grams of flash powder resulting in 6-8 million candelas and 175 decibels at approximately 5 feet. Special Operations personnel and AIR3 pilots reported that the NFD's were particularly effective at dispersing the crowd. The effectiveness of the NFDs seemed to increase when deployed after gas had been deployed as the crowd could not differentiate between devices.

The table below indicates an estimated number of NFD's utilized over the course of the period analyzed.

Diversionary Device (NFD/ Flashbang)	May 29	May 30	May 31	June 1	June 2	June 3	June 4	June 5	June 6	June 7
Special Operations	≈ 13	≈ 9	0	0	0	0	0	≈ 2	0	0
Patrol	0	0	0	0	0	0	0	0	0	0

Table 8. Diversionary Device Deployment by Day

16.13. Baton



Figure 54. SJPD 42"
Baton

The Department issues a 29" wood baton for day-to-day patrol use, and a 42" wood baton for use in crowd control situations. The 42" police baton is utilized by all officers as both a defensive tool used to protect an officer from assault, keep demonstrators beyond arm's reach and a weapon used as less-lethal force when warranted. It is also useful in crowd management to direct and move crowds. For crowd management, the Department issues hickory wood batons that are 42 inches long and 1.25 inches in diameter crowd management.

Officers are trained in baton techniques designed for use in crowd management situations: check, slash, jab, and ready position, to name a few.

The table below indicates the number of officers who documented the use of their riot batons during the Operational Timeline.

Baton	May 29	May 30	May 31	June 1	June 2	June 3	June 4	June 5	June 6	June 7
Special Operations	10	2	0	0	0	0	0	0	0	0
Patrol	33	5	1	0	0	0	0	0	0	0

Table 9. SJPD Baton Deployment by Day

16.14. CS Gas (2-chlorobenzalmalononitrile)

Only MERGE officers utilize CS gas. MERGE Unit guidelines require approval from the Office of the Chief for the use of CS gas devices. The Department typically utilizes CS gas as a pain compliance tool to compel dangerous and/or barricaded suspects to surrender peacefully, or failing that, to disrupt unlawful activity and disperse.

On May 29th at approximately 1832 hours, the Assistant Chief authorized the deployment of CS gas to help disperse the volatile crowd after it was declared an unlawful assembly. On May 30th, gas was again authorized and deployed at 2245 hours after several hours of violent conflict with the rioters.

The table below indicates an estimated number of CS devices deployed over the course of the Operational Timeline.

CS Gas Devices	May 29	May 30	May 31	June 1	June 2	June 3	June 4	June 5	June 6	June 7
Various CS Devices	≈ 27	≈ 26	≈ 1	0	0	0	0	0	0	0

Table 10. CS Gas Device Deployment by Day

(For video of above section refer to <https://youtu.be/OUaqiYv0xY8>)

16.15. Findings

The AAR Team found it difficult to determine the exact number of each munition utilized throughout the Operational Timeline. While Special Operations was able to derive an estimate based on their inventory accounting, patrol was generally unable to account for their munitions. There are several explanations for this:

- Officers were on skirmish lines engaging with the crowd for many hours without relief, often confronting repeated violent encounters during those hours.
- Under these circumstances there was no reasonable opportunity to make notes, fill out forms or write reports.
- Munitions were accessible from numerous locations making accounting for specific numbers difficult. Officers were able to obtain munitions at the following locations:
 - Central Supply
 - Police Range
 - MERGE Van
 - VCET/METRO Van
 - Command Post
 - Their own previously obtained regular duty supplies
- Officers are not issued prescribed numbers of munitions, so it is not possible to determine how many each officer acquired, how many they had at the end of the day/week, and how many were left in vehicles or gear bags.
- Supervisors also took extra supplies with them for their officers to use, and it is not possible to determine how many of those rounds remain in the supervisors' gear.

By the end of May 29th, the majority of the Department's less-lethal munitions were exhausted. Special Operations commanders began working to procure additional munitions, only to discover agencies throughout the country were competing for supplies.

Def-Tech (the less lethal munitions company) refused to ship munitions due to an overwhelming nationwide demand and shipping delays. Therefore, the only option was direct pickup from the manufacturer at the Southern California airport near the manufacturer. However, the Department lacks a fixed wing aircraft and could not otherwise arrange a flight to pick-up the munitions and gas necessary for a sustained event. Instead, Special Operations identified a local vendor and made an exigent purchase of munitions using a Department credit card, against City purchasing policy.

Following the deployment of gas, public health experts urged law enforcement to stop using chemical agents such as those used by the Department for fear it would exacerbate the spreading of the coronavirus that causes the disease Covid-19. According to health experts cited in a news article published on June 5, 2020, (Stone, NPR KQED, 2020)¹⁹ deploying these chemicals could potentially cause harm in several ways: expose more people to the virus, compromise the body's ability to fight off the infection, and cause mild infections to become more severe.

¹⁹ <https://www.npr.org/sections/health-shots/2020/06/05/870144402/tear-gassing-protesters-during-an-infectious-outbreak-called-a-recipe-for-disast>

The Department also received complaints from apartment residents in the area stating that tear gas was wafting into their apartments. There was no prior communication to the public at large that gas may be deployed, which would have provided some notice for nearby residents to shelter in place.

16.16. Recommendations

- a. Employ civilian supply personnel during large-scale events to better track equipment use and inventory.
- b. Maintain a storage container (shed or CONEX box) containing supplies that would be needed during a spontaneous, large scale civil unrest (i.e.: sufficient munitions for a multi-day, large scale event; extra gas filters; flex-cuffs)
- c. Research whether the Department is utilizing the safest and most effective crowd control tools available.
- d. Explore upgrading patrol 40mm Launchers with red dot technology to improve accuracy of round placement.
- e. Evaluate whether the training provided to patrol issued 40mm Launchers is adequate and feasibility of providing more comprehensive and ongoing training.
- f. Review Department policies, procedures, and unit guidelines to determine the appropriate use of chemical agents during crowd control situations.
- g. Before deployment, commanders should remind personnel of policies and protocols for interaction with media, and operational plans should include such reminders.

17. Evolution of Tactics

The Department has not experienced this type of spontaneous, large scale civil unrest in decades. While protests in San Jose are not unusual, the overwhelming majority are uneventful and peaceful. Upon becoming aware there may be a protest on May 29th, the Special Investigations Unit notified Special Operations who, absent more specific information, created an operations plan to be used in the event it was needed. Patrol was also notified, and patrol lieutenants designated two dayshift MFF teams consisting of ten officers and a sergeant each to respond in the event they were needed.

This type of notification and contingent preparation happens regularly, and rarely do protests occur needing any police involvement. There was no specific information leading Department personnel to believe this particular protest would morph into the chaotic, resource intensive event it became. The Department's experience with prior protest



Figure 55. Protesters at City Hall

movements (for example the Occupy Movement and post-Ferguson protests) was that generally the size and intensity of protests in San Jose were of much smaller scale than other places in the country. Once it was evident this protest was unlike those usually experienced in San Jose and appeared to be devolving rapidly into violence similar to those in cities in other parts of the country, the Department was already at a disadvantage.

Many tactical options are available to police when responding to civil unrest. When unlawful assembly declarations via the LRAD and skirmish line movements to disperse the crowd are ineffective on those within the crowd intent on violence, elevated responses, use of less-lethal munitions and tear gas can be necessary.

Beginning on May 30th and continuing throughout the remainder of the Operational Timeline, Special Operations Commanders and incident commanders met daily to debrief events from the previous night and discuss strategy and tactics for the next operational period. Command staff then provided daily briefings to all personnel assigned to work the protest event. These briefings consisted of policy reminders, lessons learned from the previous day's events, mission objectives and any tactical updates.

Crowd Psychology is a distinct field of study, with extensive scholarship devoted to exploring how and why individual behavior changes (and often degrades) when in a crowd dynamic. Crowd behavior is notoriously difficult to predict and manage. Whereas a show of force may disperse one crowd effectively, it may provoke another (or elements within it) to riotous actions. The Department continuously evaluated available resources, incoming data and intelligence, fluid crowd behavior and the overall evolving totality of circumstances in its responses. Accordingly, tactics evolved over the course of the Operational Timeline in light of changing variables and real-time learning.

17.1. Day 1

On May 29th, the Department responded to a peaceful protest that devolved into rioting. The protesters demonstrated without police presence or interference until they took over the freeway at Hwy 101 and Santa Clara Street. Inciters within the crowd stopped traffic, encircled, jumped atop, and damaged vehicles. Even then, officers only responded to help avoid potential injury to protesters by preventing more vehicles from entering the freeway. Officers did not respond to disperse the crowd or impede the protest.

Once officers arrived, rioters within the crowd began throwing dangerous objects at them. The officers demonstrated restraint despite being struck by projectiles and refrained from using force. Special Operations teams responded, regrouped with the MFF teams, and gave dispersal orders. The bulk of the crowd marched westbound on Santa Clara Street, towards City Hall. Special Operations, supplemented by patrol, formed a skirmish line at 8th Street and Santa Clara Street. Repeated dispersal orders were ignored and many in the crowd continued to engage in acts of violence and vandalism. Officers responded with use of force targeting criminal actors with less-lethal impact rounds, baton maneuvers, and personal body weapons (hands and feet).

As the event deteriorated rapidly, there was a lack of coordination in the first few hours of May 29th. Many of the Special Operations officers were responding to the scene from home. Some were unable to make it to the Command Post before they were provided an assignment on the skirmish line. There was no opportunity to do a joint briefing with all personnel to communicate a clear objective. While the patrol lieutenants had copies of the operational plan, sergeants and officers did not. When MFF teams were dispatched from the Command Post, usually at the request of Special Operations commanders, they were provided with a location to which they should respond but little information about what to do when they arrived.

In the beginning of May 29th, some MFF teams arrived to find the Special Operations commander had shifted locations to address an evolving problem elsewhere. Lacking clear direction, MFF sergeants began working independently of the Special Operations teams. Communication between the Special Operations commanders in the field and Incident Command needed improvement so the deploying officers had defined and coordinated assignments. As the evening progressed and the ICS system was implemented, communication and direction improved.

Once skirmish lines were set, conflict between officers and individuals in the crowd escalated. The skirmish line officers became the target of the crowd's animosity and officers standing in formation were being pelted with dangerous objects. When protesters failed to obey verbal warnings and directives to stay back or disperse, officers at times resorted to using force in order to preserve a safe distance from the crowd and provide visibility to identify individuals who were actively engaged in violence. The crowd became even more agitated when officers used force on certain individuals, triggering an escalation of violence against officers.

Special Operations commanders realized they needed additional commanders in the field as the span of control was simply too broad for them to effectively coordinate movements and

maintain command and control. Special Operations officers train together regularly, and at least quarterly on MFF tactics. Inserting a MFF team with varying degrees of knowledge, experience and training made coordinating a skirmish line more difficult. Patrol lieutenants would have bolstered the span of control and provided unity in command.

Incident commanders struggled to manage hundreds of people, assemble ad hoc MFF teams quickly, and deploy them. Procuring critical supplies (food and drink for personnel, flex-cuffs, munitions, and gas mask filters) in sufficient amounts became paramount. Fire personnel responding to numerous fires set downtown needed police protection, which drew personnel away from the already depleted resources.

17.2. Day 2

On May 30th, the Department had established a Command Post early in the day and had arranged for mutual aid in advance. Swing shift officers were designated solely for the anticipated protest event. Officers gathered and command staff provided a briefing, including lessons learned from the previous night and mission objectives for the day. MFF teams and Strike Teams were established in advance and were staged in specific areas at the Command Post for faster deployment. Sheriff's Office vans were used to transport officers in mass to reduce the travel time and to prevent police vehicles from being parked downtown. The Department wagon and Sheriff's Office transportation buses were utilized to retrieve arrestees more quickly. The process for prisoner processing was streamlined and clarified. The ICS system section chief roles were more clearly defined, although patrol lieutenant staffing remained at half of optimal staffing levels.



Figure 56. SJPD Special Operations on Transport Van

Special Operations teams learned that making arrests was difficult because offenders would launch an attack on officers and then run back into the crowd, hiding among peaceful protesters. Safety concerns prevented officers from forming arrest teams to attempt to infiltrate the crowd to apprehend offenders. Embedded officers were helpful in providing surveillance from within the crowd so offenders could be

arrested later when separated from the larger crowd. Aerial surveillance also helped follow offenders away from the larger crowd for apprehension later. Strike Teams were utilized as mobile teams who could quickly respond to a location to make an arrest, usually directed by Special Operations or AIR3.

The previous day, the crowd took over Santa Clara Street early. The tactical plan on the second day was to set a skirmish line early to establish a strong police presence and manage

the crowd by keeping it contained on City Hall property and adjacent sidewalks. Initially, the intention was to monitor the crowd. Much of the crowd at City Hall was peaceful. Smaller groups broke from the main crowd and engaged in vandalism and looting. Special Operations Strike Teams were able to utilize their van to follow rioters until they tired of running and then arrested them whenever possible.

Dispatchers responded to the Command Post to assist with CAD documentation, relaying information from Communications to the field, and tracking important updates coming from officers in the field. Mutual aid agencies and Strike Teams were utilized to monitor areas that were advertised as targets for looting.

17.3. Day 3

On Day 3, the initial plan to establish a skirmish line and keep the crowd on City Hall campus was similar to the previous day. The Command Post was running more efficiently, and the incident commanders had more clearly understood roles. Patrol lieutenant staffing was increased, providing sufficient numbers for two patrol lieutenants to deploy to the field to oversee patrol resources. This improved unity of command and clarity of communication and direction.



Figure 57. Protesters and Police

Commanders realized that the presence of officers on a skirmish line was enough to prompt violence from some individuals in the crowd. Protesters facing off with officers who stood for hours on the line exploited the opportunity to provoke law enforcement

officers to respond. This included approaching officers in extremely close proximity, shouting slurs, insults and threats in their faces, and attempting to provoke verbal responses. Many thrust their cameras into officers' faces, encroaching on their personal space. The Department's African American and other officers of color were singled out, with protesters calling them traitors, "Uncle Toms," and wishing death to them and their families. MFF sergeants became concerned about these officers' ability to endure the pointed abuse and worked to rotate these officers into different assignments or positions on the line in order to relieve the pressure.

17.4. Day 4

After the lengthy standoff between the protesters and skirmish line officers on Day 3, the Department adjusted its tactical response. Rather than deploying MFF Teams to create a skirmish line to face off with protesters, the Department relied upon intelligence from embedded officers within the crowd, social media live streaming, aerial observation, and Department of Transportation camera feeds to monitor the crowd. MFF and Strike Teams were staged at the Command Post for rapid deployment should the need arise.



Figure 58. Protesters at City Hall

Commanders monitored the activity of the crowd and allowed a certain amount of lawlessness to occur before deploying officers. For example, while the crowd marched and blocked traffic and engaged in sideshow activity, officers were not dispatched initially. It was

not until it became evident that the sideshow activity was continuing, and the safety of pedestrians nearby was at risk that the Department dispatched officers.

The remaining days in the Operational Timeline were similar to Day 4, with incident commanders monitoring the crowd from the Command Post and deploying MFF teams and Strike Teams sparingly.

17.5. Curfew

On May 31st, the Director of Emergency Services of the City of San Jose proclaimed a local state of emergency resulting from the first two nights of civil unrest. The City imposed a city-wide curfew beginning at 2030 hours on May 31st and ending at 0500 hours on the following day. The curfew mandated that no person shall be upon the public street, avenue, alley, park or other public place or unimproved public realty within the limits of the City of San Jose. The curfew remained in effect until 0500 hours on the morning of June 4th.

The curfew provided the Department a critical tool and was used strategically to detain and/or arrest protesters who were agitating the crowd or assaulting police. Department personnel used the LRAD and other loudspeakers to broadcast the curfew and provided protesters an opportunity to leave the downtown area. This was effective in dispersing most the peaceful protesters, leaving behind those intent on continuing civil unrest and lawlessness. *(For Complete curfew order refer to Appendix 29.21). (For video of the above section refer to <https://youtu.be/IDefF6kpvZ8> for pre curfew order or <https://youtu.be/QGcAUP17RU> for post curfew)*

17.6. Findings

Between May 29th and well into the month of July, more than 70 protests occurred in San Jose. The majority of these protests were peaceful and prompted no need for law enforcement response. There was no information to suggest the event planned on May 29th would become violent. Officers at all ranks were thrust into a chaotic situation unlike most of them had ever experienced.

While many lessons were learned, it is evident that commanders conferred, collaborated and adapted their techniques in an attempt to balance the need to protect the protester's First Amendment rights with the obligation to maintain and restore public order.

17.7. Recommendations

- a. Department should provide ongoing training in ICS, MFF, and other relevant areas to provide as much experience as practical.
- b. Ensure formal debriefings are conducted after unusual or tactically complex events to enable rapid knowledge transfer.

18. Injuries

18.1. Officer Injuries

Injuries to officers can be categorized into two types: reported injuries (documented in a General Offense report) and recorded injuries (documented in an officer-assault survey managed by the BFO Administration Unit). Over the course of the period analyzed, officers were subjected to numerous dangerous objects being thrown at them by inciters within the crowd and from elevated positions such as balconies and apartment windows.

In total, 181 officers reported being hit by objects. Some were hit by numerous objects. These numbers do not include the numerous items that did not actually strike the officers.

Item	Number of Officers	Item	Number of Officers
Water Bottle (often frozen)	65	Briquettes	1
Glass Bottle	23	Fist	4
Rock	60	Motor Vehicle	2
Brick	8	Asphalt	2
Gas Can	2	Spit	1
Beer Can	4	Urine	2
Eggs	9	Apple	1
Fireworks	6	Hammer	1
Lightbulbs	2	Metal Bar	3
Sign	1	Milk Carton (full)	2
Wood	4	Fire Extinguisher	1
Paint	11	Unknown	5
Tear Gas Canister	2	Total	222 objects thrown

Table 11 SJPd Officers Injured based on a SJPd Administration Survey.



Figure 59. Damage to Officers' Helmets

As a result of the violence over the course of the first few days, numerous officers sustained injuries ranging from minor to more significant. Thirty-six (36) officers reported injuries as a result of being struck by objects. (*Results from Administrative Unit survey of officers after the protests.*) One officer (facial injury and concussion) and one sergeant (knee injury) were transported to area hospitals to be treated for their injuries. The other 34 officers reported mild to severe bruising from blunt force.



Figure 60. Injuries to Officers

18.2. Injuries to Demonstrators

May 29th was the first date of civil unrest. While numerous officers documented their use of force against specific rioters, most often the rioters fled back into the crowd and were not captured. Therefore, it is not possible to quantify the exact number of injuries sustained by participants. It is also difficult to discern whether injuries sustained were a result of force by officers or by others in the crowd. Some rioters were throwing objects indiscriminately toward officers throughout the event, and officers responded with force including personal

body weapons, batons, PIW, and chemical agents. The resulting chaos led to injuries to officers, inciters and peaceful protesters caught in the fray. The following are the eight (8) documented injuries captured in the police report, and two (2) later revealed in media coverage.

Documented Injury (May 29 th)	Cause (if known)	Medical Treatment
Swelling and open wound on left cheek; redness on back.	Possibly caused during struggle on the ground; baton strikes to torso.	Transported to VMC via ambulance
Swelling to right eye; scratches and abrasions on face; complaint of pain to back	Alleges punched in face by officer.	Cited and released to family to be transported to O'Connor Hospital
Complaint of pain to stomach; bruising to upper left leg and right forearm.	Alleges knocked to ground and punched by officer.	Evaluated by intake nurse and cleared for booking
Small cut to left hand.	Alleges knocked to the ground by officer and "kneed" in body and head.	Evaluated by intake nurse and cleared for booking
Bruising on back	Struck by unknown object (possibly PIW projectile)	None documented
Complaint of pain to face, back, left thigh and right knee. Visible contusions above the right eye. Red mark to left thigh. Swollen knee.	Projectile impact weapons, take down, and body weapons during arrest; taken behind the skirmish line and arrested.	Transported to VMC via ambulance. Knee required surgery.
Unknown injury to arm	Unknown	Had been treated and released by O'Connor before police arrived

Taser Probe to upper torso; bruise to abdomen	Taser	Treated and released from VMC
Impact injury to testicle	PIW projectile	Not reported to officers; reported later in the media.

Table 12. Documented Injuries to Civilians on May 29th

The majority of injuries were sustained on May 29th, as detailed in Table 12. Between May 30th and June 7th, there were five minor injuries documented in the police reports related to the civil unrest. This does not mean there were not more people injured, as officers documented use of force against rioters who ran back into the crowd. In those instances, the officers could not document any injuries individuals may have sustained.

19. Arrests Made

Officers documented in their reports that they had witnessed numerous crimes, including assaults with dangerous objects on officers, felony arson and vandalism, reckless driving and other crimes. Effecting arrests on these offenders posed too dangerous throughout most of the Operational Timeline.

Special Operations commanders expressed frustration that they could not safely send officers into the volatile and violent crowd without fear that they would be immediately surrounded and assaulted. While MFF tactics do include an “encirclement” technique to send a team into the crowd to surround an offender for the purposes of arrest, the Special Operations commanders did not feel they had sufficient resources to safely do encirclements, and there were simply too many hostile rioters in the crowd to make such an attempt.

Some of the arrests made were on offenders who came close enough to the skirmish line to be apprehended and pulled to a safer position behind the line. Other arrests were made later when identified offenders could be apprehended once they left the crowd. Many arrests were made for curfew violation once the curfew was put into effect.

Throughout the Operational Timeline, officers made 176 total arrests, 16 of which were felonies including felony assaults on officers, felony vandalism and laser strikes on AIR3. Other arrests included municipal code violations, curfew violations, misdemeanor assaults and property crimes. Most of these arrestees were issued criminal citations with a later court date. As of this writing, these are ongoing investigations being handled by the Assaults Unit and the Court Liaison Unit.

City of San Jose – Protest Incidents Breakdowns
May 29, 2020 – June 2, 2020 and June 5, 2020

DATE	ADULT			JUVENILE			GRAND TOTAL
	ARREST	CITE	TOTAL	ARREST	CITE	TOTAL	
Friday, May 29, 2020	17	10	27	1	2	3	30
Saturday, May 30, 2020	2	0	2	0	0	0	2
Sunday, May 31, 2020	28	72	100	2	4	6	106
Monday, June 1, 2020	5	14	19	0	2	2	21
Tuesday, June 2, 2020	5	9	14	0	0	0	14
Friday, June 5, 2020	2	1	3	0	0	0	3
GRAND TOTAL	59	106	165	3	8	11	176

Arrest Breakdown by Gender

DATE	FEMALE	MALE	TOTAL
Friday, May 29, 2020	12	18	30
Saturday, May 30, 2020	0	2	2
Sunday, May 31, 2020	33	73	106
Monday, June 1, 2020	4	17	21
Tuesday, June 2, 2020	4	10	14
Friday, June 5, 2020	0	3	3
TOTAL	53	123	176

ETHNICITY	5/29	5/30	5/31	6/1	6/2	6/5	TOTAL
HISPANIC/LATIN/MEXICAN	19	1	57	12	5	2	96
CAUCASIAN	6	0	21	1	6	0	34
AFRICAN AMERICAN	4	1	9	3	3	0	20
OTHER	1	0	12	4	0	1	18
OTHER ASIAN	0	0	5	1	0	0	6
FILIPINO	0	0	1	0	0	0	1
HAWAIIAN	0	0	1	0	0	0	1
Grand Total	30	2	106	21	14	3	176

Table 13. Table of Arrest Numbers

OFFENSE DESCRIPTION	TOTAL
415 PC DISTURBING THE PEACE	42
OTHER MISDEMEANOR	39
DATA NOT IN OUR RMS	27
MUNICIPAL CODE VIOLATION	23
148(A)(1) PC RESIST ARREST	14
148(A)(1) PC DELAY ARREST	11
245A1 PC ASSAULT W/O FIREARM	3
594 PC VANDALISM-<\$400	2
601(A) WI CURFEW	2
69 PC RESIST EXEC OFC	2
11364 HS DRUG PARAPHERNALIA	2
594 PC VANDALISM-\$400 OR MORE	2
243(B) PC BATTERY ON AN OFC	1
247.5PC DISCH LASER OCC PLANE	1
FELONY PROBATION VIOLATION	1
647(F) PC DRUNK IN PUBLIC	1
11377(A) HS POSN CNTRLD SUBS	1
245C PC ASLT OFC W/O FIREARM	1
DOMESTIC-245A1 PC ADW NO F/ARM	1
Grand Total	176

Table 14. Total Arrest Numbers²⁰

19.1. Prisoner Processing

Proper planning, training and comprehensive briefings detailing expectations and processes for mass arrests is a key component to successful law enforcement strategy in large scale events. Mass arrests are resource intensive, and accountability for arrestees from the arrest location through the booking process is critical and is also resource intensive.



Figure 61. SJPd Prisoner Transport Wagon

On May 29th, the Sheriff's Department provided staffing, equipment and transport buses to aid with processing a potentially high number of arrestees. The Department has two transportation vans, referred to as "wagons," that are rarely used because they are in such poor condition. Both wagons have been in service since 2004. On May 29th, only one of the two was functioning. Two officers were assigned to drive the wagon to arrest locations, take custody of arrestees,

²⁰ Numbers represent individual arrests not a combination of numbers

and transport them back to the Command Post for the booking process. In several instances, the wagon was either full or unavailable, and officers with patrol vehicles were dispatched from the Command Post to retrieve prisoners. At times, this depleted resources that were standing by to escort Fire/Medical personnel to calls for service. It also caused a delay for some officers who were standing by with arrestees, creating safety concerns for the officers. The Department currently has two recently purchased wagons being built for operational use.

Because of the rapidly devolving events, several arrestees were transported back to the Command Post in the wagon without proper documentation from the arresting officer. Either the information wasn't collected by the wagon officers, or the arresting officers did not provide it. Regardless the reason, the lack of detailed information about the reason for arrest, identifying information, and arresting officer information was missing. This prolonged the processing of the arrestees and resulted in a potential for inaccurate information on citations.



Figure 62. Santa Clara County Sheriff's Office Transport Vehicle

On the subsequent days analyzed in this report, the prisoner booking process remained the same, but wagon staff were reminded to ensure the pertinent information was provided to them before they accepted a prisoner for transportation. The Sheriff's transport buses were also utilized to pick up larger groups of prisoners the wagon could not accommodate. Command staff reminded all personnel of the importance of transferring prisoners with accurate information, and this seemed to correct the problem from the previous days.

Under normal circumstances, an arrestee's name and identifying information would be electronically linked to the CAD event and the General Offense Report (police report). However, because of the unique challenges faced during the Operational Timeline, much of the arrestee information was not captured electronically or linked to either CAD or the police reports. This makes tracking official arrest numbers difficult and creates work for the administrative and investigative staff responsible for processing the arrestee paperwork.

An additional area of concern was the lack of restroom facilities accessible to arrestees. The bathroom inside the SAP Center was available for use by the hundreds of officers, but ideally there should be separate facilities for arrestees. This problem was corrected when the SCCSO provided portable toilets on May 31st for use throughout the remainder of the days analyzed.

Once prisoners were processed at the Command Post, the Sheriff's Office personnel transported groups of arrestees via transport buses to predetermined locations away from

the downtown area. The arrestees were released pending the District Attorney's case review process. Only those who were arrested for felony charges were booked into jail.

19.2. Findings

Because the Department only had one transport wagon, arresting officers at times had to wait longer than optimal for prisoner transport to arrive. While the Sheriff's Office provided buses for transport, these buses were utilized to hold prisoners until they were ready for transport to jail but were not otherwise used to pick up arrestees in the field. Confusion and lack of accurate information regarding the transfer of prisoners from arresting officers on the skirmish line to the transport officers was inefficient and resulted in confusion, lengthier processing times, and errors on the booking paperwork.

19.3. Recommendations

- a. Develop written guidelines for prisoner processing during large-scale events that provide clear direction to arresting, transporting, and booking officers.
- b. Field supervisors should emphasize and ensure complete and accurate information is provided to the transport officers before arrestees are transferred to their custody.
- c. Develop a protocol for quality control of booking paperwork/citations, etc. to minimize mistakes that compromise prosecution.
- d. Deploy the newly purchased wagons for operational use immediately upon receipt.

20. Property Damage

Throughout the period analyzed, many rioters committed acts of vandalism, arson and looting resulting in damaged police vehicles, civilian vehicles, downtown businesses, City Hall property, and other city property. Below is an estimate of some of that damage based on police reports, police fleet maintenance records, correspondence with the Downtown Business Association, and other city records.

20.1. Damage to Police Vehicles

Over the course of the civil unrest in the City of San Jose, multiple marked San Jose Police patrol vehicles were damaged. Eight (8) patrol vehicles' rear windows were shattered, three (3) side windows were shattered, and two (2) front windows were shattered. Five (5) marked patrol vehicles were damaged with various types of paint. One (1) patrol vehicle was towed because rioters slashed all its tires and broke all its windows. One (1) Special Operations vehicle received a shattered front windshield.

Per the fleet manager, approximately \$6,417.20 in damage to police vehicles was sustained over the course of the civil unrest. *(Note: Dollar amounts are estimates and are not all-inclusive.)*



Figure 63. Damage to SJPD Patrol Vehicles

20.2. Damage to City Property

City Hall sustained graffiti, broken glass, and other damage during the Operational Timeline according to the Building Management Administrator for the City of San Jose's Public Works Department, clean up and repairs related to civil unrest was approximately \$45,000. *(Note: Dollar amounts are estimates and are not all-inclusive.)*



Figure 64. Some of the Extensive Vandalism at San Jose City Hall

21. City Wide Looting

A search in Versadex for all looting events reported in the impacted area during the dates analyzed revealed the following looting events reported to the Department:

5/29/2020 (Friday)				
Case Number:	Time:	Name of Business:	Location of Business:	Items:
20-151-0165	1700 HRS	Starbucks	101 E. Santa Clara St.	\$150 in damages to walls, 3 Apple iPads missing, \$150 in cash, \$5000 in damages to coffee machines
20-150-0495	1710 HRS	UPS	3 rd St. and Santa Clara St.	UPS delivery truck is looted and the packages are burned.
20-150-0495	1828 HRS	Construction Site	5 th St. and Santa Clara St.	Protesters break into a construction site and loot tools and material to use against police.
20-154-0536	2049 HRS	Cinnaholic	115 E. San Carlos St.	Windows and doors broken out. \$500 in baked goods and drinks stolen.
20-153-3124	2130 HRS	Grace and Deli	303 Almaden Blvd #160	Windows broken and smashed. Security scared off subjects inside the business.
Un-Reported	Unk.	Pizza My Heart	117 E. San Carlos St.	Unknown if items were taken but news media on viewed looting.

Table 15. Looting City Wide 5-29-2020



Figure 66. Looting of UPS Delivery Truck



Figure 65. Looting of Garcia Pharmacy

(For video of the above section refer to <https://youtu.be/YLzqp3xeI7I> or https://youtu.be/UNZq_zCfB7q)

5/30/2020 (Saturday)				
Case Number:	Time:	Name of Business:	Location of Business	Items:
20-151-0393	2015 HRS	Mezcal	25 W. San Fernando St	Windows and doors broken out. \$8000 in liquor stolen. 2 Apple Macbooks taken \$2400.
20-151-0938	2350 HRS	T-Mobile	100 E. San Fernando St.	Front door broken. \$2100 worth of merchandise taken.
20-150-0829	0146 HRS	FedEx Office Store	93 E. San Carlos St.	Power Pack, batteries, headphones taken

Table 16. Looting City Wide 5-30-2020

05/31/2020 (Sunday)				
Case Number:	Time:	Name of Business:	Location of Business	Items:
20-152-0674	2021 HRS	Target	1750 Story Rd.	Numerous subjects looted Target and took various items.
20-152-0690	2100 HRS	Garcia Pharmacy	25 N. 14th St.	\$124,514 in prescription medication taken.

Table 17. Looting City Wide 5-31-2020

22. Arson Incidents

A search in Versadex for all arson events reported in the impacted area during the dates analyzed revealed the following arson related events to which the San Jose Fire Department Arson Investigation Unit responded. *(For video of the above section refer to <https://youtu.be/7NXKe9dvOa0> and <https://youtu.be/VQTPOFDLtLw>)*

Location	Item Burned	Date	Time	Cost
2 nd St./Reed St.	City trash can	05/29/20	1854	\$100
201 S 4th St.	City trash can	05/29/20	1925	\$100
19 N 3rd St.	Dumpsters	05/29/20	1925	\$1500
4 th St./San Carlos St.	City trash cans	05/29/20	1955	Unknown*
1 st St./San Fernando St.	City trash cans	05/29/20	1955	Unknown*
2 nd St./Santa Clara St.	Dumpster	05/29/20	1955	Unknown*
1 st St./San Carlos St.	City trash can	05/29/20	2025	\$100
200 S 3rd St.	Dumpster and trash can	05/29/20	2025	\$700
131 E William St.	Mattress and furniture	05/29/20	2025	\$1000
Plaza de Cesar Chavez	4 City trash cans	05/29/20	2055	\$400
1 st St./San Salvador St.	City trash can	05/29/20	2055	\$100
2 nd St./San Fernando St.	City trash can	05/29/20	2055	Unknown*
2 nd St./San Carlos St.	City trash can	05/29/20	2055	\$100
434 S 1st St.	Dumpster	05/29/20	2125	\$500
2 nd St./San Salvador St.	City trash can	05/29/20	2125	Unknown*
2 nd St./William St.	City trash can	05/29/20	2125	Unknown*

467 S 4th St.	Couch	05/29/20	2220	\$500
2 nd St./San Salvador St.	City trash can	05/29/20	2225	\$100
4 th St./San Carlos St.	Trash in the street	05/29/20	2255	Unknown*
33 S 3rd St.	2 Dumpsters	05/30/20	1910	\$500
2 nd St./Santa Clara St.	Trash can	05/30/20	0024	\$50
92 N Almaden Blvd.	Attempted: "Molotov Cocktail" thrown through window	05/30/20	0100	Unknown*
115 Terrain St.	Attempted: "Molotov Cocktail" thrown at the wall of the building	05/30/20	0101	Unknown*

Table 18. Arson Events City Hall

* Indicates damage was cleaned up prior to the arson investigator's ability to estimate damage.



Figure 67. Burning Debris

23. Media

San Jose Police Department Duty Manual Section L 2306 TREATMENT OF NEWS MEDIA states:

Officers assigned to the scene of a demonstration will cooperate with the media, whether writer, photographer, radio or television personnel. News media representatives have a constitutional right to cover demonstrations: however, they must not violate the law.

Those with a right to cover or photograph demonstrations are obviously not limited to representatives of the major newspapers, radio or television stations. Persons who represent some of this City's small newspapers or magazines, free lancers and other citizens are also entitled to take notes or photographs.

Although the press has no special right as a matter of law to be present if an unlawful assembly is declared, officers will attempt to discriminate between non-obstructing members of the press and voluntary participants in the unlawful assembly.

Section 409.5 of the Penal Code authorizes officers to close disaster scenes such as earthquakes or fires to the public. Subsection (d), however, allows duly authorized representatives of any news service, newspaper, or radio or television station or network to enter closed areas. Areas determined to be part of a crime scene shall be closed to both the public as well as the press.

The Department issues media credentials as a convenient means for officers to identify members of the media and an easily recognized way for the media to identify themselves to officers at the scene of disasters or crime scenes. Media credentials issued by other police agencies or by the media representative's employer should be considered valid.



Figure 68. False Media Representative

Throughout the Operational Timeline, media representatives bearing media credentials and those claiming to be media representatives without visible credentials, were interspersed within the crowd. With few exceptions, they were indistinguishable from protesters. When unlawful assembly and dispersal orders were given, or when the curfew was announced, media members remained embedded with in the crowd. During the chaos of the unfolding events, some media representatives were detained by officers and others were struck by PIW munitions and chemical agents. This was further exacerbated by those pretending to be media and media representatives present with no credentials.²¹

²¹ <https://www.sanjoinside.com/news/sj-mayor-calls-detention-of-reporters-very-troubling/>



Figure 69. Clothing Media was Wearing During Protests



Figure 70. Media in Crowd

23.1. Findings

Media embedded in the crowd were difficult to distinguish, resulting in some being detained and others being struck by PIW munitions.

23.2. Recommendations

- a. In addition to media credentials, the Department should issue easily identifiable reflective vests, and/or other conspicuous indicators to media representatives, so they are more easily distinguishable in a crowd.
- b. Before deployment, commanders should remind personnel of policies and protocols for interaction with media, and operational plans should include such reminders.
- c. During large-scale incidents, a Press Information Officer (PIO) should be assigned to the command post for impromptu press interviews and messaging.

24. Social Media

One of the problems faced on May 29th occurred when the violent rioters that had taken over the freeway and attacked officers with dangerous objects united with the crowd at City Hall. Rapidly, the crowd grew to an estimated 500-700 people. It is possible some of the protesters at City Hall had not observed any of the lawlessness which led to the issuance of the dispersal orders. Despite the dispersal order being audible, the crowd at City Hall may have perceived that police were the instigators of the violence and were overreacting to a peaceful protest.

It is clear that social media is the primary mechanism by which protesters communicated and advertised their intended activities. The Department could have also leveraged social media. As dispersal orders are broadcast, social media could be used to communicate more detailed information to the crowd, including that dispersal orders apply to everyone in attendance.

When officers form a skirmish line they are trained not to engage in conversation or debate with individuals in the crowd. This makes members of the crowd uncomfortable and can be perceived as impersonal or insensitive. Constant communication and careful messaging with the crowd through social media may positively impact police/protester interactions.

Messaging via various social media platforms could include:

- Communication of the Department's objective to allow for the expression of First Amendment rights.
- Tips for protesters to follow to express their views lawfully and safely.
- Directions for protesters to designated protest areas.
- Warnings that inciting behavior could lead to dispersal.
- Dispersal order and consequences of not dispersing.
- Warnings to public that CS gas will be used to allow them time to shelter in place or seek shelter.

24.1. Findings

The Department did not utilize social media platforms to improve communication with the public at large during the event.

24.2. Recommendations

- a. During large-scale incidents, a Press Information Officer (PIO) should be assigned to the command post for impromptu press interviews and messaging.
- b. Press Information Officers should leverage social media to communicate important messages to the public during events.

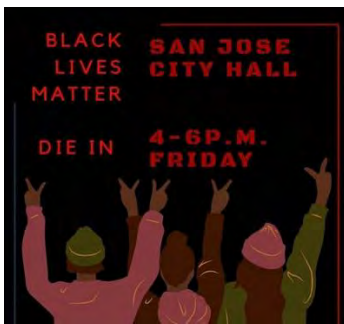


Figure 71. Social Media Posts

25. Collateral Impact

Calls for service are dispatched by a defined priority system. Priority 1 events are in-progress or just-occurred emergencies. Examples include shootings, stabbings, and armed robberies. Priority 2 events are in-progress or just-occurred events that are of lesser priority. Examples include family disturbances where weapons are not involved, welfare checks, and in progress property crimes. It is important to remember that throughout the Operational Timeline, the dispatch center continued to receive calls for service.

On May 29th, once the Department requested a Code 30, the remaining resources were insufficient to provide service to the rest of the city. Additional staffing did not arrive until the midnight shift began at 2100 hours. Because of the aforementioned problematic staffing levels at the command level, there was no patrol lieutenant monitoring calls citywide.

The chart below reveals a comparison of Priority 1 and Priority 2 calls for service during swing shift hours the week before the protests compared with calls for service during the Operational Timeline. Of significance is the average queuing time, or the time the call waited in the queue before being dispatched. For Priority 1 calls, the average queuing time increased from 49 seconds to 4 minutes and 34 seconds. Priority 2 calls increased from 10 minutes and 34 seconds of average queuing time to 30 minutes. *(For complete table refer to Appendix 29.23)*

The Communications Division experienced impact as a result of the civil unrest, particularly in the first few days. The non-emergency call queue indicated callers were waiting extended periods. Many people likely hung up before Communications could answer their call, although tracking those numbers is not possible. Eighty-two (82) events per day, on average, were canceled without a police response due to insufficient resources. This was a significant increase compared to the fifty-five (55) calls canceled during the same week in 2019.

On May 29th, at one point, there were 168 pending calls for service. Dispatch Supervisors provided a few examples of calls for service that pended for extended periods of time: a rape pended for 6 hours; a disturbance requiring medical assistance pended for 5.5 hours; a domestic violence incident involving strangulation pended for 24-hours.

The events of May 29th impacted Communications staffing. The last-minute request for a Dispatch Response Team (DRT) dispatcher to respond to the CP created an unplanned reduction in control room staffing. Additionally, a fire near the Department caused smoke to fill the control room, adding further stress to the staffing shortage and an increase in call volume. For the remainder of the Operational Timeline, DRT dispatchers worked from the CP in addition to their control room responsibilities. They worked 14-16 hours per day, including on their regularly scheduled days off.

Communications personnel also expressed concern about their safety and building security. There is no secure parking area for staff, and throughout the Operational Timeline, protesters marched in the streets surrounding the campus. The Department utilized officers on overtime to provide extra campus security, but Communications staff were unaccompanied to and from their vehicles.

The Table below illustrates the increase in call wait times for priority one and priority two calls for service.

INITIAL PRIORITY	DISTRICT	#CALLS		AVG OVERALL		% CHANGE	AVG QUEUING TIME		% CHANGE
		5.15 - 5.24	5.29 - 6.7	5.15 - 5.24	5.29 - 6.7		5.15 - 5.24	5.29 - 6.7	
1	A	8	4	6.42	3.79	-41.0%	0.76	0.31	-59.2%
1	C	14	5	5.66	5.34	-5.7%	0.70	0.29	-58.6%
1	D	1	0	1.89	-	-100.0%	0.55	-	-100.0%
1	E	9	16	5.00	35.49	609.8%	0.38	30.49	7923.7%
1	F	11	7	6.96	9.38	34.8%	0.52	2.16	315.4%
1	K	5	9	6.28	7.89	25.6%	0.52	0.53	1.9%
1	L	15	15	5.49	5.97	8.7%	0.54	0.47	-13.0%
1	M	9	9	4.32	6.98	61.6%	0.30	0.35	16.7%
1	N	5	3	6.04	4.12	-31.8%	0.37	0.46	24.3%
1	P	7	6	3.82	5.23	36.9%	0.66	0.42	-36.4%
1	R	4	8	6.30	8.36	32.7%	0.40	0.46	15.0%
1	S	7	10	5.73	9.77	70.5%	0.50	0.97	94.0%
1	T	7	11	4.40	7.07	60.7%	0.40	0.27	-32.5%
1	V	5	4	4.98	7.58	52.2%	0.47	0.46	-2.1%
1	W	5	3	5.50	6.60	20.0%	0.54	0.69	27.8%
1	X	16	11	4.67	5.77	23.6%	0.35	0.40	14.3%
1	Y	7	6	7.37	4.62	-37.3%	0.36	0.32	-11.1%
PRI 1 OVERALL		135	127	5.47	10.44	90.9%	0.49	4.34	785.7%
2	A	57	54	23.38	38.84	66.1%	9.54	29.95	213.9%
2	C	87	85	19.89	25.91	30.3%	6.73	11.88	76.5%
2	D	4	10	8.97	11.32	26.2%	3.82	3.99	4.5%
2	E	79	72	11.75	41.41	252.4%	5.39	33.63	523.9%
2	F	86	66	14.98	25.99	73.5%	6.04	13.63	125.7%
2	K	97	78	17.47	36.17	107.0%	9.85	23.63	139.9%
2	L	110	121	21.36	32.51	52.2%	12.54	23.42	86.8%
2	M	80	66	14.87	27.09	82.2%	6.21	18.36	195.7%
2	N	74	52	19.02	37.93	99.4%	7.82	25.21	222.4%
2	P	74	60	16.32	45.32	177.7%	6.17	35.62	477.3%
2	R	88	56	16.55	59.09	257.0%	5.71	48.46	748.7%
2	S	94	85	26.04	61.21	135.1%	17.42	51.46	195.4%
2	T	64	45	15.91	36.68	130.5%	5.70	20.79	264.7%
2	V	75	76	21.24	75.40	255.0%	12.47	64.51	417.3%
2	W	55	59	22.20	36.93	66.4%	14.20	25.37	78.7%
2	X	97	57	23.74	38.16	60.7%	10.61	29.91	181.9%
2	Y	73	86	32.14	38.50	19.8%	22.74	28.32	24.5%
PRI 2 OVERALL		1294	1128	19.75	40.69	106.0%	9.94	30.04	202.2%
PRI 1 & 2 TOTAL		1429	1255						

Table 20. Increase in Call Wait Times

25.1. Findings

This large-scale protest was a resource intensive event. Given that the event erupted into violence so quickly, the Department did not have time to prepare for supplemental staffing and resources. The Department's per capita staffing levels make managing large-scale events and managing citywide policing difficult.

25.2. Recommendations

- Develop a plan to activate the Bureau of Administration and Bureau of Investigations personnel to supplement patrol during large-scale events, particularly in positions at the Command Post (prisoner processing, Mutual Aid liaison, logistics, etc.)

26. Crisis Management Unit (CMU)

Officers often endure a great deal of stress due to their day-to-day assignments, which include responding to crisis calls for service some of which include child deaths, fatal accidents and highly volatile encounters with domestic partners.

In the weeks leading up to the protests, San Jose officers' cumulative stress was compounded by the Coronavirus Pandemic, which for many put a strain on both their professional and personal lives. Professionally, officers were unable to avoid close contact with the public. Personally, many officers had spouses who lost employment and their children were sheltered in place at home. The CMU was actively working to offer support and services to officers who were suffering from exceptional stress as a result of these micro-traumas and those stressors associated with working in the field as an essential employee.

The George Floyd incident served the officers another stressful blow in the form of negative public and media attention toward police officers at large. Officers also experienced the loss of friends, their children were subjected to harassment on social media, and some had conflict with family members.

As a result of the unplanned protests that took place in San Jose, on May 29th, 2020, officers responded to the emergency call for help from fellow law enforcement officers. This resulted in 12-hour shifts on all three watches where many officers were subjected to angry, and sometimes violent protesters. Those who were not directly involved in the protests experienced a significant increase in their workload, as the entire swing shift was devoted to handling the civil unrest leaving day shift and midnight shift to handle the remainder of the city.

As a result of this added stress, the Crisis Management Unit responded to the mental health of officers by proactively offering officers and their family members resources to assist with resiliency and psychotherapy, to include licensed therapists.

Some of these measures included:

- The creation of a list of 'on-call' therapists who made themselves available 24/7 for the officers.
- Officers were provided with one-on-one peer support resources with CMU personnel.
- Officers were provided with handouts which offered resources to assist them and their families with self-care tools and techniques.
- CMU provided team engagement to assist officers with 'unpacking' compartmentalized stress. This occurred both before and after shifts as requested by Supervisors and/or Officers.

27. Internal Affairs

The Department's Internal Affairs Unit (IA) received more than 1,200 complaints about the Department's response to the civil unrest. Below is a chart detailing the nature of the complaints being investigated by Internal Affairs investigators.

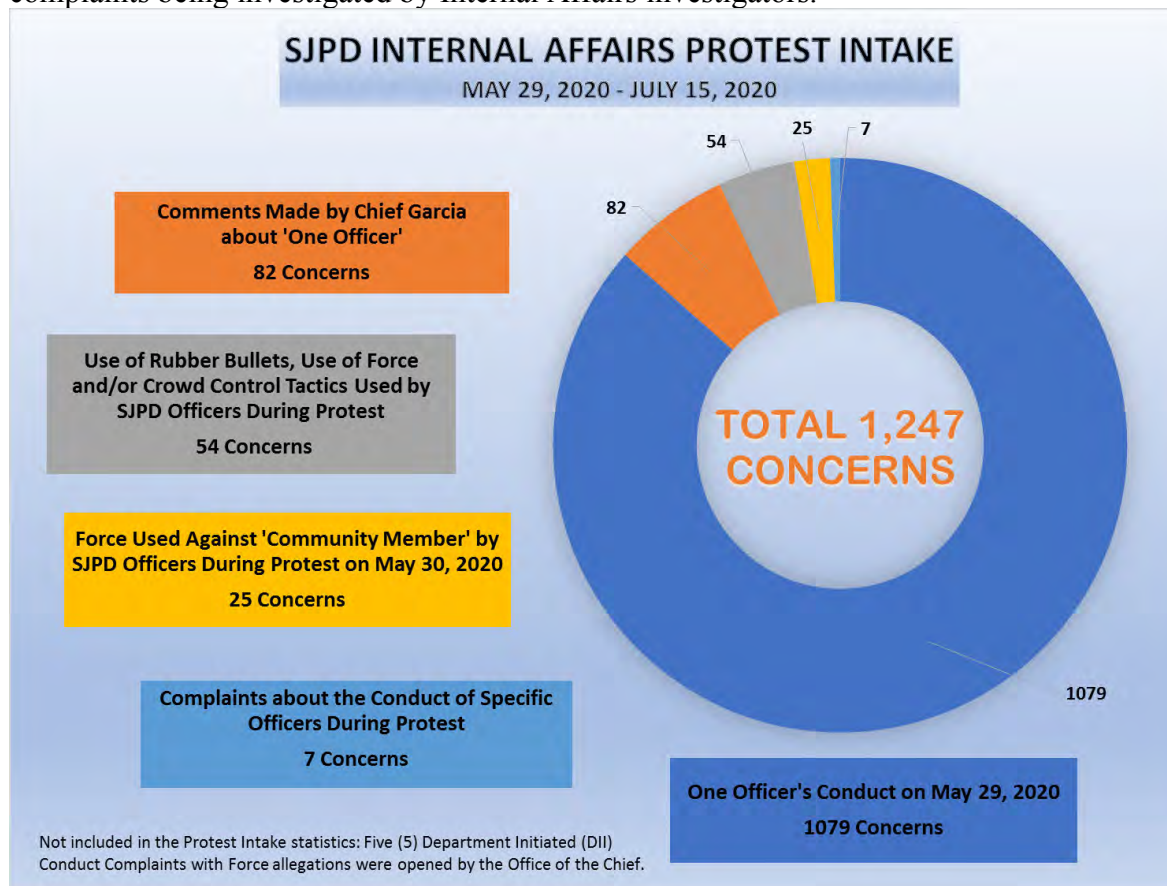


Table 21. SJPD Internal Affairs Protest Intake

Between May 29, 2020 and June 30, 2020, approximately 1,024 persons contacted the Independent Police Auditor's (IPA) office regarding interactions between the police and demonstrators or police policy focused on demonstrators. The IPA is producing a report detailing the complaints and their response to them. It is unknown at the time of this writing how many of these complaints are duplicates to those received by Internal Affairs.

28. Closing Thoughts

The observations and recommendations found within this report identify, highlight and document the numerous lessons learned during the civil unrest that occurred between May 29th, 2020 and June 7th, 2020. This report is a resource for the San Jose Police Department, and public safety agencies across the country, in continued efforts to improve response capabilities related to incidents of civil unrest.



Figure 72. SJPD Officer and Protester

The San Police Department remains committed to protecting the community's First Amendment rights, regardless of the message being expressed. The Department is also committed to protecting the community from civil unrest and lawlessness. As departments across the country have experienced, these objectives are difficult to balance in the face of riotous lawlessness and opportunistic looting and vandalism.

Whether a different outcome would have resulted had the Department applied different strategies and tactics is unknowable. The totality of the circumstances must be evaluated from the perspectives of commanders and officers involved in the events and the facts and circumstances known and experienced at the time. Through this assessment process, the Department identified opportunities for continued improvement. The City's Independent Police Auditor will be conducting an independent After Action Report that will include community feedback as directed by city officials. Any findings and recommendations that come from that, along with those in this preliminary After Action Report, will serve to positively impact similar future operations.²²

²² This report took approximately six weeks to compile by appointed Department staff. The AAR Team consisted of sworn and non-sworn personnel of varying ranks, with input from Training commanders, MFF Training commanders, Special Operations commanders and the BFO Deputy Chief. It was inclusive of hundreds of hours of gathering and analyzing data, coalescing information, and documenting it into a functional operational timeline for consumption. At different intervals, the report and its contents were reviewed by Command Staff, various units from within the Department who were affected, and the City Attorney's Office. All information included was the best source of information on the date and time it was collected. Some figures may change due to new information that was previously not available or evaluated for the purpose of this report.

29. Appendix

29.1. Glossary of Terms

AAR	After Action Report
Active Resistance	To intentionally and unlawfully oppose the lawful order of a peace officer in a physical manner (e.g., bracing, tensed muscles, interlock arms/legs, pushing, kicking, etc.
After Action Report	A report covering response actions, application of ICS, modifications to plans and procedures, training needs, and recovery activities.
AOR	Area of Responsibility
Arrest Teams	Personnel assigned to arrest duties during civil disobedience/civil disorder incidents
Assessment Period	05-29-2020 to 06-07-2020
Assessment Team	An assessment team designed to review the Department's response to large scale demonstrations of events of civil unrest that occurred between May 29, 2020 and June 7, 2020
Assistant Chief of Police	The Assistant Chief of Police is the second highest ranking officer in the Department. Responsibilities of the Assistant Chief include command of major functions of the Department, and as Acting Chief of Police in the absence of the Chief.
ASU	Air Support Unit
Bearcat	Ballistic Engineered Armored Response Counter-Attack Truck
Best Practice	Those tasks performed by an organization that reflect the spirit of current research and ideology of the discipline. In law enforcement, this includes problem solving, community policing, evidence-based decision making, and procedural justice.
BFO	Bureau of Field Operations
BOA	Bureau of Administration
BOI	Bureau of Investigations
BWC	Body Worn Camera
CAD	Computer-Aided Dispatch
Cal OES	California Governor's Office of Emergency Services
Captain	A Police captain is the highest middle management rank in the Department. Responsibilities of a captain may include command and management of a major subdivision of a bureau and other duties as assigned.
Chemical Agents	See Nonlethal Chemical Agents

Chief of Police	The Chief of Police is the chief executive officer of the Department and the final authority regarding all matters of policy, operations and discipline. Responsibilities of the Chief of Police include the execution of laws and ordinances and providing for the efficient operation of the Department.
CHP	California Highway Patrol
Civil Disobedience	An unlawful event involving a planned or spontaneous demonstration by a group of people
Civil Disorder	An unlawful event involving significant disruption of the public order
CMU	Crisis Management Unit
Code 30	This is the highest priority emergency mutual aid request for any police resources immediately available.
Command Staff	An officer who has obtained the rank of lieutenant or higher
Command Vehicle	A Mobile Command Center equipped to provide a centralized location for command collaboration, information gathering, technology, and resources
CP	Command Post
CSO	Community Service Officer
Deputy Chief of Police	A Deputy Chief of Police is the third highest ranking officer in the Department. Responsibilities of a Deputy Chief include the command of a Department Bureau, assuming general responsibility of overall Department operations in the absence of superior ranking command department members, and the execution of policies and directives emanating from the Office of the Chief of Police, and the performance of other tasks assigned by competent authority.
DHS	Department of Homeland Security
Dispersal Order	Lawful orders communicated by law enforcement personnel commanding individuals unlawfully assembled to disperse.
DOT	Department of Transportation
DVE	Domestic Violence Extremist
EMS	Emergency Medical Services
FAA	Federal Aviation Administration
FBI	Federal Bureau of Investigation
Flashpoint	Specific location(s) which become the initial source of unlawful activity and the origin or focal point of civil disorder.
Hole Day	When two teams in a particular district overlap every two weeks, the overlapping officers are dispersed throughout the city to fill "holes" in the watch left by officers out sick, with a day off, etc.
IC	Incident Commander
ICP	Incident Command Post
ICS	Incident Command System
IED	Improvised Explosive Device

Incident Command System (ICS)	The statewide model for field-level management of emergencies mandated by the Standardized Emergency Management System (SEMS). ICS is specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single and multiple incidents without being hindered by jurisdictional boundaries.
LEO	Law Enforcement Officer
Less Lethal Impact Munitions	Projectiles launched or otherwise deployed for purposes of overcoming resistance, preventing escape, effecting arrest, reducing serious injury and may be applied without a significant likelihood of causing death.
Lieutenant	A police lieutenant is the beginning middle management rank in the Department. Responsibilities of a lieutenant include the command and management of programs or functions and the supervision of assigned subordinate department members.
LRAD	The Long-Range Acoustic Device (LRAD) is an acoustic hailing device.
MAMFF	Mutual Aid Mobile Field Force
MCATI	Managing Civil Actions in Threat Incidents
MERGE	Mobile Emergency Response Group and Equipment
METRO	A SJPD specialized unit
MMF	Mobile Field Force see Mobile Field Force
Mob	A disorderly group of people engaged in unlawful activity
Mobile Field Force	An organized, mobile law enforcement tactical force equipped and trained to respond to unusual occurrences. The mobile field force is currently the statewide standard configuration known as "Mutual Aid Response Mobile Field Force."
MOTORS	SJPD Motors unit
NCRIC	Northern California Regional Intelligence Center
NIMS	National Incident Management System
Nonlethal Chemical Agents	Devices utilized by law enforcement agencies which may include CS, CN, OC, and HC (smoke).
Officer	A police officer performs law enforcement duties to protect life and property and has the greatest influence over the achievement of the Department's mission. The officer is the most visible department member. Conduct displayed by officers set the tone for the public's response to all other department members and programs. Success or failure of the Department's mission is directly dependent upon the officer's professional conduct, knowledge, and sense of duty.
OT	Overtime
Passive Resistance	Refers to intentional and unlawful opposition of a lawful order of a peace officer during arrest situations but involves no physical resistance. (See Active Resistance.)

PIO	Public Information Officer
PIW	Projectile Impact Weapon
POST	California Police Officer Standards and Training
Potato Gun	Pipe-based weapon which uses air pressure or combustion to launch projectiles at high speeds
PPE	Personal Protective Equipment
RDT	Rapid Deployment Team
Riot	A violent disturbance of the peace by a crowd
SEMS	Standard Emergency Management System
Sergeant	Police sergeants supervise and evaluate assigned department members and are responsible for the efficient and effective accomplishment of functions and tasks assigned to them.
Strike Team	Smaller groups of officers tasked with specific tasks. Once the task is completed the Strike Team returns to the command post.
Tear Gas	The term used in the California Penal Code for what law enforcement more accurately refers to as "nonlethal chemical agents."
UAV	Unmanned Aerial Vehicles
Unified Command	In ICS, it is described as a unified team effort, which allows all agencies with responsibility for the incident, either geographical or functional, to manage an incident by establishing a common set of incident objectives and strategies. It maintains agency authority, responsibility and accountability.
Unity of Command	The concept by which each person within an organization reports to one and only one designated person
VCET	Violent Crimes Enforcement Team is a SJPd specialized unit
Versadex	Electronic records management database utilized by the San Jose Police Department
Watch 1	Day shift from 0630-1630
Watch 2	Swing shift from 1500-0100
Watch 3	Midnight shift from 2100-0700

29.2. Summary of the Recommendations

Background Found in Section 2.3

- a. As increasing staffing permits return to prioritizing training on overlap days.
- b. Formalize training to be delivered consistently during briefings.
- c. Develop a process by which off duty officers can be electronically notified of large-scale events to help bolster staffing.
- d. Continue diverse and ethnic recruitment.

Background Found in Section 2.10

- a. *Mandate a minimum number of Mobile Field Force (MFF) training annually for all sworn personnel, to include practical scenarios.*
- b. *Ensure designated personnel attend Santa Clara County Managing Civil Actions in Threat Incidents (MCATI) bi-annual training.*
- c. *Maintain detailed training records to include rosters and curriculum outlines.*
- d. Training should include regular tabletop critical incident or event exercises involving mutual aid responders, other first responders and key community leaders.
- e. Designate patrol Specialists as MFF squad leaders and provide them the relevant training.

From Incident Command System Found in Section 12.2

- a. Supervisors should receive Standardized Emergency Management System (SEMS) and Incident Command System (ICS) training, to include practical/tabletop exercises and scenario training.
- b. Review staffing models to determine if adjustments to the current model are needed to allow for sufficient command and control during large-scale events.
- c. Develop a plan to activate the Bureau of Administration and Bureau of Investigations personnel to supplement patrol during large-scale events, particularly in positions at the Command Post (prisoner processing, Mutual Aid liaison, logistics, etc.)

Mutual Aid Found in Section 13.2

- a. Consider working with the Police Chiefs' Association of Santa Clara County to review the Mutual Aid Protocol (2009) to determine what changes, if any, should be made to bring the protocol in line with current best practices. For future events, provide a mutual aid liaison solely dedicated to managing mutual aid resources.

Equipment Found in Section 14.4

- a. Acquire a fixed-wing aircraft to provide critical aerial surveillance to provide commanders appropriate situational awareness.
- b. Acquire hand-held downlink devices in all command vehicles to receive the aerial surveillance feed from air support units.
- c. Fully implement the UAV program and utilize UAVs for aerial surveillance in large scale civil unrest events.

Equipment Found in Section 14.11

- a. Revise the Department's dispersal order script to include POST recommended language, including an explicit warning about force and gas.
- b. Pre-record dispersal orders in the three languages most likely to be encountered in San Jose: English, Spanish and Vietnamese.
- c. Coordinate with Emergency Operations Center (EOC) to acquire additional LRAD devices to ensure dispersal orders and announcements can be heard in all directions for several blocks.
- d. Incorporate into protocols a recommendation that unlawful assembly orders be repeated periodically once the Department is prepared to take enforcement action to avoid prolonged repeated announcements that may cause the crowd to become complacent.
- e. Unlawful assembly orders should be given repeatedly and then enforcement action taken soon thereafter so the crowd does not become emboldened or complacent.
- f. When dispersal orders are given, they should be published on various social media platforms and include instructions that the order applies to everyone present.

Use of Force Found in Section 16.2

- a. Engage the community in a comprehensive review of the Department's policies and procedures applicable to crowd control events and use of force.
- b. Research whether the Department is equipped with the state-of-the-art crowd control tools.
- c. Provide additional training to sworn personnel regarding the use of force during crowd control situations.
- d. Establish a system to accurately record and document the deployment of less lethal weapons, to include the date, time, circumstances and number of munitions.
- e. Supervisors and commanders should ensure the accurate documentation of all events, facts and uses of force as soon as practicable after the event.

Use of Force Found in Section 16.16

- a. Develop a process by which property clerks, or those with equivalent skills, can be deployed to the scene of a CP to manage and track rapidly outgoing inventory.

- b. Maintain a storage container (shed or conex box) containing supplies that would be needed during a spontaneous, large scale civil unrest (i.e.: sufficient munitions for a multi-day, large scale event; extra gas filters; flex-cuffs)
- c. Research whether the Department is utilizing the safest and most effective crowd control tools available.
- d. Explore upgrading patrol 40mm Launchers with red dot technology to improve accuracy of round placement.
- e. Evaluate whether the training provided to patrol issued 40mm Launchers is adequate and feasibility of providing more comprehensive and ongoing training.
- f. Review Department policies, procedures, and unit guidelines to determine the appropriate use of chemical agents during crowd control situations.
- g. Before deployment, commanders should remind personnel of policies and protocols for interaction with media, and operational plans should include such reminders.

Evolution of Tactics Found in Section 17.7

- a. Department should provide ongoing training in ICS, MFF, and other relevant areas to provide as much experience as practical.
- b. Ensure formal debriefings are conducted after unusual or tactically complex events to enable rapid knowledge transfer.

Arrests Made Found in Section 19.3

- a. Develop written guidelines for prisoner processing during large-scale events that provide clear direction to arresting, transporting, and booking officers.
- b. Field supervisors should emphasize and ensure complete and accurate information is provided to the transport officers before arrestees are transferred to their custody.
- c. Assign personnel to quality control check booking paperwork and the police report before the prisoners are booked or transported to jail to minimize mistakes that may compromise the prosecution.

Media Found in Section 23.2

- a. In addition to media credentials, the Department should issue easily identifiable reflective vests, and/or other conspicuous indicators to media representatives, so they are more easily distinguishable in a crowd.
- b. The Department should provide training to officers in recognition of media credentials and policies surrounding treatment of media.
- c. Include reminders about policies surrounding the treatment of media at such events in the operational plan.
- d. As part of the ICS plan, ensure a PIO is at the CP and available for impromptu press interviews and messaging.

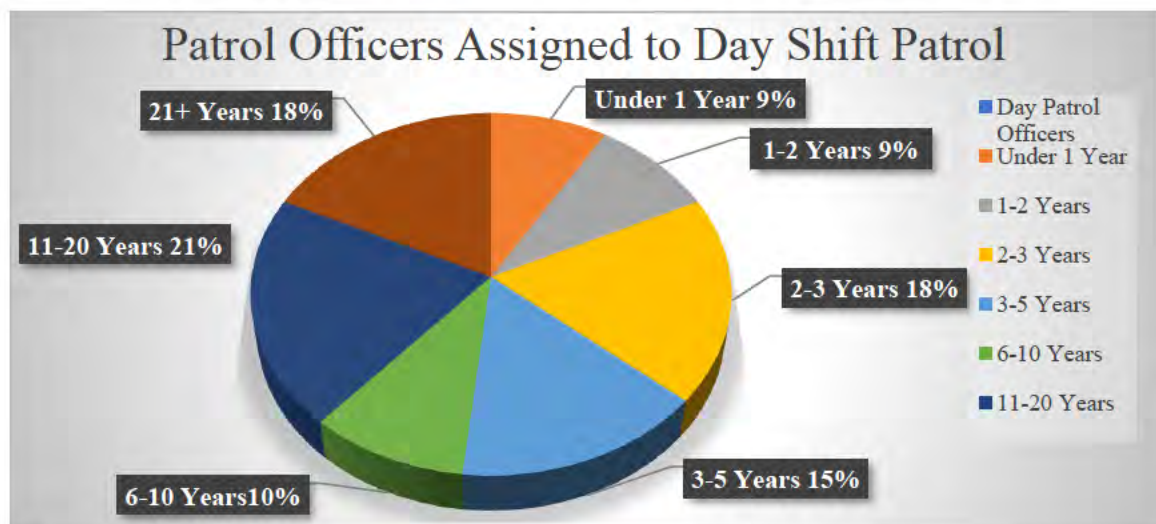
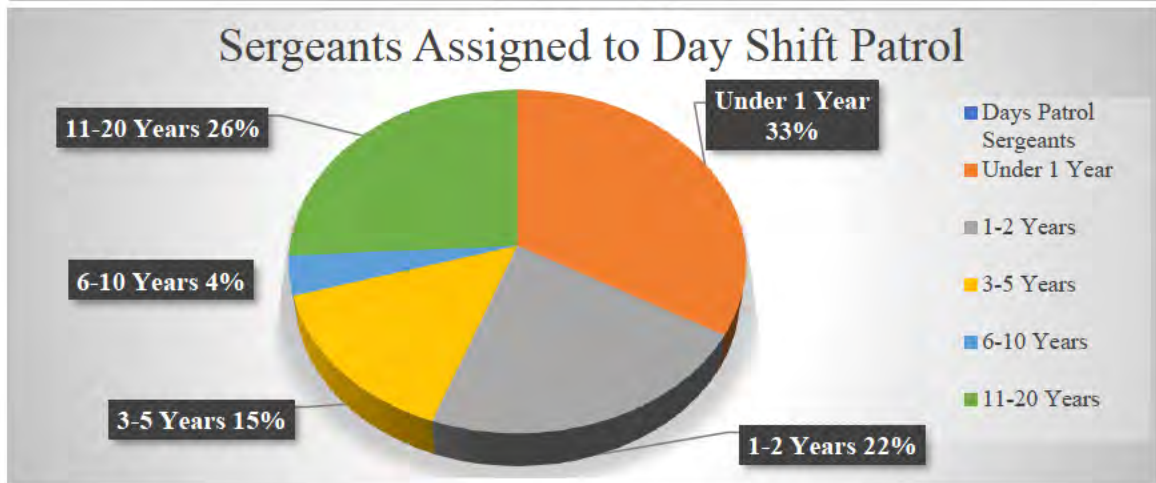
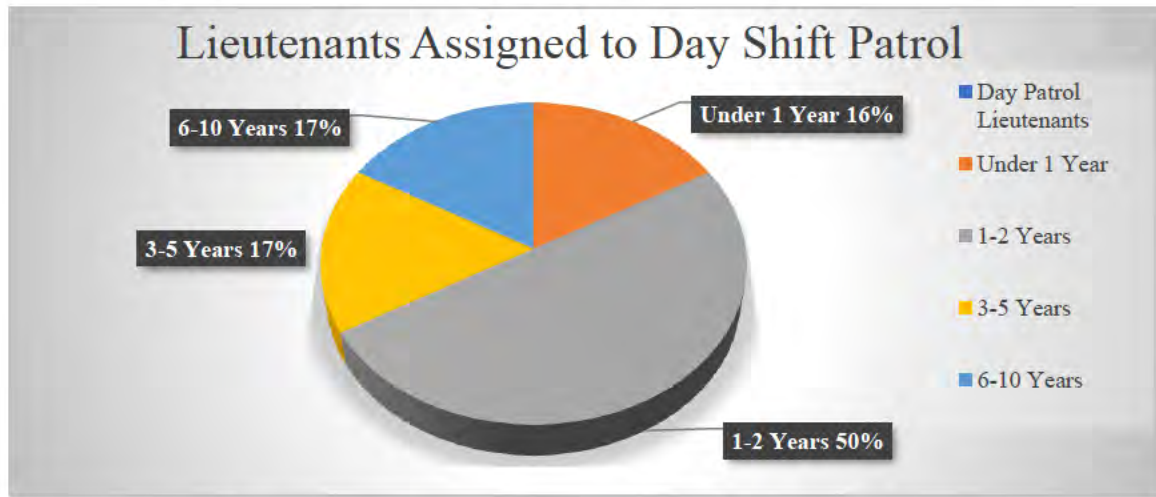
Social Media Found in Section 24.2

- a. During large-scale incidents, a Press Information Officer (PIO) should be assigned to the command post for impromptu press interviews and messaging.
- b. Press Information Officers should leverage social media to communicate important messages to the public during events.

Collateral Impact Found in Section 25.2

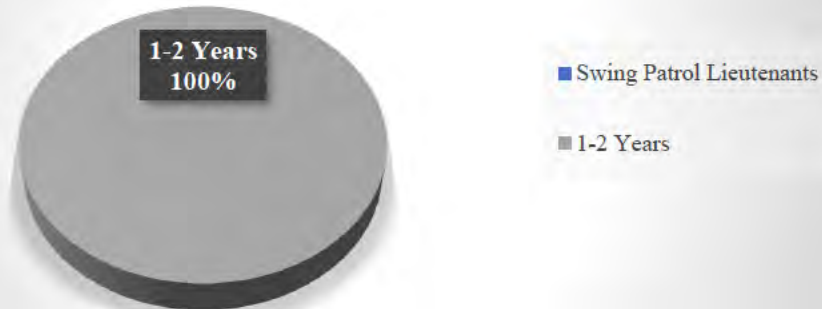
- a. Develop a plan for activating BOA and BOI personnel to supplement patrol during large-scale events.
- b. Utilize BOA and BOI personnel for assignments at the CP rather than fully depleting patrol.

29.3. Day Shift Experience by Rank

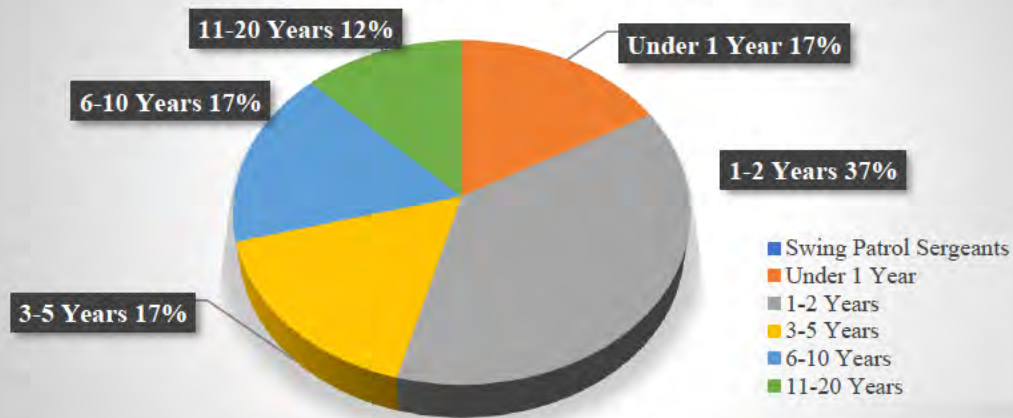


29.4. Swing Shift Experience by Rank

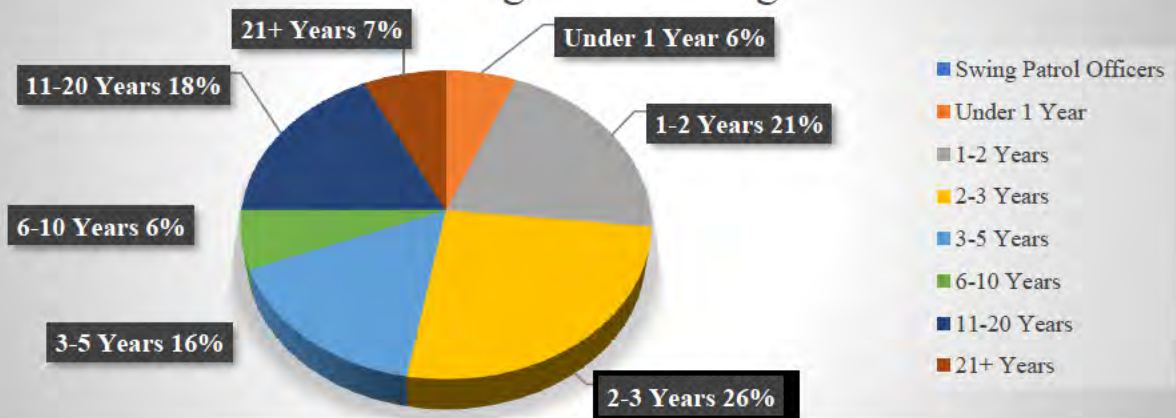
Lieutenants Assigned to Swing Shift Patrol



Sergeants Assigned to Swing Shift Patrol

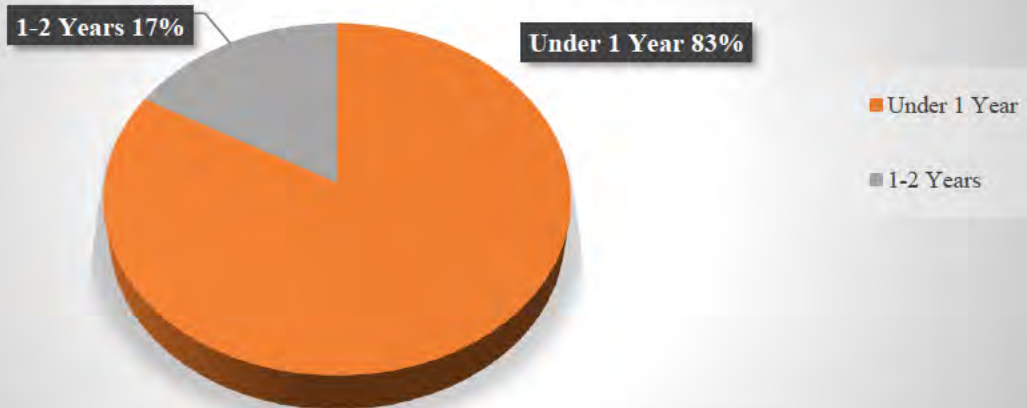


Patrol Officers Assigned to Swing Shift Patrol

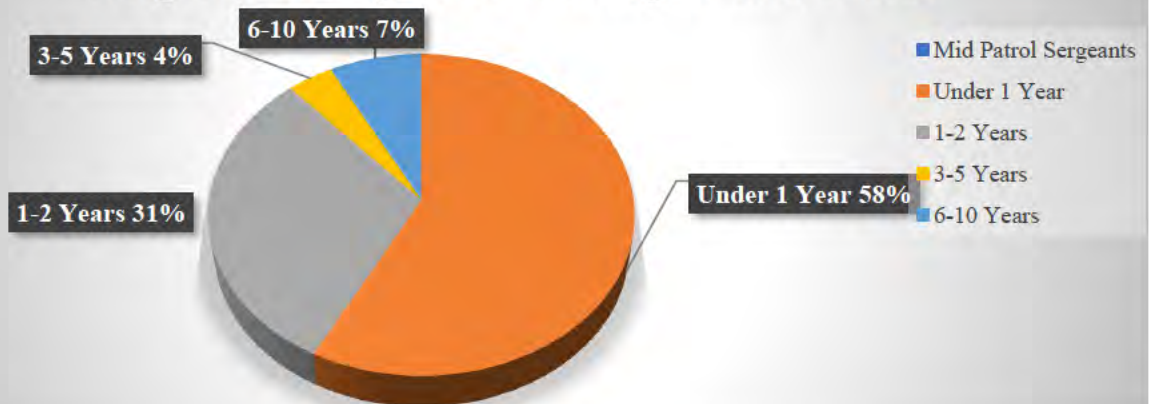


29.5. Midnight Shift Experience by Rank

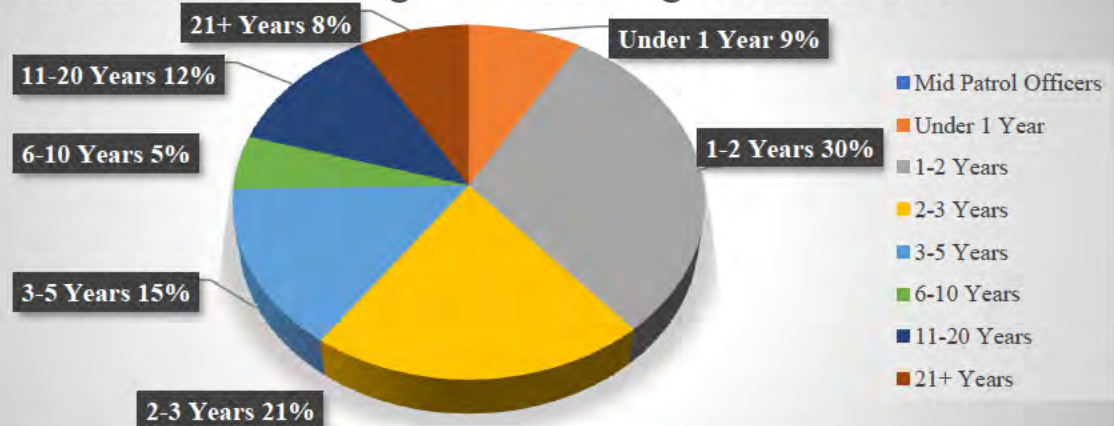
Lieutenants Assigned to Midnight Shift Patrol



Sergeants Assigned to Midnight Shift Patrol



Patrol Officers Assigned to Midnight Shift Patrol



29.6. Santa Clara County Mutual Aid Protocol

MUTUAL AID

PROTOCOL

2009

Police Chiefs' Association of Santa Clara County

Adopted August 13, 2009

Santa Clara County Law Enforcement
MUTUAL AID MANUAL

Resources:

California OES 2003 Overview (Red Book)
OES 2003 Law Enforcement Mutual Aid Plan
(Blue Book)

Santa Clara County Law Enforcement MUTUAL AID MANUAL

SECTION I

Mutual Aid QUICK REFERENCE CHECKLIST

REQUESTING AGENCY CHECKLIST:

- Call the Sheriff's Department Operations Desk: (408) 808-4410
- Provide the following information:
- Incident information
- Type of disturbance or situation
- Number of participants, if a disturbance or civil unrest
- Anticipated duration
- Command Center location
- Staging area for responding resources
- Open call back phone number

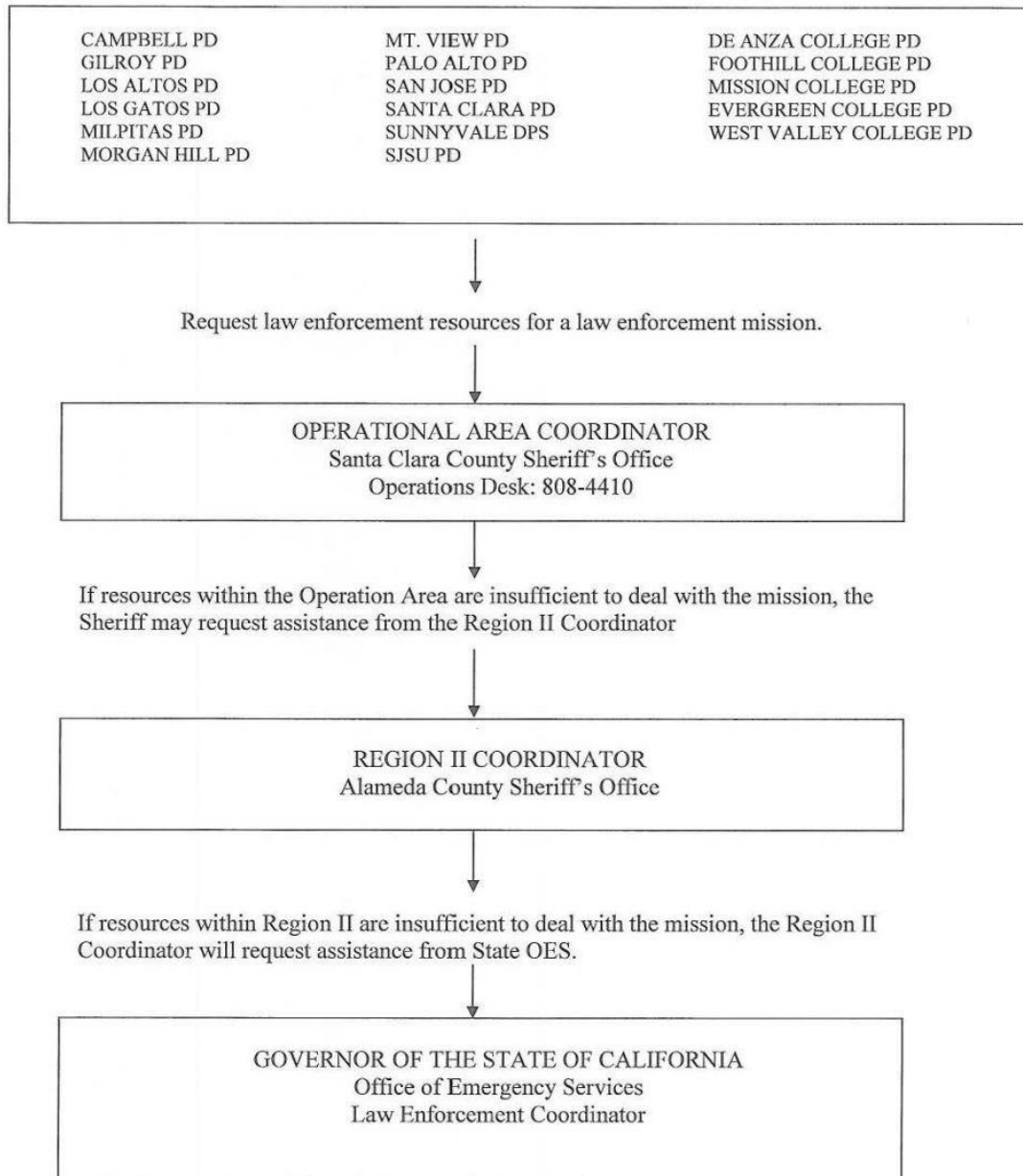
MUTUAL AID COORDINATORS'S CHECKLIST

- Notify Special Operations lieutenant/Chain of command
- Notify local law enforcement agencies (List on following page)
- Give them your call back phone number
- Advise them of the staging and command center locations
- Request call back with number of resources responding and estimated time of arrival at staging area
- Notify Requesting Agency of the level of response after contact has been made with each assisting local agency

RESPONDING AGENCY CHECKLIST:

- Determine what your level of response will be and when they will arrive at the staging area
- Provide this information to the Sheriffs Mutual Aid Coordinator at:
(408) 421-6680 or (408) 808-4410

Mutual Aid Contact Hierarchy



Santa Clara County Law Enforcement MUTUAL AID MANUAL

SECTION 2

INTRODUCTION TO COUNTY MUTUAL AID

The purpose of this plan is to provide for the coordination of law enforcement mutual aid operations at local or operational levels. It serves also to establish procedures for alerting, dispatching and utilizing law enforcement personnel and equipment resources.

The goals of this mutual aid agreement are to establish procedures for law enforcement agencies dealing with major civil disturbances, riots, or unusual occurrences to follow for obtaining assistance when any single agency is unable to control a given situation utilizing only its own resources.

This plan serves to implement mutual aid within the boundaries of Santa Clara County, but is not intended to supersede the State Mutual Aid Plan. This document also provides information on how mutual aid is activated within the region. For more detailed information, refer to Governor's Office of Emergency Services The Law Enforcement Mutual Aid Plan.

KEYPOINTS

- o A viable plan for working together
- o Supplements staff and equipment resources in critical situations

Law enforcement mutual aid may be exercised in different ways. The most common one is the day-to-day assistance. During the course of normal law enforcement, incidents occur that require immediate assistance such as back-up on a traffic stop, perimeter control for a fleeing suspect, code 20/code 30, etc. Officers from nearby jurisdictions may respond to these emergency broadcasts on their own initiative (department policy permitting) without a formal mutual aid request. Law Enforcement Mutual Aid resources are also activated regularly, for example, to assist in SAR (Search and Rescue) missions or to provide air support to patrol officers. Less common, but equally important, are the responses to civil disorders and disasters.

Law Enforcement Mutual Aid is coordinated at the Operational Area level (a county, along with political subdivisions within the county) by the Sheriff. All local requests for Law Enforcement Mutual Aid must be coordinated through the Operational Area Coordinator (Sheriff) or the Sheriff's designee. This includes requests for out of county law enforcement resources to be used in the Operational Area.

Several other Mutual Aid systems exist in parallel to the law enforcement system. These include Fire, Emergency Medical Services, Public Works, Emergency Management and Coroner systems. In general, elected or appointed officials within their field of expertise coordinate these systems. Normal requests for these resources to be applied to a law enforcement incident are coordinated by the Operational Area Coordinator of that particular field (Fire, PW, EMS, etc.).

California is divided into seven law enforcement mutual aid regions, all coordinated by

the Governor's Office of Emergency Services. Region 2 includes the counties of Del Norte, Humboldt, Mendocino, Lake, Sonoma, Napa, Marin, Solano, Contra Costa, San Francisco, Alameda, San Mateo, Santa Clara, Santa Cruz, San Benito, and Monterey.

The Law Enforcement Regional Mutual Aid Coordinator for Region 2 is currently the Sheriff of Alameda County. Requests for out-of-county law enforcement resources are directed to the Regional Coordinator by the Operational Area Coordinator. If the need cannot be met within the region, it is forwarded to the State for further action. The Governor's Office of Emergency Services' Law Enforcement Mutual Aid Coordinator may utilize adjacent (or more distant) county resources, state owned resources (CHP, Fish and Game) or may request the Governor to access California National Guard resources. In extreme situations, the Governor may request the President to provide assistance, which could include federal law enforcement agencies (Secret Service, U.S. Marshals, ATF, DEA or Coast Guard) or elements of the Department of Defense.

The initial call from a local law enforcement agency for mutual aid resources should be to the Santa Clara County Sheriff's Office Mutual Aid Coordinator, representing the Operational Area. If the resources within the Operational Area are insufficient, the Mutual Aid Coordinator will contact the Region 2 Coordinator, which is the Alameda County Sheriff's Department. The Region 2 Coordinator would then advise the State OES Warning Center of any further needs, which would then be transmitted to the State OES Law Enforcement Mutual Aid Coordinator.

KEY POINTS

- o Santa Clara County is our, Operational Area."
- o Region 2 resources are requested through the Santa Clara County Sheriff's Mutual Aid Coordinator at (408) 808-4410

RESPONDING TO DISASTERS AND CIVIL DISORDER: OVERVIEW AND PHILOSOPHY

In dealing with disaster strategy, there are two areas of primary importance: disasters, either natural or man-made, and civil disorders.

First, with regard to either natural or man-made disasters, we subscribe to the universal law enforcement goal of protecting life and property, and to rescuing victims. More specifically, in cases of man-made disaster, such as acts of terrorism that result in widespread destruction and major loss of life or large numbers of victims with injuries, there is also the critical need for scene and evidence containment for investigative and prosecution purposes.

KEYPOINTS

- o Protect life and property
- o Rescue victims
- o Identify and protect evidence

Secondly, with regard to civil disorder, we have seen several different methods used over the years by law enforcement at the onset of these incidents. One method has been

to attempt to contain the affected area and let the disturbance "burn itself out." Another has been to commit manpower and equipment to the incident and suppress it.

Law enforcement has learned, from past experience, that it is next to impossible to contain a riot; participants can and will affect the guise of the non-involved and move out of the contained area only to commit further acts of violence or crime elsewhere. We recognize that standing by and letting a situation "burn itself out" does not resolve the problem but perpetuates it.

Based upon these observations, it is our policy that at the onset of civil disorder and riot, we will move immediately to suppress the outbreak through the judicious use of all necessary manpower and equipment and with such a lawful force as is necessary to accomplish this policy.

In addition, Section 26602 of the California Government Code states, in part, "The Sheriff shall prevent and suppress any affrays, breaches of the peace, riots, and insurrections which come to his knowledge,". It remains our policy to arrest and detain all law violators under any circumstances. This should be tempered only by the realities we face at the time the opportunity for arrest presents itself, with manpower being a deciding factor.

Much latitude must be given the field supervisors or the incident commander in dealing with arrest issues when the numbers of law violators, i.e., looters, far exceed that of law enforcement personnel. Also, to mass arrest means mass bookings, and that in itself, produces the problem of losing the tactical use of field personnel. The circumstances of the situation may require the incident commander to exercise his or her option to disperse rather than arrest. Considerations should also be given to the possibility of jail managers to provide and release field bookings at a site away from the location of the disturbance.

KEYPOINTS

- Suppress outbreaks immediately
- Utilize necessary manpower
- Utilize available equipment

It is important that intelligence regarding any potential for disorder be shared as soon as it is known. Any law enforcement agency that undertakes specific planning for anticipated civil unrest should immediately notify the affected Operational Area Mutual Aid Coordinator. It is also important to share planning information with local fire department officials.

MUTUAL AID PLAN DEFINITIONS

Local Emergency - The duly proclaimed existence of conditions of disaster or of county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or

an earthquake, or other conditions, other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of that political subdivision and require the combined forces of other political subdivisions to combat [Section 8558(c), California Government Code].

Operational Area - An intermediate level of the state emergency organization, consisting of a county and all political subdivisions within the county area.

Operational Area Coordinator - The County Sheriff.

Mutual Aid Region - A multi-county area established by the Office of Emergency Services to facilitate coordination of mutual aid. (Note: Santa Clara County is part of Region2.)

Regional Coordinator - An Operational Area Law Enforcement Coordinator elected by other Coordinators within an OES-defined region to act as the overall mutual aid coordinator for that region.

State Law Enforcement Mutual Aid Coordinator – The Chief of the OES Law Enforcement Division.

Unusual Occurrence - An event involving potential or actual personal injury or property damage arising from fire, flood, storm, earthquake, wreck, enemy action, civil disturbance, or other natural or human caused incident requiring exceptional law enforcement response.

National Incident Management System (NIMS) - The Department of Homeland Security (DHS) has developed a National Incident Management System (NIMS) under *Management of Domestic Incidents*. NIMS is similar to California's Standardized Emergency Management System (SEMS), which was adopted through legislation and regulation in the 1990s. This similarity is most evident in the NIMS version of the Incident Command System (ICS) and adoption of the concept of mutual aid. DHS will phase in NIMS over time. As a result of Homeland Security Presidential Directive (HSPD)-5, all federal departments, agencies, state, local, and tribal governments are required to fully comply with NIMS by FY 2007 (October 1, 2006) in order to be eligible to apply for federal preparedness assistance. BY FY 2007, Federal preparedness assistance will be conditioned by full compliance with the NIMS.

Standard Emergency Management System (SEMS) - The emergency management organization required by California statute, Government Code 8607(a), for emergency response and disaster management in multi-agency and multi-jurisdiction emergencies. California local governments must use SEMS in emergency response and disaster management to be eligible for any available disaster reimbursement funding for its personnel related costs provided through state disaster assistance programs.

The Standard Emergency Management System (SEMS) incorporates the use of:

Incident Command System (ICS)- The field level emergency management response system and organization. The combination of facilities, equipment, personnel, procedures and communications operating within a common organizational structure with responsibility for the management of resources to effectively accomplish stated objectives pertinent to an incident.

Unified Command- A unified team effort which allows all agencies with responsibility for the incident, either geographical or functional, to manage an incident by establishing a common set of incident objectives and strategies. This is accomplished without losing or abdicating agency authority, responsibility or accountability.

Area Command- An organization established to: 1) oversee the management of multiple incidents that are each being handled by an Incident Command System organization; or 2) to oversee the management of a very large incident that has multiple Incident Management Teams assigned to it. Area Command has the responsibility to:

- Set overall strategy and priorities;
- Allocate critical resources based on priorities;
- Ensure that incidents are properly managed, and;
- Ensure that objectives are met, and strategies followed.

Command Level Personnel- An officer holding the rank of lieutenant or above.

KEYPOINTS

- o SEMS required in multi-agency response to emergencies and disasters

RESPONSIBILITY FOR CALL-UP AUTHORIZATION

It will be the responsibility of the Santa Clara County Sheriff's Office to initiate the operational area mutual aid plan. Authorization for mobilization shall come from the Sheriff, who serves as the Operational Area Coordinator, or his/her designated subordinate.

The requesting agency shall contact the Sheriff's Office for authorization of mutual aid. The requesting agency *will* give information as to the size of the incident and advise on what assistance is necessary, i.e., numbers of officers, specialized unit or equipment, etc. The requesting agency shall advise on the locations of the staging area and the Incident Command Center.

Upon receipt of this information and request for aid, the Sheriff's Department will advise all participating agencies of the authorization for a mutual aid response. It will then be the responsibility of each agency to mobilize their Level 1 resources and dispatch them to the identified staging area. Each responding agency will notify

the Sheriffs Mutual Aid Coordinator with information as to the number of personnel and level of resources they are sending, along with the estimated time of arrival. The Sheriff's Mutual Aid Coordinator will forward that information to the Command Center established by the requesting agency.

KEYPOINTS

WHEN REQUESTING MUTUAL AID:

- o Call the Sheriffs Mutual Aid Coordinator at (408) 808-4410.
- o Advise where staging area and Command Center are located.

KEYPOINTS

WHEN SENDING RESOURCES:

- o Tell the Sheriff's Mutual Aid Coordinator the number of personnel and equipment you are sending and when they are expected to arrive.
- o This information will be given to the requesting agency.

OBTAINING MUTUAL AID

LOCAL - When a Chief of Police determines that an emergency situation in his or her jurisdiction may become or is already beyond the control of that department's resources, it is that Chief's responsibility to request mutual aid from the Operational Area Coordinator.

OPERATIONAL AREA - When an emergency develops or appears to be developing which cannot be resolved by a law enforcement agency within an operational area, it is the responsibility of the Operational Area Coordinator to provide assistance and coordination to control the problem [Section 26602 of the Government Code]. If it should appear likely that the resources of an operational area might be depleted, the Operational Area Coordinator should advise the Regional Area Coordinator in advance.

REGIONAL - Should an existing or anticipated emergency be of such magnitude as to require the commitment of the resources of one or more operational areas, it is the responsibility of the Regional Coordinator to organize the dispatch of resources within the region. The Regional Area Coordinator will keep the State Law Enforcement Coordinator advised.

STATE - If the combined resources of a region are not sufficient to cope with an emergency situation, or if such a condition is indicated, the Regional Coordinator will request additional assistance through the State Law Enforcement Mutual Aid Coordinator.

KEYPOINTS

- o The Sheriff is the Operational Area Coordinator for Santa Clara County and

manages resource response to any agency requesting assistance.

COMMAND RESPONSIBILITY

All command responsibility pertaining to the establishment of an Incident Command Center will rest with the agency requesting assistance or the agency that has jurisdiction in the affected area.

When it becomes necessary for the Operational Area Coordinator to provide assistance and coordination to a requesting agency via mutual aid, a Unified Command may be established to respond to the emergency. It is clear that a unified approach to these types of emergencies will provide the essential management to integrate the disciplines of all affected departments and agencies. This concept in no way advocates decision-making by committee but provides a management structure and method for insuring that all the concerns, issues, authority and responsibilities of each department are collectively considered.

KEYPOINTS

- o A Unified Command may be established when mutual aid is provided.

In the event that any assisting agency does not provide command level personnel for the Unified Command operation, the Sheriff, as the Operational Area Coordinator, will assume that function for that agency and its personnel.

Each agency will follow their own department's policies and procedures. However, the final command decisions, as to actions taken by the entire mutual aid force, shall rest with the requesting agency.

Functionally, the Operational Area Coordinator will remain the coordinator of the mutual aid response agencies until the emergency is over and all responding agency personnel are released to return to their respective jurisdictions.

DEGREE OF ASSISTANCE

The requesting agency is urged to attempt to accurately evaluate the situation as to manpower needs prior to requesting mutual aid from the Operational Area Coordinator. The Operational Area Coordinator will be responsible for seeing to it that the needs of the requesting agency are met and that an equitable distribution of resources from all other agencies is achieved.

The Santa Clara County Law Enforcement Mutual Aid Manual has been set up to initiate two (2) levels of response to requests of mutual aid. The number of personnel and equipment available in each level is determined by each agency. The criteria upon which these quantities are based are as follows:

- There is no prior notice given to the agency;

- The agency is at a minimum staffing level at the time the request is received;
- The agency's jurisdiction is not directly impacted by the event

LEVEL 1: This level of response does not exceed approximately 50% of the agency's on-duty uniformed patrol deployment at the time of request.

LEVEL 2: This level of response incorporates what an agency is able to commit for an ongoing (72+ hours) operation. Agencies will respond all possible personnel and supporting equipment, but still retain enough to provide minimal line functions to their respective jurisdictions. This may necessitate the cancellation of days off and implementation of 12-hour shifts. Due to the severity of the workload, which this place upon an agency, this response will be used only in cases of great magnitude.

NOTE: The above levels of response are for mutual aid requests only and do not in any way change an agency's response to another agency's Code 30 request.

SECTION 3

ASSISTANCE AGREEMENT

SANTA CLARA COUNTY LAW ENFORCEMENT AGENCIES AGREEMENT PURSUANT TO SECTION 830.1(a) (2) OF THE CALIFORNIA PENAL CODE AND EMERGENCY MUTUAL AID OPERATIONAL PLAN

WHEREAS, Section 830.1(a)(2) of the California Penal Code provides that the authority of any peace officer, as defined therein extends to any place in the state where the peace officer has the prior consent of the Chief of Police, or person authorized by the Chief of Police to give such consent, if the place is within a city; or of the Sheriff, or person authorized by the Sheriff to give such consent, if the place is within a county; and

WHEREAS, the undersigned desire to coordinate law enforcement efforts and encourage maximum cooperation between all agencies represented here; and

WHEREAS, the parties to this agreement have public safety responsibilities within Santa Clara County, and therefore have mutual interests and objectives to accomplish for the preservation and protection of life and property within the county; and

WHEREAS, it is the intention of the undersigned that peace officers be given the maximum powers consistent with California law; and

WHEREAS, it is agreed among the undersigned that when members of their respective agencies are engaged in law enforcement activity in a jurisdiction other than their own that these members will notify, whenever practicable, the department whose jurisdiction they are entering, of their activities in said jurisdiction; but that the practicability of such prior notification shall be solely at the discretion of the individual member(s); and

WHEREAS, Mutual Aid assistance among Santa Clara County Law Enforcement Agencies is necessary and inures to the benefit of said agencies, their individual officers and deputies, and the public; and

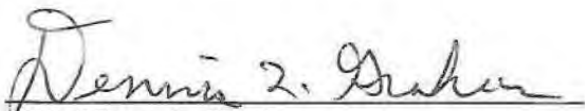
WHEREAS, in the event of a major disaster, either natural or man-made, or civil disorder, it may be impossible for officers or deputies to report to their agencies due to blocked roads.

NOW, THEREFORE, IT IS HEREBY AGREED by each of the signatories, to the provisions listed below pursuant to 830.1(a)(2) of the California Penal Code and the Santa Clara County Law Enforcement Mutual Aid Manual:

1. Any peace officer, as defined by California Penal Code 830.1, employed by any of the law enforcement agencies listed below, has the full authority of a peace officer at all times, including during times of emergency, within the political subdivision for which each of the signatories can give consent.

2. During emergency situations, individual officers and deputies can take care of immediate family needs and after assisting to their own family care, these officers and deputies will report to the nearest law enforcement agency for service. Each law enforcement agency will keep track of the hours worked by any officer or deputy from another department, and that officer or deputy's own agency will treat those hours worked as if they had been worked at the officer or deputy's own agency. When roads open, officers and deputies will be released immediately to go to their own jurisdictions. In case of injury, death or disability, the individual officer or deputy's agency will be responsible pursuant to section 50921 of the Government Code. In the case of injury allegedly inflicted by an officer or deputy within the scope of employment while assigned pursuant to this agreement to an agency not his or her own, the agency for whom that officer or deputy was working and with jurisdiction over the location of the actions involved will defend and indemnify the individual officer or deputy pursuant to sections 825 et seq. of the Government Code, if appropriate.

3. This agreement shall be binding on the successors of each of the signatories. Should any of the signatories to this agreement or their successors intend to revoke his consent herein, a notice of such intention shall be given to all signatories, in writing, at least sixty (60) days prior to the effective date of such revocation. This agreement shall thereafter continue in full force and effect as to all remaining-signatories.


Chief Dennis Graham
Milpitas Police Department
Chair, Police Chiefs' Association of
Santa Clara County

Date: 8-13-09

29.7. SJPD Manual Sections for PIW



Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM: Edgardo Garcia**
Chief of Police

SUBJECT: PROJECTILE IMPACT WEAPONS **DATE: May 22, 2020**
SEE BELOW

Memo# 2020-019

SUBJECT

DUTY MANUAL REVISION – L 2629 USE OF PROJECTILE IMPACT WEAPONS
DUTY MANUAL REVISION – L 2629.5 LIMITED USE OF 37 MM PROJECTILE
IMPACT WEAPON FOR CROWD CONTROL

BACKGROUND

In the interest of providing officers with additional less-than-lethal force options, the Department is revising the following Duty manual sections related to the use of Projectile Impact Weapons (PIW) to include the authorized use of the 40mm OC less-than-lethal munitions. Field situations often arise where a normal 40mm foam baton round is ineffective on a dangerous suspect. These circumstances include but are not limited to incidents where the suspect is barricaded and/or behind cover. The 40mm OC round, which is similar to the foam baton round but carries a payload of OC powder, has the capability to be deployed at or in the general area of a suspect in order to gain compliance through blunt force and/or through the OC irritant exposure. Several Duty Manual sections are being revised to ensure that the use of the 40mm OC round complies with the PIW sections as well as with the Chemical Agent sections of the Duty Manual.

The availability of a 40mm PIW containing Chemical Agents requires revision of section L 2629.5 which previously prohibited the use of 40mm PIWs in crowd control situations.

ANALYSIS

The Duty Manual has been revised to reflect changes to the below listed sections. Additions are shown in italics and underlined. Deletions are shown in “strike through” form.

L 2629 USE OF PROJECTILE IMPACT WEAPONS:

Revised 05-22-20

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.

L 2629.5 LIMITED USE OF 37 MM PROJECTILE IMPACT WEAPON FOR CROWD CONTROL:

Revised 05-22-20

Only the 37mm Projectile Impact Weapon (i.e. SAGE Gun) may be used for crowd control purposes as in the method prescribed in this section. ~~Stun-bag shotguns and 40mm Projectile Impact Weapons may only be used in accordance with Section L 2629 and may not be used for crowd control purposes as a method for crowd dispersal as described in this section.~~ 40mm Projectile Impact Weapons that do not contain chemical agents may not be used for crowd control purposes. 40mm Projectile Impact Weapons that do contain chemical agents may be used for crowd control purposes as described in section L 2609.

The 37mm utilizes a single black powder round that deploys five foam baton projectiles. For the purposes of this policy, this Projectile Impact Weapon is not intended to target individual suspects, but to provide a visual and auditory deterrent (loud report and bright muzzle flash).

The primary objective when deploying a 37mm Projectile Impact Weapon in this manner is to compel persons engaged in assaultive resistance to disperse peacefully, so that the use of physical force intentionally directed at persons can be avoided. For the purposes of this policy, assaultive resistance is defined as acts of violence against persons, or intentional destruction of property resulting in major property damage. An example of this type of conduct would include suspects throwing objects capable of causing bodily injury from within the crowd at officers or other persons.

The 37mm Projectile Impact Weapon shall be utilized in accordance with the following procedures:

1. A lawful dispersal order shall have been given and the crowd has been given a reasonable amount of time to disperse and has failed to do so in violation of Penal Code Section 409 – Failure to Disperse.
2. Only personnel assigned to the Special Operations Division shall utilize the 37mm Projectile Impact Weapon during crowd control situations.
3. A Command Officer must authorize both the carrying and discharging of the 37mm Projectile Impact Weapon for crowd control purposes.
4. When authorized, the 37mm round shall be fired into the ground in front of the crowd. The 37mm round should only be expelled when there is sufficient distance between the officer and the crowd to allow the energy of the round, once it strikes the ground, to sufficiently dissipate in order to prevent any substantial risk of injury to any person.

When an intentional discharge of a 37mm Projectile Impact Weapon is used for the purpose of dispersing a crowd engaged in assaultive resistance, the discharge shall be documented as a use of force in accordance with Duty Manual Sections L 2643 – L 2645 regardless of whether or not a person is struck by a 37mm round. Nothing in these guidelines is meant to restrict or prevent an officer from deploying a Projectile Impact Weapon in accordance with the Duty Manual Sections L 2629 – L 2631.

ORDER

Effective immediately, all sworn personnel will adhere to the above listed Duty Manual changes.

Edgardo Garcia
Chief of Police

EG:PC



29.8. SJPD Chemical Agents Duty Manual Section



Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM: Edgardo Garcia**
Chief of Police

SUBJECT: CHEMICAL AGENTS
SEE BELOW

DATE: May 22, 2020

SUBJECT

DUTY MANUAL REVISION – L 2609 USE OF CHEMICAL AGENTS
DUTY MANUAL REVISION – A 3012 USE OF CHEMICAL AGENTS BY CSOs
DUTY MANUAL REVISION – S 1144 CHEMICAL AGENTS

BACKGROUND

A recent review of Duty Manual section L 2609 – Use of Chemical Agents, revealed that it requires revision in order to include the Department’s full complement of Chemical Agent options and to bring the section’s language up to contemporary standards.

Duty Manual sections A 3012 and S 1144 have been updated to comport with the new language in DM L 2609.

ANALYSIS

The Duty Manual has been revised to reflect the following changes to Department policy regarding chemical agents. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike through~~ form.

L 2609 USE OF CHEMICAL AGENTS:
Revised: 05-22-20

~~Only chemical agents authorized by the Chief of Police as specified in DM Section S 1100 (Authorized and Required Equipment) will be used.~~

Chemical Agents are substances designed to irritate the eyes and mucous membranes.

Chemical Agents are classified as a Category II use of force for the purpose of assessment

under DM 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. 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.

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 .2% 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:

- 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.
- When aiming an LLIM at a violent individual during crowd control circumstances, 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 LLIM would be unjustified.

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:

- 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.

A 3012 USE OF CHEMICAL AGENTS BY CSOs:

Revised: 05-22-20

Only chemical agents authorized by the Chief of Police as specified in DM Section S 1100 (Authorized and Required Equipment) will be used. A CSO may only use his/her OC Spray in self-defense situations or in defense of others as long as their conduct was reasonable under the circumstances. Such use must comply with DM L 2609 – USE OF CHEMICAL AGENTS.

S 1144 CHEMICAL AGENTS:

Revised: 05-22-20

Officers assigned to or functioning in a uniformed capacity, either on-duty or off, may only carry chemical agent canisters issued by the Department.

Officers functioning in a plainclothes capacity, or members in an off-duty status, may carry either the Department-issued chemical agent canister or the smaller variety by the same manufacturer containing the same agent.

Regardless of which canister type is carried, any use of said chemical agent must comply with DM L 2609 – USE OF CHEMICAL AGENTS.

ORDER

Effective immediately, all sworn personnel will adhere to the above listed Duty Manual changes.



EDGARDO GARCIA
Chief of Police

EG:CS:PC

29.9. SJPD 37mm Limited Use Duty Manual Section



Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM: Edgardo Garcia**
Chief of Police

SUBJECT: DUTY MANUAL REVISION **DATE: June 1, 2020**
L 2629.5 - LIMITED USE OF 37 MM
PROJECTILE IMPACT WEAPON
FOR CROWD CONTROL

BACKGROUND

Duty Manual section L 2629.5 – LIMITED USE OF 37 MM PROJECTILE IMPACT WEAPON FOR CROWD CONTROL prescribes a technique for using the 37mm (SAGE) Projectile Impact Weapon (PIW) to disperse crowds during unlawful assemblies. The same section authorizes the use of 40mm O.C. rounds for crowd dispersal if done in compliance with DM section L 2609 – CHEMICAL AGENTS. DM L 2629.5 explicitly prohibits the use of Stun Bag shotgun and non-O.C. 40mm munitions to disperse crowds. It does not prohibit the use of either munition for defense against violent attack.

In order to provide officers with the necessary tools to protect the community and themselves from acts of violence and/or major destruction of property, the Department is modifying the list of munitions that may be used to disperse crowds from an unlawful assembly. The 37mm SAGE and 40mm O.C. rounds remain the only preauthorized crowd dispersal munitions. However, in exceptional circumstances certain personnel may authorize the use of the Stun Bag shotgun and/or non-O.C. 40mm rounds in the same manner as the 37mm SAGE Projectile Impact Weapon.

ANALYSIS

The Duty Manual has been revised to reflect changes to the below listed sections. Additions are shown in *italics and underlined*. Deletions are shown in “~~strike through~~” form.

L 2629.5 LIMITED USE OF 37 MM PROJECTILE IMPACT WEAPON FOR CROWD CONTROL:

Revised 06-01-20

Only the 37mm Projectile Impact Weapon (i.e. SAGE Gun) may be used for crowd control purposes in the method prescribed in this section. ~~Stun bag shotguns may not be used for crowd control purposes. 40mm Projectile Impact Weapons that do not contain chemical agents may not be used for crowd control purposes.~~ 40mm Projectile Impact Weapons that do contain chemical agents may be used for crowd control purposes as described in section L 2609.

EXCEPTION: Stun Bag shotgun and non-O.C. 40mm projectile impact munitions may be used as prescribed in this section for the 37mm Projectile Impact Weapon when authorized by the Special Operations Incident Commander, the Chief of Police, or the Assistant Chief of Police.

The 37mm utilizes a single black powder round that deploys five foam baton projectiles. For the purposes of this policy, this Projectile Impact Weapon is not intended to target individual suspects, but to provide a visual and auditory deterrent (loud report and bright muzzle flash). The primary objective when deploying a 37mm Projectile Impact Weapon in this manner is to compel persons engaged in assaultive resistance to disperse peacefully, so that the use of physical force intentionally directed at persons can be avoided. For the purposes of this policy, assaultive resistance is defined as acts of violence against persons, or intentional destruction of property resulting in major property damage. An example of this type of conduct would include suspects throwing objects capable of causing bodily injury from within the crowd at officers or other persons.

The 37mm Projectile Impact Weapon shall be utilized in accordance with the following procedures:

1. A lawful dispersal order shall have been given and the crowd has been given a reasonable amount of time to disperse and has failed to do so in violation of Penal Code Section 409 – Failure to Disperse.

EXCEPTION: With the authorization of the Special Operations Incident Commander, the Chief or Police, or the Assistant Chief of Police, step one may be skipped when circumstances evolve from a peaceful protest into one that presents an imminent threat of bodily injury or an intent to attack officers with such rapidity that it would be unreasonable to pause for a dispersal order. In such an occurrence, a dispersal order should be given as soon as is practical.

2. Only personnel assigned to the Special Operations Division shall utilize the 37mm Projectile Impact Weapon during crowd control situations.
3. A Command Officer must authorize both the carrying and discharging of the 37mm Projectile Impact Weapon for crowd control purposes.
4. When authorized, the 37mm round shall be fired into the ground in front of the crowd. The 37mm round should only be expelled when there is sufficient distance between the officer and the crowd to allow the energy of the round, once it strikes the ground, to sufficiently dissipate in order to prevent any substantial risk of injury to any person.

When an intentional discharge of a 37mm Projectile Impact Weapon is used for the purpose of dispersing a crowd engaged in assaultive resistance, the discharge shall be documented as a use of force in accordance with Duty Manual Sections L 2643 – L 2645 regardless of whether

or not a person is struck by a 37mm round. Nothing in these guidelines is meant to restrict or prevent an officer from deploying a Projectile Impact Weapon in accordance with the Duty Manual Sections L 2629 – L 2631.

ORDER

Effective immediately, all sworn personnel will adhere to the above listed Duty Manual changes.

A handwritten signature in black ink, appearing to read 'Edgardo Garcia', with a stylized, sweeping flourish at the end.

Edgardo Garcia
Chief of Police

EG:PC



29.10.SJPD Reporting Misconduct Duty Manual Section



Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM: Edgardo Garcia**
Chief of Police

SUBJECT: Reporting Misconduct – DM Revision **DATE: June 9, 2020**
C 1402 General Responsibilities

Memo# 2020-025

BACKGROUND

Government Code section 7286(b) requires that Law Enforcement agencies adopt policies addressing various use of force principles by January 1, 2021. Many of these principles already exist in San Jose Police Department Training and Policy. For example, the C 1400 section of the Duty Manual (Standards & Conduct) already requires that all Department personnel report observed violations of any Department policy to a superior officer. However, a revision is necessary to specifically state certain requirements for sworn personnel who observe excessive force by another officer:

1. Report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer. (Government Code section 7286(b)(3))
2. Intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject. (Government Code Section 7286(b)(8))

ANALYSIS

The Duty Manual has been revised to reflect changes to the below listed section. Additions are shown in *italics and underlined*.

C 1402 **GENERAL RESPONSIBILITIES:**
Revised 06-09-20

All department members will become thoroughly familiar with these rules and regulations and will abide by them. They will observe and obey all:

- Federal, state and local laws.
- General, Special and Personnel Orders of the Department and of the Bureau to which they are assigned.
- Provisions of the San Jose Police Department Duty Manual.
- Other lawful orders of their superiors.

Upon observing or otherwise becoming aware of a violation of the rules, procedures or policies as set forth in this manual, each department member is obligated to report such violation to a superior officer

Additionally, sworn personnel shall:

- Report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.
- Intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

ORDER

Effective immediately, all sworn personnel will adhere to the above listed Duty Manual change.



EDGARDO GARCIA
Chief of Police

EG:PC

29.11.SJPD Carotid Restraint and Chokehold Use Duty Manual Section



Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM: Edgardo Garcia**
Chief of Police

SUBJECT: SEE BELOW

DATE: June 9, 2020

Memo# 2020-026

SUBJECT

DUTY MANUAL REVISION – L 2627 CAROTID RESTRAINT USE PROHIBITION

DUTY MANUAL REVISION – L 2628.1 CHOKEHOLD USE PROHIBITION

BACKGROUND

The Department has conducted a review of its Use of Force policies and is revising the language of Duty Manual section L 2628.1 - CHOKEHOLD USE PROHIBITION.

In addition, on June 5th, 2020, Governor Newsom issued an Executive Order directing that the carotid hold/restraint be removed from the state police training program and state training materials. As a result, the Commission on Peace Officer Standards and Training (POST) has decertified Carotid Restraint training in California and is working to remove the POST regulation requiring Carotid Restraint training in the standard police academy curriculum. The Department is moving now to revise DM section L 2627 – USE OF CAROTID RESTRAINT.

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 2627 ~~USE OF CAROTID RESTRAINT~~ USE PROHIBITION:
Revised 06-09-20

The "Carotid Restraint," in which pressure is applied to the sides of a suspect's neck compressing the carotid arteries, is ~~authorized~~ prohibited as an authorized control technique to overcome resistance and shall not be used for this purpose.

DEADLY ENCOUNTER EXEMPTION: The "Carotid Restraint" may ~~be used when other control techniques have failed or are inappropriate and deadly force may become objectively reasonable if the "Carotid Restraint" is not used~~ only be used by an officer as a deadly force

option (i.e. when the force being responded to is likely to cause death or serious bodily injury) when the use meets the requirements of Duty Manual Section L 2602.1 – DEADLY FORCE.

The Carotid Restraint is not the same as a chokehold. It does not compress the trachea and therefore does not restrict the person's ability to breathe. Instead, the Carotid Restraint technique applies pressure to the sides of the neck in order to restrict blood flow in the carotid arteries and jugular veins but does not compromise the airway by placing pressure on the trachea.

After resistance is overcome with the "Carotid Restraint," the suspect will be handcuffed to minimize the potential of further violence. The suspect should then be placed in the recovery position if possible.

L 2628.1 CHOKEHOLD USE PROHIBITION:

Revised 06-09-20

The chokehold, in which pressure is applied to the neck to restrict the ability to breathe, is prohibited as an authorized control technique to overcome resistance and shall not be used for this purpose. However, chokeholds are prohibited regardless of whether they are applied using an officer's body part (e.g. hand, arm, knee, or foot) or with an inanimate object (e.g. flashlight or baton).

DEADLY ENCOUNTER EXEMPTION: A chokehold may only be used by an officer as a deadly force option (i.e. when the force being responded to is likely to cause death or serious bodily injury) when the use meets the requirements of Duty Manual Section L 2602.1– DEADLY FORCE.

A chokehold is not the same as a Carotid Restraint. By definition, a chokehold applies pressure to the front structures of the neck and restricts a person's airway by compressing the trachea which restricts the person's ability to breathe.

After resistance is overcome with the chokehold, the suspect will be handcuffed to minimize the potential of further violence. The suspect should then be placed in the recovery position if possible.

~~The Carotid Restraint does not compress the trachea and therefore does not restrict the person's ability to breathe. Instead, the Carotid Restraint technique applies pressure to the sides of the neck in order to restrict blood flow in the carotid arteries and jugular veins, but does not compromise the airway by placing pressure on the trachea. (See Duty Manual Section L 2627 Use of Carotid Restraint.)~~

ORDER

Effective immediately, all sworn personnel will adhere to the above listed Duty Manual changes.



EDGARDO GARCIA
Chief of Police

EG:PC

29.12.SJPD Prohibition of PIW for Crowd Control Duty Manual Section



Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM:** Edgardo Garcia
Chief of Police

SUBJECT: DUTY MANUAL REVISION **DATE:** June 16, 2020
L 2629.5 – PROHIBITION ON THE
USE OF PROJECTILE IMPACT
WEAPONS FOR CROWD CONTROL

Memo# 2020-028

BACKGROUND

The Department has conducted a review of its Use of Force policies and is revising the language of Duty Manual section L 2629.5 – LIMITED USE OF 37MM PROJECTILE IMPACT WEAPON FOR CROWD CONTROL.

Duty Manual section 2629.5 - LIMITED USE OF 37 MM PROJECTILE IMPACT WEAPON FOR CROWD CONTROL is being revised to prohibit the use of projectile impact weapons against persons for the purposes of crowd control and crowd dispersals. The use of projectile impact weapons continues to be authorized against individuals who are actively attacking an officer or another person or who are armed and pose a threat to officers or other persons (as described in DM section L 2629 – USE OF PROJECTILE IMPACT WEAPONS).

ANALYSIS

The Duty Manual has been revised to reflect changes to the below listed sections. Additions are shown in *italics and underlined*. Deletions are shown in “~~strike through~~” form.

L 2629.5 PROHIBITION ON THE ~~LIMITED-USE OF 37-MM PROJECTILE IMPACT~~
WEAPONS FOR CROWD CONTROL:

Revised 6-20-20

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.

Only the 37mm Projectile Impact Weapon (i.e. SAGE Gun) may be used for crowd control purposes in the method prescribed in this section. 40mm Projectile Impact Weapons that contain chemical agents may be used for crowd control purposes as described in section L 2609.

EXCEPTION: Stun Bag shotgun and non O.C. 40mm projectile impact munitions may be used as prescribed in this section for the 37mm Projectile Impact Weapon when authorized by the Special Operations Incident Commander, the Chief of Police, or the Assistant Chief of Police.

The 37mm utilizes a single black powder round that deploys five foam baton projectiles. For the purposes of this policy, this Projectile Impact Weapon is not intended to target individual suspects, but to provide a visual and auditory deterrent (loud report and bright muzzle flash). The primary objective when deploying a 37mm Projectile Impact Weapon in this manner is to compel persons engaged in assaultive resistance to disperse peacefully, so that the use of physical force intentionally directed at persons can be avoided. For the purposes of this policy, assaultive resistance is defined as acts of violence against persons, or intentional destruction of property resulting in major property damage. An example of this type of conduct would include suspects throwing objects capable of causing bodily injury from within the crowd at officers or other persons.

The 37mm Projectile Impact Weapon shall be utilized in accordance with the following procedures:

2.—— A lawful dispersal order shall have been given and the crowd has been given a reasonable amount of time to disperse and has failed to do so in violation of Penal Code Section 409—Failure to Disperse.

EXCEPTION: With the authorization of the Special Operations Incident Commander, the Chief of Police, or the Assistant Chief of Police, step one may be skipped when circumstances evolve from a peaceful protest into one that presents an imminent threat of bodily injury or an intent to attack officers with such rapidity that it would be unreasonable to pause for a dispersal order. In such an occurrence, a dispersal order should be given as soon as is practical.

5.—— Only personnel assigned to the Special Operations Division shall utilize the 37mm Projectile Impact Weapon during crowd control situations.

6.—— A Command Officer must authorize both the carrying and discharging of the 37mm Projectile Impact Weapon for crowd control purposes.

7.—— When authorized, the 37mm round shall be fired into the ground in front of the crowd. The 37mm round should only be expelled when there is sufficient distance between the officer

~~and the crowd to allow the energy of the round, once it strikes the ground, to sufficiently dissipate in order to prevent any substantial risk of injury to any person.~~

~~When an intentional discharge of a 37mm Projectile Impact Weapon is used for the purpose of dispersing a crowd engaged in assaultive resistance, the discharge shall be documented as a use of force in accordance with Duty Manual Sections L 2643—L 2645 regardless of whether or not a person is struck by a 37mm round. Nothing in these guidelines is meant to restrict or prevent an officer from deploying a Projectile Impact Weapon in accordance with the Duty Manual Sections L 2629—L 2631.~~

ORDER

Effective immediately, all sworn personnel will adhere to the above listed Duty Manual changes.



Edgardo Garcia
Chief of Police

EG:PC



29.13.SJPD Use of Chemical Agents Duty Manual Section



Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM: Edgardo Garcia**
Chief of Police

SUBJECT: DUTY MANUAL REVISION
L 2609 - USE OF CHEMICAL
AGENTS

DATE: June 18, 2020

Memo# 2020-029

BACKGROUND

A recent review of Duty Manual section L 2609 – USE OF CHEMICAL AGENTS, revealed a need to designate who can authorize the use of Chlorobenzylidene Malononitrile (CS) gas in crowd control situations. Language is being added to the CS gas section of Duty Manual section L 2609 to require approval from the Chief of Police, the Assistant Chief of Police or their designee before CS gas can be used for crowd control purposes.

Additionally, the language associated with using Less Lethal Impact Munitions (that carry chemical agents) during crowd control is being modified to bring it into alignment with the recent revision to Duty Manual section L 2629.5 – PROHIBITION ON THE USE OF PROJECTILE IMPACT WEAPONS FOR CROWD CONTROL.

ANALYSIS

The Duty Manual has been revised to reflect the following change to Department policy regarding chemical agents. Additions are shown in *italics and underlined*. Deletions are shown in ~~strikeout~~ form.

L 2609 USE OF CHEMICAL AGENTS:
Revised: 06-18-20

Chemical Agents are substances designed to irritate the eyes and mucous membranes. Chemical Agents are classified as a Category II use of force for the purpose of assessment under DM 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. 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.

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 .2% 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:

- 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.* ~~When aiming an LLIM at a violent individual during crowd control circumstances, 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 LLIM would be unjustified.~~

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:

- 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.

ORDER

Effective immediately, all sworn personnel will adhere to the above listed Duty Manual changes.



EDGARDO GARCIA
Chief of Police

EG:PC

29.14.SJPD Body Worn Camera Policy



Memorandum

TO: ALL SWORN PERSONNEL

FROM: Edgardo Garcia
Chief of Police

SUBJECT: DUTY MANUAL REVISIONS
L 4433 - L 4446 BODY WORN
CAMERA

DATE: June 25, 2020

Approved

Memo # 2020-031

BACKGROUND

In 2015, the City of San Jose and the San Jose Police Officers' Association entered into an initial agreement approving the San Jose Police Department Body Worn Camera Policy. This comprehensive policy was a result of extensive research including: review of sample policies; related reports; law enforcement best practices; dialogue with Department stakeholders and ongoing external outreach. The policy took effect in July 2015 during the Body Worn Camera Field Test and Evaluation. The parties agreed to periodically revisit the policy to ensure best practices were being followed.

The San Jose Police Body Worn Camera Policy has been incorporated into the San Jose Police Duty Manual and will regulate the use and management of body worn cameras, the body worn camera evidence management system as well as related body worn camera video evidence.

ANALYSIS

Revisions to the Department's Duty Manual involving procedures pertaining to the use of Body Worn Cameras are reflected below. Additions are shown in *italics and underline*. Deletions are shown in "strike through" form.

L 4433 OFFICER RESPONSIBILITIES

~~Every~~ *Each* uniformed officer assigned a body worn camera and working a *uniformed or plain-clothes assignment in the City of San Jose, to include secondary employment and the Main Lobby, patrol assignment, including pay cars,* is responsible for ensuring that they are equipped with a Department-issued body worn camera and that the camera is fully charged and in good working order at the beginning of their shift. If a device is in need of repair, members will notify their supervisor and turn the body worn camera into Central Supply for repair or replacement. Actual time spent testing or reporting damage to a body worn camera shall be regarded as time worked.

Note: This section is inclusive of all uniform types (i.e. school resource officer, bicycle patrol, secondary employment, etc.), but is not meant to include Bureau of Investigation detectives, other Bureaus, or secondary employment where officers are not in uniform, unless otherwise engaged in the service of a search or arrest

warrant (see Duty Manual Section L 4435, item #6.)

Uniformed officers ~~should~~ 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.

Officers will 'power on' the body worn camera before going into service and keep it powered on for the remainder of his/her shift, with the exception of bathroom breaks or those times when an officer is entering a Department locker room. The officer will only 'power off' his/her body worn camera at the conclusion of his/her shift prior to placing it in a camera dock to upload.

Note: An exception to this rule are Officer-Involved Incidents, as outlined in Duty Manual Section L 4446.

Officers shall not deliberately remove, dismantle or tamper with any hardware, video evidence, and/or the evidence management software component of the body worn camera.

Each officer is responsible for ensuring that their assigned body worn camera is ~~downloaded/~~ uploaded during their shift as needed or at the completion of their shift, or at any time the device's memory is deemed to be full. Actual time spent ~~downloading/uploading~~ the body worn camera files at the completion of an officer's shift shall be considered booking evidence and regarded as time worked.

Exception: If an officer is working a uniformed secondary employment (i.e. school pay job, airport pay job, traffic control, etc.) on a regularly-scheduled day off, he/she will upload the video evidence at the earliest opportunity on their first day back to work. In the interim, the officer will ensure the safety of the camera and its contents until such time it can be uploaded. A supervisor may direct an officer to upload sooner should the event or investigation require the video evidence sooner. In these situations, the officer will ensure his/her video evidence is uploaded in accordance with the supervisor's instruction.

Media captured via the body worn camera shall only be ~~downloaded/~~ uploaded to Department-approved secure storage. Since the content of the recording may be considered evidence, and are considered Department records of investigation, officers will comply with all sections in the Duty Manual regarding the handling of evidence and official Department records.

L 4434 SUPERVISOR RESPONSIBILITIES

Supervisors ~~will~~ shall utilize their body worn camera and ensure that officers utilize their body worn cameras according to these policy guidelines. Refer to Section L 4444.

Supervisors shall ensure videos related to Officer-Involved Incidents, as defined in Duty Manual Section L 4446, are uploaded/~~downloaded~~ as soon as possible following the event or as requested by a supervisor.

Supervisors completing a Use of Force investigation where a body worn camera was used should review the video and follow procedures set forth in Duty Manual Section L 2605 (Supervisor's Responsibilities).

Supervisors may have the ability to immediately ~~resolve~~ address citizen ~~complaints~~ concerns by viewing video captured by the officer's body worn camera prior to contacting the citizen. At no time, except at the direction of the Chief or designee, shall the supervisor allow the citizen to view the file footage.

In those circumstances where a ~~complaint~~ concern is ~~resolved~~ addressed with no further action ~~needed~~ required, supervisors shall make notes in the CAD event. This allowance is independent of the complaint process, and supervisors are reminded to abide by Duty Manual Section C 1700 (Allegations, Complaints and Non-Misconduct Concerns Internal Affairs Unit).

Supervisors should also utilize body worn camera files when handling a Supervisory Referral as outlined in Duty Manual Section C 1707.5 (Supervisory Referral Complaint Defined).

L 4435 WHEN TO ACTIVATE

There are many situations when to activate the body worn camera, however, this policy is not intended to describe every possible circumstance.

The safety of officers and members of the public is the highest priority, and the Department acknowledges there may be situations in which operation of the device is impractical or may be an impediment to public and officer safety. Additionally, the Department recognizes human performance limitations during particularly stressful, critical situations. As such, officers shall activate their body worn camera while enroute, and prior to arrival, to a call for service. This will ensure the entire event is captured on the body worn camera.

Officers shall make every effort to record non-enforcement contacts should they become confrontational, assaultive or enforcement-oriented. In addition to the required conditions, personnel may activate the system any time they feel its use would be appropriate and/or valuable to document an incident. Also, officers shall not be required to activate or deactivate their body worn camera based solely on the requests or demands of a citizen, but rather rely on their training and this policy to direct their use of the body worn camera.

During their shift, officers shall ~~make every reasonable effort to~~ activate the body worn camera prior to initiating, or due to officer safety reasons, as soon as practical after initiating, the following police actions:

1. All enforcement encounters where there is at least reasonable suspicion the person(s) has committed, is committing or may be involved in criminal activity. This includes, but is not limited to:
 - a) Detentions, vehicle stops, pedestrian stops and consensual encounters
 - b) Probation, parole, post-release community supervision, mandatory supervision or consent searches, ~~'knock and talks.'~~
2. Taking or attempting to take a person into custody (e.g., arrests, foot pursuits, protective custody of mentally disturbed person, etc.).
3. Enforcement encounters where there is reason to believe that the individual is committing a violation for which a citation may be issued.
4. All incidents involving a use of force.
5. All public interaction, regardless of context, that escalates and becomes adversarial.

6. Service of search or arrest warrants (regardless of assignment).
7. Suspect statements.
8. Witness/Victim statements (~~when practical~~ refer to L 4439 Victim and Witness Statements).
9. Code 3 driving and vehicle pursuits (~~when practical~~).
10. Response to complaints or calls for service (regardless if the suspect, victim, or witness is present at the scene).
11. Assist visitors and members of the public while assigned to the Main Lobby (regardless if the contact occurs inside or outside the Lobby).

L 4436 WHEN TO DEACTIVATE

Body worn camera recordings shall not be intentionally terminated until the conclusion of the encounter, ~~except for tactical or safety reasons, or the encounter no longer holds evidentiary or investigative value.~~

Exception: Officers may deactivate while still assigned to a call or investigation as long as he/she has cleared the scene; is no longer involved in the care and/or custody of a prisoner or another person; or no longer actively involved in an investigation, including collecting physical evidence.

Anytime the recording is terminated prior to the end of the encounter, the reason(s) ~~should~~ shall be documented both on the body worn camera recording before deactivation and ~~or~~ in the subsequent police report. If the reasons are not documented on the BWC and no police report is filed for the recorded encounter, then the reason(s) for the early termination ~~should~~ shall be recorded on the citation, CAD event or Street Check.

~~Officers will use reasonable judgment in determining when to deactivate the body worn camera, such as when the purpose for activation is no longer present.~~

- ~~• Example: An officer is assigned to an outer perimeter position for an extended period of time and has no verbal or visual contact with involved parties.~~
- ~~• Example: Officers have secured a prisoner and are completing paperwork outside the presence of the prisoner, unless the prisoner is combative, agitated or otherwise uncooperative.~~

~~Keeping in mind that static situations may change rapidly, officers need to recognize it may be necessary to re-activate their body worn camera unexpectedly.~~

- ~~• Example: Officers are assigned to an outer perimeter position with their cameras turned off, and a suspect exits the residence to surrender or run from police.~~

~~Officers shall deactivate the body worn camera when engaged in conversations with individuals with whom the officer is in a privileged relationship (e.g. spouse, attorney, police peer counselor, labor representative, minister, etc.) Officers will verbally indicate why the body worn camera is being deactivated and will reactivate the body worn camera at the conclusion of the private conversation if the need for recording the police encounter or investigation still exists.~~

L 4437 ADVISEMENTS AND CONSENT

Generally, officers are **not** required to advise or obtain consent to utilize the body worn camera from a private person when:

1. In a public place; or

2. In a location where there is an expectation of privacy (e.g., inside a building or dwelling) but the officer is lawfully present.

However, when initiating a police action as described in Duty Manual Section L 4435 (When to Activate), officers **shall make a reasonable effort to** advise persons they are being recorded with the body worn camera, unless the officer has reason to believe that doing so will endanger the safety of the officer, or another officer, or a member of the public, or will interfere with the conduct of an investigation.

When an officer's legal grounds for a search of a residence is based solely on **consent**, they are required to both advise **and** obtain consent to record with a body worn camera from the person, with legal standing, who is being recorded and/or searched. This does not apply to crimes in progress or other circumstances that would allow the officer to be lawfully present without a warrant.

L 4438 WHEN NOT TO ACTIVATE

Personnel are not required to activate the camera system during routine, incidental contact with a citizen, (i.e. giving directions or lunch breaks).

Officers will not knowingly activate the body worn camera in the following circumstances:

1. A potential witness who requests to speak to an officer confidentially or desires anonymity (See Duty Manual Section L 4439, Victim and Witness Statements).
2. A victim or witness who requests that he or she not be recorded and the situation is not confrontational (See Duty Manual Section L 4439, Victim and Witness Statements).
3. A victim who requests that he or she not be recorded as a condition of cooperation and the interests of justice require such cooperation (See Duty Manual Section L 4439, Victim and Witness Statements).
4. During tactical briefings, or the discussion of safety and security procedures that occur away from the scene of an investigation or enforcement encounter (e.g. a nearby staging location or Command Post).
5. Undercover or plain clothes officers, except while serving arrest or search warrant(s), Duty Manual Section L 4435 Subsection 6 in the course of criminal investigation.
6. Strip Searches.
7. Public or private locker rooms, changing rooms, restrooms, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
8. Doctor's or lawyer's offices, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
9. Medical or hospital facilities, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
10. Other places where individuals unrelated to the investigation are present and would have a reasonable expectation of privacy, unless taking the police actions stated in Duty Manual Section L 4435 (When to Activate), Subsections 1-6, and 9.
11. To surreptitiously record any department member without their consent, a court order, or unless lawfully authorized by the Chief of Police or designee for the purposes of a criminal investigation. (Duty Manual Section L 4513, Recording of Statements).
12. The monitoring of persons based solely upon the person's political or religious beliefs or upon the exercise of the person's constitutional rights to freedom of speech and religious expression, petition and assembly under the United States and California Constitutions, or because of the content or viewpoint of the person's protected speech is prohibited.

13. While officers are engaged in conversations with individuals with whom the officer is in a privileged relationship (e.g. spouse, attorney, police peer counselor, labor representative, minister, etc.). Note: A privileged conversation does not include a conversation with another officer or supervisor while still actively engaged in a call for service, investigation, or enforcement encounter. When entering the Santa Clara County Main Jail's main facility. Surveillance operations until the point where enforcement will be taken (i.e. covert surveillance of suspect prior to arrest.)

L 4439 VICTIM AND WITNESS STATEMENTS

When conducting an investigation, the officer shall attempt to record the crime victim or witness' statement with the body worn camera. The recording may be valuable evidence that contributes to or compliments an investigation. While evidence collection is important, the Department also recognizes it is important for officers to maintain credibility with people wanting to share information with law enforcement.

On occasion, an officer may encounter a reluctant crime victim or witness who does not wish to make a statement on camera. In these situations, the officer should continue to develop rapport with the individual while balancing the need for evidence collection with the individual's request for privacy.

Should the officer use discretion and not record the crime victim or witness statement with the body worn camera, the officer ~~should~~ shall document the reason for not fully recording the statement with the body worn camera. In these instances, officers shall ~~may still~~ record with an audio recorder as outlined in Duty Manual Section L 4513 (Recording of Statements).

~~Refer to Duty Manual Section L 4438 (When Not to Activate), for circumstances not when to record a victim or witness statement.~~

L 4440 UNAUTHORIZED ACCESS AND USE

All body worn camera recordings shall remain the property of the Department and constitute official records of investigation of the Department.

Unauthorized access to, use, duplication, and/or distribution of body worn camera files is prohibited. Personnel shall not make copies of any Body Worn Camera file for their personal use and are prohibited from using a recording device such as a phone camera or secondary video camera to record body worn camera files.

The body worn camera shall not be used to record:

1. Encounters not directly related to official activities in the ~~proper~~ performance of police duties.
2. Performance of non-enforcement functions or administrative duties within a Department facility.

Personally owned body worn cameras shall not be used while on duty.

Note: All activity related to body worn camera video files are automatically tracked in the evidence management system's audit trail. This information

includes: the person accessing the file(s), the date and time of access, the activity that was performed, and the specific IP address from which the file(s) were accessed.

L 4441 ACCIDENTAL RECORDINGS

In the event of an accidental activation of the body worn camera ~~where the resulting recording is of no investigative or evidentiary value~~, the recording officer may request that the ~~body worn camera~~ video file be deleted. The officer will submit a request for deletion via email, with sufficient information to locate the body worn camera file, to their direct supervisor.

The email will be forwarded through the officer's chain of command to their Lieutenant. The receiving Lieutenant shall review the file and approve or deny the request. ~~Prior to deleting an accidental activation, t~~The Lieutenant will ensure the file is not associated with a police contact or CAD event. No files associated with an official police contact, CAD event, or any pending litigation or complaint is eligible for deletion. Should the Lieutenant approve the request, he/she will send an email

to the Body Worn Camera Admin Unit with enough information to locate the file(s). Only members of the Body Worn Camera Admin Unit with Administrative privileges shall delete the file(s). The reason for the deletion, including the authorizing authority, will be documented in the notes of the videos. These notes are retained by the evidence management system's audit trail. Deletions and requests for deletion are tracked by the Body Worn Camera Administrative Unit.

Officers will not request deletion of body worn camera files that are not the result of an accident. Should the officer knowingly or unknowingly record something of a confidential nature (i.e. conversation with a confidential informant, critical intelligence, specific tactics, etc.), the officer will do the following:

Place an electronic Marker within the video (via the body worn camera's Function Button) or within Evidence.com after uploading the video, AND

- Change the Title of the video file(s) to "SENSITIVE/CONFIDENTIAL.". This will indicate to the Body Worn Camera Admin Unit, the Santa Clara County District Attorney's Office, and/or the City Attorney's Office that the file(s) contains something of a sensitive nature that may need to be redacted prior to disclosure should release occur. In these situations, further discussion between the officer and the Body Worn Camera Admin Unit may be required for coordination. Officers are also encouraged to provide additional information in Evidence.com as to the sensitive or confidential nature of the video by adding notes within the video file. This will assist the Body Worn Camera Admin Unit with proper identification of the sensitive/confidential evidence.

L 4442 DOCUMENTING USE OF THE BODY WORN CAMERA

Personnel should not substitute a body worn camera recording for a detailed and thorough report. Personnel should continue to prepare reports as outlined in the Duty Manual. Body worn camera video cannot substitute the collection of physical

evidence such as fingerprints, documents, photographs, or other important evidentiary items that are considered part of the criminal investigation. These items must be properly collected and booked into evidence.

If an officer is required to write a report or citation, the officer will also document in

the report or citation the fact that a BWC was used to record the incident. If the BWC was not activated as per policy, the officer shall document in the report or citation the reason and/or justification for not activating his/her camera.

Exception: Officers involved in an Officer-involved incident. Refer to Duty Manual Section L 4446 (Officer-Involved Incidents).

~~Officers will document on a report when a body worn camera file is made associated with an incident. If no report is filed, the officer will ensure the use of the body worn camera is noted on the citation, CAD event or Street Check.~~

L 4443 REVIEW OF BODY WORN CAMERA FILES

All file viewing and sharing is for law enforcement use only and subject to a right to know and need to know basis (Refer to Duty Manual Sections ~~C 2002-2004, C 2007, C 2011~~ Chapter C 2000 (Obtaining Criminal Records/Information), and Chapter C 2100 (Juvenile Records)).

Department personnel may review body worn camera files according to the provisions of this policy and Duty Manual requirements: and are reminded that all activity related to body worn camera video files are automatically tracked in the evidence management system's audit trail. This information includes: the person accessing the file(s), the date and time of access, the activity that was performed, and the specific IP address from which the file(s) were accessed.

~~Access to the body worn camera system is logged automatically with the date, time and name of person viewing the files.~~

An officer should review body worn camera files, including those of other officers, in the following instances:

1. For the purposes of completing criminal investigations and preparing accurate official reports with the exception of Officer-Involved Incidents. Refer to Duty Manual Section L 4446 (Officer-Involved Incidents) and R 1108 (Accuracy and Brevity).
2. Prior to courtroom testimony or for courtroom presentations, or as part of preparation by the San Jose City Attorney's Office for litigation in which a police officer is a party or a witness and the City Attorney's Office is representing the City and/or officers who are parties to the litigation.
3. For potential training purposes refer to Duty Manual Section L 4445 (Training with Body Worn Camera Files).
4. For preparation of an Internal Affairs interview, including review with officer representative, outside the presence of any investigator or supervisor.
5. For other reasons as specified with the permission of the Chief of Police.

Exception: Department members identified as Administrative Users may access body worn camera files from a computer or device outside of the Department for the purpose of completing administrative tasks, such as locking or unlocking users, etc.

L 4444 ADMINISTRATIVE REVIEW OF BODY WORN CAMERA FILES

It is not the intent of the Department to review body worn camera files without cause, for the purpose of general performance review of individual officers or to proactively discover policy violations.

Supervisors and Internal Affairs personnel may, however, access body worn camera files for administrative investigations limited to the specific complaint against the officer.

Supervisors should, ~~however,~~ on a reasonable basis, review body worn camera files to ensure that body worn camera equipment is functioning properly and officers are adhering to the requirements of this policy ~~Department body worn camera procedures~~. Inadvertent discovery of evidence of policy violations ~~other allegations~~ during this review shall require the supervisor or Internal Affairs personnel to articulate the reason for expanding the scope of the original audit or investigation.

Supervisors who inadvertently discover ~~minor, non-criminal~~ policy violations will continue to have discretion to resolve the violation with training or informal counseling. Should the policy violation rise to the level of more formal discipline, the supervisor will adhere to policies set forth in the Duty Manual C 1700 (Allegations, Complaints and Non-Misconduct Concerns Internal Affairs Unit).

Exception: Field Training Officers, Sergeants ~~(FTO)~~ and the FTO Commander may view body worn camera files to evaluate the performance of an recruit officer in the Field Training Program.

L 4445 TRAINING WITH BODY WORN CAMERA FILES

A body worn camera file may be utilized as a training tool for individuals, specific units, and the Department as a whole with the involved officers' permission. Department members recommending utilization of a body worn camera file for training purposes will submit the recommendation to their supervisor for

approval and contact the Body Worn Camera Admin Unit for assistance as needed ~~through the chain of command to the Training Unit Commander.~~

Exception: Field Training Officers may use body worn camera files to provide immediate training to recruits and to assist with the completion of the Daily Observation Report (DOR).

L 4446 OFFICER INVOLVED INCIDENTS

The Department recognizes that the video images ~~captured~~ recorded on the body worn camera files are two-dimensional and cannot always capture the entire scene, as seen or heard by the officer, due to a number of limiting factors. ~~The~~ However, the body worn camera files file(s) are still ~~should be~~ considered important ~~but one piece of evidence collected from an Officer-Involved Incident~~ a scene or incident and not a singularly inclusive piece of evidence.

An Officer Involved Incident includes:

- A. Officer-involved shootings,
- B. In-custody deaths, and
- C. Any act by an officer, including but not limited to any use of any deadly or dangerous weapon by an officer, which proximately causes injury likely to produce death to another ~~intentional act by an officer which proximately causes injury likely to produce death to another.~~

Following an Officer-Involved Incident involved officers, herein defined as both involved officers and witness officers to the incident, personnel and their representative(s) shall not view their video, or any video capturing their image or the incident on any device.

In most circumstances, officers shall keep their body worn camera on their uniform following an Officer-Involved Incident. The supervisor assigned to the involved officer will 'power off' the involved-officers' body worn camera to safeguard the evidence after the officer has provided the public safety statement at the scene. If the involved officer does not have a supervisor assigned to him/her, the officer will 'power off' his/her body worn camera to safeguard the evidence. Prior to deactivation of the body worn camera, the officer shall verbally indicate the reason why he/she is deactivating the camera.

Once the involved officer has been photographed by the Crime Scene Unit, a member of the Crime Scene Unit will collect the officers' body worn camera and upload the video evidence to the Department's secure storage.

The initial interview of an officer involved in an Officer-Involved Incident should occur before the officer has reviewed ~~any audio/video~~ body worn camera recordings of the incident. Once an involved officer has provided an initial statement to detectives, which should not be confused with a public safety statement at the scene, he/she will have an opportunity to review any available body worn camera recordings with his/her representative. The officer shall then be afforded an opportunity to provide a follow-up statement after having reviewed the recording(s). ~~The Chief or designee shall have discretion to permit officers to review video files prior to the initial interview.~~

Note: The Chief or designee shall have the discretion to permit officers to review video files prior to the initial interview. In the extraordinary circumstance an officer is allowed to view his/her video file(s) prior to the initial interview, the authorizing authority will first consult with the Santa Clara County District Attorney's Office and document the reason(s) in a police report.

Investigators will be mindful that audio/video recordings have limitations and may depict events differently than the events recalled by the involved officer. When the investigator shows any audio/video recordings to an involved officer **after** the initial interview, the investigator will first admonish the involved officer about the limitations of audio/visual recordings.

The following is an example of an admonishment that would be appropriate in a case involving video evidence that is shown to the involved officer after he/she has provided an initial statement. In these situations, the showing of a body worn camera file to an officer will be documented in the investigator's report:

In this case, there is video evidence that you will have an opportunity to view after you have given your initial statement. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional

orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and recollection.

~~In situations where a Crime Scene supervisor is charged with the collection of evidence, the Crime Scene supervisor will, as soon as safe and practical, retrieve the body worn camera from the involved officer at the scene. The Crime Scene supervisor will be responsible for assuring the body worn camera file is uploaded/ downloaded.~~

ORDER

Effective immediately, all sworn personnel will adhere to the revised San Jose Police Department Duty Manual Sections L 4433 - L 4446, collectively known as the Body Worn Camera Policy.

Edgardo Garcia,
Chief of Police

A handwritten signature in black ink, appearing to be 'Edgardo Garcia', with a stylized, sweeping flourish extending to the right.

29.15.SJPD Duty Manual Revisions



Memorandum

**TO: ALL DEPARTMENT
PERSONNEL**

FROM: Edgardo Garcia
Chief of Police

**SUBJECT: DUTY MANUAL REVISIONS:
SEE SUBJECT BELOW**

DATE: December 23, 2019

Memo# 2019-028

SUBJECT

L 2600 USE OF FORCE
L 2602.1 DEADLY FORCE (Necessity & Warnings)
L 2621 USE OF IMPACT WEAPONS
L 2627 USE OF CAROTID RESTRAINT
L 2628.1 CHOKEHOLD USE PROHIBITION
L 2638 DIRECT USE OF FIREARM
L 2641 WHEN DEADLY FORCE SHALL NOT BE USED

BACKGROUND

On August 19, 2019, California Assembly Bill 392 was approved by Governor Newsom and resulted in the amending of Penal Code Sections 196 and 835a, relating to justifiable homicide and use of force. The amended sections will take effect beginning January 1, 2020. AB 392 will redefine the circumstances under which a peace officer is justified in using deadly force. Under the new law a peace officer will be justified in using deadly force upon a person when the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary: (A) to defend against an imminent threat of death or serious bodily injury to the officer or to another person, or (B) to apprehend a fleeing person for a felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless the person is immediately apprehended. AB 392 prescribes the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape, or to overcome resistance.

ANALYSIS

The Duty Manual has been revised to reflect changes made to the above sections to be congruent with amended Penal Code Sections 196 and 835a. Additions are shown in italics and underlined. deletions are shown in “strike through” form.

L 2600 USE OF FORCE:

Revised 01-01-20

The San Jose Police Department recognizes and understands the complexity of those situations necessitating the use of force. Officers follow established authorizations to use force provided by state law (Penal Code Sections 835 and 835a). At times, officers are confronted with situations where control is required to affect arrests or protect the public safety. Attempts are made to achieve control through advice, warnings and persuasion. However, in situations where resistance, a threat to life or a threat of physical force against officers or others is encountered and verbal persuasion has not been effective, is not feasible or would appear to be ineffective, an officer may use objectively reasonable force. In the event deadly force is utilized, a thorough investigation is conducted. All use of force is appropriately investigated, documented and reviewed by supervisory/command staff.

Peace Officers' authority to use physical force is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Department finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law. The decision by an officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force.

L 2602.1 DEADLY FORCE:

Added 01-01-20

NECESSITY: Officers will use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

WHEN DEADLY FORCE IS JUSTIFIED: An officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

- *To defend against an imminent threat of death or serious bodily injury to the officer or to another person.*
- *To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.*

WARNINGS: When feasible, officers shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

DEFINITIONS: For purposes of this section, the following definitions shall apply:

- “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.
- A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.
- “Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

L 2621 USE OF IMPACT WEAPONS:

Revised 01-01-20

Impact weapons the Chief of Police authorizes for use in DM Section S 1124 (Minimum Uniform and Equipment Articles Required for All Officers) include the straight baton, expandable baton, side handle baton, Kendo sticks and Yawara stick. In addition to the authorized impact weapons, impact objects may be used as objectively reasonable based on the totality of the circumstances.

Officers may only intentionally target a suspect’s head with an impact weapon as a deadly force option (i.e. when the force being responded to is likely to cause death or serious bodily injury) ~~when objectively reasonable to protect themselves or others from an imminent threat of death or serious bodily injury~~ when the use meets the requirements of Duty Manual Section L 2602.1.

L 2627 USE OF CAROTID RESTRAINT:

Revised 01-01-20

The "Carotid Restraint," in which pressure is applied to the sides of a suspect's neck compressing the carotid arteries, is authorized.

The "Carotid Restraint" may be used when other control techniques have failed or are inappropriate and deadly force may become objectively reasonable (as defined in Duty Manual Section L 2602.1) if the "Carotid Restraint" is not used.

After resistance is overcome with the "Carotid Restraint," the suspect will be handcuffed to minimize the potential of further violence.

L 2628.1 CHOKEHOLD USE PROHIBITION:

Revised 01-01-20

The chokehold is prohibited as an authorized control technique to overcome resistance and shall not be used for this purpose. However, a chokehold may only be used by an officer as a deadly force option (i.e. when the force being responded to is likely to cause death or serious bodily injury) when ~~objectively reasonable to protect themselves or others from an imminent threat of death or serious bodily injury~~ the use meets the requirements of Duty Manual Section L 2602.1.

A chokehold is not the same as a Carotid Restraint. By definition, a chokehold applies pressure to the front structures of the neck and restricts a person's airway by compressing the trachea which restricts the person's ability to breathe. The Carotid Restraint does not compress the trachea and therefore does not restrict the person's ability to breathe. Instead, the Carotid Restraint technique applies pressure to the sides of the neck in order to restrict blood flow in the carotid arteries and jugular veins, but does not compromise the airway by placing pressure on the trachea. (See Duty Manual Section L 2627 Use of Carotid Restraint.)

L 2638 DIRECT USE OF FIREARM:

Revised 01-01-20

An officer may discharge a firearm under any of the following circumstances:

- When discharged in a safe manner at an approved range
- When used for the humane destruction (euthanasia) of a seriously injured animal, or to dispatch any animal that poses an immediate threat to any person or other animal, and other dispositions are impractical
- When based on the totality of the circumstances, deadly force is objectively reasonable and necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person. ~~in self defense or in defense of another person's life.~~
- When based on the totality of the circumstances, deadly force is objectively reasonable and necessary to effect the capture of, or prevent the escape or rescue of, a suspect whom the officer has reasonable cause to believe has committed a felony that threatened or resulted in death or serious bodily injury, and the officer reasonably believes that the person will cause

~~death or serious bodily injury to another unless immediately apprehended, involving the use of a threat to use deadly force, and whom an objectively reasonable officer could believe would pose an imminent danger of death or serious physical injury to other persons if he or she were to escape.~~

**L 2641 WHEN DEADLY FORCE FIREARMS WILL SHALL NOT BE USED
DISCHARGED:**

Revised 01-01-20

Officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

Firearms ~~will~~ shall not be discharged under the following circumstances:

- At misdemeanants who do not pose an imminent danger of death or serious physical harm to other persons.
- To affect the capture, or prevent the escape or rescue of, a suspect whom the officer has reasonable cause to believe has committed a felony which did not threaten or result in death or serious bodily injury ~~involve the use of a threat to use deadly force.~~

ORDER

The above stated changes to the Duty Manual are effective January 1, 2020.


EDGARDO GARCIA
Chief of Police

EG:PC:MB

29.16. Amended California Penal Codes 196 and 853a effective January 1, 2020

196 PC

Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

- (a) In obedience to any judgment of a competent court.
- (b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

835a PC

(a) The Legislature finds and declares all of the following:

- (1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.
 - (2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.
 - (3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.
 - (4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.
 - (5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.
- (b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

29.17. List of Agencies who Responded to the call for Mutual Aid



29.18. Santa Clara County Mutual Aid Mobile Field Force (SCCMAMFF) agreement

SANTA CLARA COUNTY

MUTUAL AID MOBILE FIELD FORCE



1. Purpose.

- A. The purpose of this memorandum of understanding is to provide guidelines for the organized response by allied agencies to mutual aid requests. The term Mutual Aid Mobile Field Force (MAMFF) will be used throughout this document to describe this mutual aid element. The MAMFF is an organized, trained, and equipped force of officers and supervisors from allied law enforcement agencies from within Santa Clara County. The operational concept is to deploy a force with the sufficient personnel and equipment to mitigate potential or real problems resulting from a formal request for mutual aid.

2. Operating Guidelines.

- A. **Activation.** The MAMFF will be made available for response pursuant to requests for mutual aid in the event of disaster, civil unrest, or other major incidents following the guidelines as specified in the State of California Guidelines for Law Enforcement Mutual Aid Plan and the Santa Clara County Police Chiefs' Association Mutual Aid Agreement. Upon receipt of a mutual aid request:

1. The County Law Enforcement Mutual Aid Coordinator will:

- a. Notify the Regional Mutual Aid Coordinator (if required).
- b. Notify the Mutual Aid Mobile Field Force Officer in Charge (MAMFF OIC) of the activation request.
- c. Notify the allied agencies' on-duty watch commanders of the activation request.

2. The Mobile Field Force Officer in Charge will:

- a. Notify the individual members of the MAMFF. This notification will include the location of the assembly point for the MAMFF, the expected duration of the activation and other pertinent information.

- B. **SEMS/NIMS/ICS.** When activated, the MAMFF will follow the SEMS/NIMS/ICS protocol outlined in the Law Enforcement Guide for Emergency Operations.

- C. **Personnel.** The MAMFF will be comprised of personnel from the below listed allied agencies. Each agency is responsible to ensure that appropriate members of the MAMFF are available for deployment in an emergency (the numbers below are the minimum numbers per agency).

1. MAMFF South Squad

Gilroy Police Department
Morgan Hill Police Department
Santa Clara County Sheriffs Office

4 Officers
4 Officers
14 Deputies/ 2 Sergeants
1 Lieutenant
MAMFF South Squad Total
22 Officers
1 Lieutenant
2 Sergeant

2. MAMFF North Squad

Milpitas Police Department
Santa Clara Police Department
Mountain View Police Department
Los Altos Police Department
Palo Alto Police Department
Sunnyvale Police Department

4 Officers
4 Officers
4 Officers
2 Officers
4 Officers
4 Officers
MAMFF North Squad Total
22 Officers

3. MAMFF Central Squad

San Jose Police Department
Campbell Police Department
San Jose State Police Department
Los Gatos-Monte Sereno

12 Officers
3 Officers
2 Officers
2 Officers
MAMFF Central Squad Total
19 Officers

D. **Equipment.** MAMFF members will be equipped with the following equipment by their assigned agency for response to a MAMFF activation.

1. MAMFF Uniform (TDU/ Agency Patch)
2. Duty belt
3. Soft Body Armor
4. Ballistic Helmet
5. Baton, 36" Riot
6. Flashlight
7. Personal Water system
8. Deployment bag
9. Motorola APX 7000 Radio

E. **Training.** Appropriate training is crucial to the maintenance of an effective MAMFF. MAMFF training will consist of an initial twenty four hour training session and supplemented with a bi-annual eight hour MAMFF update training session. All training sessions will be certified through the California Commission on Peace Officer Standards and Training (POST).

- F. **After Action Reports.** After Action Reports will be completed by the MAMFF OIC and forwarded to the Incident Commander immediately following the event that initiated the MAMFF activation. After Action Reports will be forwarded to the Chief Executive Officer of each allied agency and the County Law Enforcement Mutual Aid Coordinator. The After Action Report will include a synopsis of the event, the personnel deployed, number of hours worked, arrests made, problems encountered, expenditures/reimbursements and recommendations for improvements to the MAMFF Program.

3. Administrative Guidelines.

- A. **Chain of Command.** The MAMFF will be assigned to support the Incident Commander of the mutual aid event. When operating as part of the MAMFF, assigned officers will be placed under the operational control of the MAMFF OIC. Assigned officers shall follow all lawful directions of supervisors in the unit as they would in their agency.
- B. **Use of Force.** All allied agency policies regarding the use of force shall remain in effect.
- C. **Firearms.** Every officer assigned to the MAMFF shall carry and use a firearm in accordance with his/her department's policies and procedures. Any firearm carried while assigned to the MAMFF must be approved by his/her department, and minimum departmental standards for qualification must be met.
- D. **Officer-Involved Shootings.** The investigation of officer-involved shootings shall be under the existing officer involved protocol, or if outside of Santa Clara County, will be the primary responsibility of the jurisdiction in which the incident occurred. The MAMFF OIC will notify the staff from the involved officer(s) department to allow for coordination between representatives.
- E. **On-Duty Motor Vehicle Accidents.** MAMFF members who are involved in on-duty motor vehicle collisions will report the incident to the MAMFF OIC. The MAMFF OIC will insure that the accident is reported and investigated by the jurisdictional police agency. Copies of the completed collision report will be forwarded to the MAMFF OIC, the officer's agency and the County Mutual Aid Coordinator. The involved officer will be responsible for meeting specific requirements detailed within his/her agency's vehicle accident reporting policy.
- F. **On-Duty Injuries.** When an MAMFF member is injured on-duty, the MAMFF OIC will ensure that immediate medical attention is received by the officer. Following this immediate care, the policy of the injured officer's allied agency will be followed. Each allied agency will provide the MAMFF OIC with guidelines, forms and notifications to be completed upon the injury of their MAMFF officer. The

MAMFF OIC will be responsible for the completion of all line-of-duty injury reports.

- G. **Citizen Complaints.** Complaints regarding misconduct of an MAMFF member will be directed to the MAMFF OIC. The MAMFF OIC will review the complaint and notify the involved officer's agency of the allegation. The MAMFF OIC will gather all preliminary information related to the allegation. The information shall be provided to the involved parties' agency for completion of the investigation per the agency's policy.

4. Fiscal Guidelines.

- A. **Payroll.** All officers, when assigned to the MAMFF, will be paid by their respective agency. When an incident is organized under the Standardized Emergency Management System (SEMS), the MAMFF OIC will report and coordinate all personnel record keeping with the Finance Representative for future reimbursement if a mission task number was provided by the requestor. The County Overhead Team should be notified and requested on extended operations.
- B. **Illness.** If a MAMFF member becomes ill while assigned to the MAMFF, the MAMFF member's agency sick leave policy will be used. The MAMFF OIC will report all illness reports to the MAMFF member's agency representative.
- C. **Overtime.** All overtime for members of the MAMFF will be approved in advance by the MAMFF OIC and reported to the member's allied agency representative.

5. Indemnification and Limitation of Liability

- A. Each party to this agreement agrees to be responsible for and assume liability for its own wrongful and negligent acts or omissions, including the negligence attributed to that party's command decisions, or those of its officers, agents, or employees to the fullest extent allowed by law, and agrees to save and hold every other party to this agreement and said parties, officers, agents, and employees harmless from such liability and to waive any liability legal claims that parties to this agreement might have against each other or any one of them for liability arising out of the performance or non-performance of any act under this agreement. However, in any lawsuit brought against any other parties to this agreement or against their officers, agents, or employees by persons or entities not signatory to this agreement, then none of them shall be limited in their legal rights to request apportionment of any judgment rendered against them, and none of them shall be limited in their rights as provided under the laws of the State of California to seek contribution for any judgment they are required to pay in excess of their proportionate share of any liability judgment or award.
1. Each party agrees to be adequately self-insured or maintain adequate insurance coverage for its own equipment and personnel.

2. Each party agrees not to subrogate against one another in Workers Compensation or Liability issues.
 3. Each party to this agreement should have equal access to the records created by any of the agencies involved in a request for assistance so that they can have the appropriate information to defend themselves in lawsuits.
 4. Each party to this agreement is obligated to notify every other party who responds to a request for assistance should they receive a claim or lawsuit arising out of emergency response operations.
- B. The parties recognize and acknowledge this Memorandum of Understanding is entered into and subject to California Government Code Section 8565 of the California Emergency Services Act.

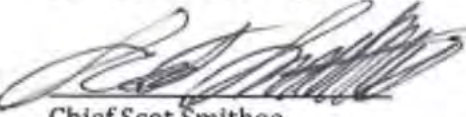
PARTICIPATING SANTA CLARA COUNTY POLICE AGENCIES

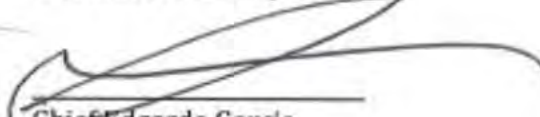
By: 
 Chief Phan Ngo
 Sunnyvale Department of Public Safety

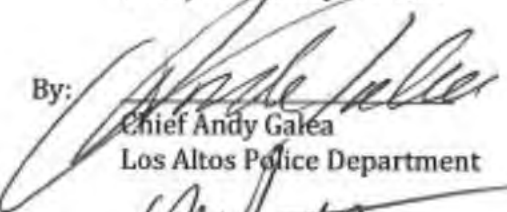
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 Chief Max Bosel
 Mountain View Police Department

By: 
 Chief David Carmichael
 Campbell Police Department

By: 
 Interim Chief Ron Watson
 Palo Alto Police Department

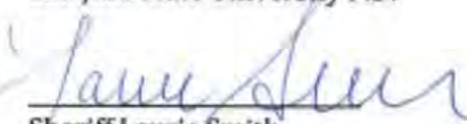
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 Gilroy Police Department

By: 
 Chief Edgardo Garcia
 San Jose Police Department

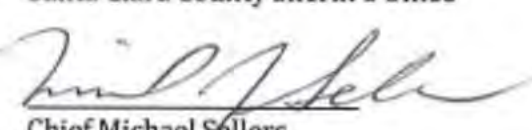
By: 
 Chief Andy Galea
 Los Altos Police Department

By: 
 Chief Peter Decena
 San Jose State University P.D.

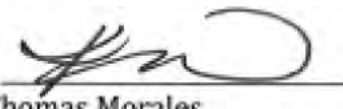
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 Interim Chief Michael D'Antonio
 Los Gatos/Monte Sereno P.D.

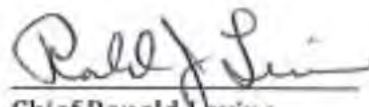
By: 
 Sheriff Laurie Smith
 Santa Clara County Sheriff's Office

By: 
 Chief Steve Pangelinan
 Milpitas Police Department

By: 
 Chief Michael Sellers
 Santa Clara Police Department

By: 
 Chief David Swing
 Morgan Hill Police Department

By: 
 Chief Thomas Morales
 San Jose-Evergreen CC
 District Police Department

By: 
 Chief Ronald Levine
 Foothill-DeAnza CC
 District Police Department

By: 
 Chief Ken Tanaka
 West Valley-Mission CC
 District Police Department

29.19. Headwaters Forest Def. v. County of Humboldt

No. 98-17250
United States Court of Appeals, Ninth Circuit

Headwaters Forest Def. v. County of Humboldt

211 F.3d 1121 (9th Cir. 2000)
Decided May 4, 2000

No. 98-17250

Argued and Submitted December 6, 1999, San Francisco, California

1122 Filed May 4, 2000 *1122

Appeal from the United States District Court for the Northern District of California, Vaughn R. Walker, District Judge, Presiding D.C. No. CV-97-03989-VRW

Mark Hughes, University of Denver, Denver, Colorado, for the plaintiffs-appellants.

Nancy K. Delaney, Mitchell, Dedekam Angell, Eureka, California, for the defendants-appellees.

Margaret C. Crosby, American Civil Liberties Union Foundation of Northern California, San Francisco, California, for the amicus curiae.

Before: Myron H. Bright,¹ Harry Pregerson, and William A. Fletcher, Circuit Judges.

¹ The Honorable Myron H. Bright, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

Opinion by Judge Harry Pregerson; Concurrence by Judge Bright.

1123 *1123

1124 *1124

1125 *1125

PREGERSON, Circuit Judge:

OPINION

[2] Nine environmental activists, along with an entity called Headwaters Forest Defense, brought this action under 42 U.S.C. § 1983, alleging that the use of pepper spray on the activists during three protests in Humboldt County constituted excessive and unreasonable force in violation of their Fourth Amendment rights. The named defendants included Humboldt County and its Sheriff's Department; Humboldt County Sheriff Dennis Lewis and Chief Deputy Sheriff Gary Philp, who authorized the use of pepper spray; the City of Eureka and its

1126 Police Department; *1126 as well as each law enforcement officer who participated in the protesters' arrests.

The district court granted summary judgment on qualified immunity grounds in favor of all individual defendants, except for Sheriff Lewis and Chief Deputy Sheriff Philp.² A jury trial in this case consumed nine days. At the close of plaintiffs' case-in-chief, the district court ruled that Lewis and Philp were also entitled to

qualified immunity as a matter of law and dismissed the case against them. After deliberating for six hours on the remaining claims, the jury announced that it was irreconcilably deadlocked. The district court declared a mistrial and set a new trial date. But eight weeks later, the district court reversed itself and granted defendants' motion for judgment as a matter of law.

Plaintiffs contend on appeal that the district court erred in ruling that Sheriff Lewis and Chief Deputy Sheriff Philp were entitled to qualified immunity as a matter of law because historical facts were in dispute and that the court erred in directing a verdict in favor of the remaining defendants. We agree.

I.

Factual Background

In the fall of 1997, environmental activists staged three nonviolent protests against what they perceived to be the unnecessary logging of ancient redwood trees in the Headwaters Forest along California's northern coast. During each protest, two to seven protesters linked themselves together using self-releasing lock-down devices known as "black bears." A "black bear" is a ten to twenty-five-pound steel cylinder (about one-fourth of an inch thick) with a rod or post welded into the center. The protesters placed their arms into the steel cylinders and attached steel bracelets worn around their wrists to the center rods or posts in the "black bears" by using mountain climbers' carabiners. Each "black bear" linked two protesters together. When in place, the devices completely immobilized their arms and prevented their separation. By simply using their hands to unclip the carabiners on the inside of the cylinder, the protesters could disengage themselves from the devices. If the protesters did not voluntarily agree to release themselves, the lock-down devices made it difficult, but not impossible, for law enforcement officers to take the protesters into custody upon arrest. To forcibly remove "black bears," the officers had to use a Makita grinder. A Makita grinder is a hand-held electric grinder that can cut through steel.

The protesters' use of these lock-down devices is at the heart of this case. Since 1990, nonviolent environmental activists had on many previous occasions used these and other mechanical devices to link themselves physically together during similar protests in Humboldt County. Over the years, the devices became increasingly sturdy and more difficult for the police to remove forcibly. The initial devices were bicycle locks or lightweight metal cylinders, weighing less than five pounds. By 1995, they had evolved into the "black bears" that were used here.

In 1997, the Humboldt County Sheriff's Department organized a special response team comprised of Special Services Deputies to deal with the environmental protests. The officers selected for the team were those with special training and experience in the use of a Makita grinder to remove lockdown devices safely. By the fall of 1997, one of the officers had used a Makita grinder to remove hundreds of lock-down devices from the arms of environmental protesters. He had done so safely, without causing injuries to either himself or the protesters.

Nevertheless, because a Makita grinder generates sparks when used, the defendants claim to have had a growing concern about the danger involved in using it. So, in the summer of 1997, the Humboldt County Sheriff's Department explored alternatives for effecting the arrest of environmental protesters in lock-down devices — including the use of oleoresin capsicum aerosol ("OC" or "pepper spray"). Defendants Lewis and Philp consulted a certified trainer in the use of pepper spray, the county's risk manager, and its district attorney. And they read much of the available literature on the subject. By summer's end, defendants concluded that the

use of a lock-down device by any protester — even an otherwise non-violent protester who posed no danger to the public, himself, or the arresting officers — constituted "active resistance" to arrest, warranting police use of pepper spray as a "pain compliance technique."

But, according to then-California Attorney General Dan Lungren, the use of pepper spray under these circumstances was unprecedented; its use had been previously "limited to controlling hostile or violent subjects." Even Sheriff Lewis conceded at trial that no law enforcement officer in Humboldt County, the State of California, or anywhere in the nation had ever used pepper spray on nonviolent protesters as it was used in this case. The defendants nonetheless contend, and the district court found as a matter of law, that the officers' use of pepper spray during the three protests at issue here was reasonable and appropriate under the circumstances.

The Scotia Protest

The first protest took place on September 27, 1997, at the headquarters of the Pacific Lumber Company in Scotia, California ("the Scotia protest"). During the Scotia protest, plaintiffs Vernell "Spring" Lundberg (a minor at the time), Jennifer Schneider, Molly Burton, and Eric "Sam" Neuwirth, along with three others, ran into the Pacific Lumber Company lobby, sat down in a circle, and locked themselves together using the "black bears." Meanwhile, other activists held a peaceful rally (including folk music and protest songs) and a mock trial of the owner of Pacific Lumber Company on the sidewalk in front of the Pacific Lumber Company building. Still other activists hung protest signs from the roof of the Pacific Lumber building.

Pacific Coast Lumber employees called the Humboldt County Sheriff's Department, which dispatched its special response team. Upon arrival, the officers observed that the seven protesters had placed the "black bears" under their arms and legs, making it particularly difficult to use a grinder to remove them. The officer in charge decided that using pepper spray was the most appropriate and safest way to arrest the trespassing protesters. He and the other officers testified that they made this decision solely because of the difficulty in using a grinder in these circumstances. It was "immaterial" to them that the protesters were peacefully engaged in an act of civil disobedience, as opposed to being violent. And the protesters outside the building were not a factor in their 1128 decision to use the pepper spray *1128 on those inside the building. Indeed, it is undisputed that the protesters both on the roof and outside the building were nonviolent, did not interfere with ingress or egress to and from the Pacific Lumber building, posed no safety risks to the public or to the officers, and willingly dispersed when their rally and mock trial were ended or when the police directed them to do so.

The Sheriff's videotape of the incident reveals that the officers never attempted to negotiate with the protesters. Once they made the decision to use the pepper spray, the officers simply warned the protesters repeatedly that if they refused to release themselves from the "black bears" the officers would apply pepper spray to their faces. The protesters tucked their heads into their chests and refused to release. The officers then forced four protesters' heads back and applied pepper spray with a Q-tip to the corners of their closed eyes. The protesters screamed in pain. The three other protesters, including one who announced that she had asthma, then voluntarily released. The officers put plastic handcuffs on these three protesters and placed them on the couch right next to those still protesting. They remained there for more than an hour, cheering on the others who continued protesting and excoriating the officers for using pepper spray on them. At this point, the officers did not offer to flush out the protesters' eyes with water.

The four protesters who remained in the lock-down devices were seated in sets of two. The circle of human legs and arms had been broken. Nevertheless, the officers reapplied the pep-per spray with Q-tips to the protesters' eyelids. The protesters still did not release. Twenty minutes after the pepper spray was first applied

and six minutes after its second application, the officers sprayed water into the eyes of the protesters to dilute the OC, continuing to do so periodically for more than an hour. Thereafter, the officers escorted the three protesters who were never pepper sprayed out of the building and carried the two pairs of remaining protesters out of the building on stretchers. It took two officers just three minutes to carry each of the two pairs of protesters out of the building; a few other officers present opened doors and directed their movement. The officers appeared to have no trouble lifting and carrying the protesters out. Once outside the building, one pair of protesters voluntarily released themselves. A Makita grinder was used to extricate the other pair from the "black bears." It took ten minutes to remove the device by grinder. The officers threw a fire blanket over the protesters to protect them from the sparks generated by the grinder's use.

The Bear Creek Protest

The second protest took place on October 3, 1997, when two pairs of protesters, including plaintiffs Michael McCurdy and Noel Tendick, using "black bears" locked themselves to two Pacific Lumber Company bulldozers at a remote logging site on Pacific Lumber Company property (the "Bear Creek protest"). Again the special response team was called to the scene. The same officer in charge at the Scotia protest was in charge at Bear Creek. He testified that he told the protesters that the officers were going to use pepper spray on them if they didn't release because "we're getting out of here quicker that way." He also testified to his concern that using a grinder would have presented a fire hazard because of the diesel fuel and oil canisters around the bulldozers. He added that protesters hiding in the woods presented an unspecified danger, although the Sheriff's videotape does not show the threatening presence of any other demonstrators. The officers made no attempt to negotiate with the protesters. They simply threatened repeatedly to use pepper spray unless the protesters
1129 released themselves from the "black bears." But before *1129 proceeding, the officers waited more than half an hour for the videographer to arrive.

The Sheriff's videotape reveals that two protesters released themselves from the "black bears" when threatened with the immediate use of pepper spray. Despite repeated warnings, two others refused. The last warning told the protesters that they had "five minutes" to release themselves from the "black bears." But the actual elapsed time between that last warning and the first application of pepper spray was less than two minutes. The officers applied the pepper spray with a Q-tip to the closed eyes of both protesters. Despite the protesters' pleas for water to flush the pepper spray out of their eyes, one of the officers can be heard on the videotape saying that they will only be given water if they release and that the pain will only get worse in thirty seconds when he sprays the OC in their faces. A minute later, he sprayed the OC directly into both of the protesters' faces in short full bursts from inches away. The videotape reveals that the blast of pepper spray ran down one protester's face and into his mouth.

Five minutes later, the protesters again refused to release and the officer in charge said that they "have all day to do this . . . [and] all kinds of cans of chemical weapons." Protester Tendick then said, "If you've got all day to do this, why don't you cut us out?" To which the officer in charge responded, "because we are already committed here." The officers then offered to spray water from hand-held spray bottles onto the protesters' faces to try to flush the pepper spray out. Tendick testified that lightly spraying his face with water only made the pain worse because the water caused the OC to drip into his nose and mouth. On the videotape, Tendick can be heard screaming in pain after the water was administered. Thereafter, a Makita grinder was safely used to cut both protesters out. Despite the officers' stated concern for the danger posed by using the grinder around fuel and oil canisters, the officers did not remove the canisters when they decided to use the grinder. No injuries resulted from the use of the grinder.

The Riggs Protest

The third protest took place less than two weeks later, on October 16, 1997, in the Eureka office of Congressman Frank Riggs. Plaintiffs Terri Slanetz, Lisa Sanderson-Fox, Maya Portugal (a minor at the time), and Jennifer Schneider entered the Congressman's office, dropped wood chips on the floor, and chained themselves together using "black bears" around a tree stump that another protester had brought into the Congressman's office. Meanwhile, a crowd of fifty nonviolent protesters gathered on the street outside the Congressman's office.

Officers from the Eureka Police Department and from the Humboldt County special response team arrived at the scene in response to calls for assistance made by the Congressman's staff. The Humboldt County special response team determined that the wood chips would create a fire hazard if a grinder was used. Although Congressman Riggs's staff made a vacuum cleaner available to them to remove the wood chips, the officers chose not to use it. Instead, on the basis of the Humboldt officers' recommendation, the Eureka Police captain in charge authorized the use of pepper spray on the protesters. Again no attempt at negotiation was made.

The Sheriff's videotape shows that the officers repeatedly warned the protesters that pepper spray would be used if they did not voluntarily release. One of the protesters declared that they had to take a stand against the use of pepper spray against nonviolent civil protesters. Another pleaded with the officers not to use the pepper spray. She pointed out that the protesters were all young women — one a minor — and asked the officers if they would want someone to use pepper spray on their own daughters. She also pointed out that the protesters
1130 posed no danger to *1130 anyone. Nevertheless, the officers pulled each of the protester's heads back and applied pepper spray to their eyes with a Q-tip. One protester, Maya Portugal, claims that one of the officers pried open her eyes and applied the pepper spray directly on them. Although the videotape lends some support to this claim, it is ultimately unclear whether this occurred. One of the protesters can be heard on the videotape yelling, "no, don't open them [my eyes]." The defendants deny that any of the protesters' eyes were opened when the pepper spray was used.

At this point, no water was offered to wash the pepper spray off the protesters' eyes. Seven minutes after the initial application, one of the officers can be heard on the videotape saying that water will be given if the protesters release themselves from the "black bears." At that point, one of the protesters released, followed shortly thereafter by another, leaving the two remaining protesters attached only to each other. Then, one of the remaining protesters asked why the officers could not physically carry them out of the Congressman's office and use a grinder to cut them out once they were outside the building. An officer responded by saying that the jail "would not accept you like this" and that it "is too dangerous to transport you like this."

One officer then stood within a foot of one of the remaining protesters and sprayed the pepper spray directly into her face. Within three minutes, the remaining two protesters released. The officers then offered water from spray bottles to wash the pepper spray off the protesters' faces.

II.

Procedural History

On October 30, 1997, the nine protesters on whom the police had used pepper spray and an entity called the Headwaters Forest Defense filed this action under 42 U.S.C. § 1983, claiming that the application of pepper spray to the eyelids and faces of nonviolent protesters constituted use of excessive and unreasonable force to effect their arrests in violation of their Fourth Amendment rights. Each plaintiff sought damages for the pain

and emotional trauma that each suffered and for the violation of their constitutional rights. Because no one sought medical treatment for physical injuries, special damages were not claimed. But plaintiffs sought punitive damages from the individual defendants.

On defendants' motion for summary judgment, the district court granted all individual defendants qualified immunity except for Humboldt County Sheriff Dennis Lewis and Chief Deputy Sheriff Gary Philp, the officers who initially authorized the use of pepper spray on the nonviolent protesters. The court, however, refused to grant summary judgment in favor of the defendants on the excessive force charges. On those charges, the court stated in its written decision that whether the use of pepper spray "is reasonable is for the jury to determine.

Jury consideration is particularly appropriate here in that OC, a chemical agent, has not been used in past demonstrations." The court's decision noted that the parties vigorously disputed what occurred before, during, and after the use of pepper spray on the protesters during each protest. All of the disputed facts directly addressed the question whether the use of pepper spray was needed to effect the arrest of nonviolent protesters in lock-down devices. For example, the court's decision noted that the manufacturer's instructions on the canisters of pepper spray that the officers used "expressly discouraged" spraying OC from distances of less than three feet. Similarly, the decision noted that the Humboldt County Sheriff's deputy in charge of chemical agent training — the only certified trainer in the use of OC with whom Lewis and Philp had consulted before authorizing its use — recommended applying pepper spray with a Q-tip only. Yet here, the officers applied full

1131 blast sprays of OC into *1131 some of the protesters' faces from just inches away.

In addition, the court noted that Humboldt County had only one official general order that addressed police use of chemical agents such as pepper spray. And it stated in pertinent part that:

The department issues non-lethal aerosol chemical agents to each sworn member of the Department. This aerosol is furnished as a defensive weapon for the protection of department members and as a possible alternative to the additional use of force The chemical agent is intended for use in those cases wherein a member of the Department is attempting to subdue an attacker or a violently resisting suspect, or under other circumstances which under the law permit the lawful and necessary use of force, which is best accomplished by the use of a chemical agent.

(Emphasis added). Similarly, the Eureka Police Department use-of-force policy statement "classified the use of OC-based products as a compliance technique directly below intermediate force on the use-of-force continuum."

(Emphasis added). According to that policy statement, even intermediate force may not be used on nonviolent suspects who are passively resisting arrest. The policy stated in pertinent part that:

[OC] shall be used instead of baton strikes whenever practical and when the failure to use it would result in the need to apply more force which holds the greater potential for injury. OC shall not be used to harass or punish a prisoner. Chemical agents are nonlethal devices designed to temporarily subdue or overcome [an arrestee] by spraying the agent into the face..... "

(Emphasis added).

The case proceeded to trial. After nine days, plaintiffs completed their case-in-chief. Thereupon, on defendants' motion, the district court ruled that Lewis and Philp were entitled to qualified immunity as a matter of law and dismissed the case against them. After deliberating for only six hours, the jury announced it was deadlocked.

The district court declined to give a formal Allen charge³ to the jury as both parties requested, but the court did query the jury foreperson "to get some sense from the jury of the degree to which they [felt] that they [were] deadlocked." Without polling each juror, the court satisfied itself that the jurors had fully reviewed the

evidence, considered each other's views, and were irreconcilably deadlocked. In a colloquy with counsel on the record but out of the jury's presence, the court stated that the issue in this case is "a simple and straightforward one It's obviously one on which reasonable people can differ." (Emphasis added). Thereafter, the district court declared a mistrial, set a new trial date, and took under submission defendants' renewed motion for judgment as a matter of law.

³ An Allen charge — named after the case of *Allen v. United States*, 164 U.S. 492 (1896) in which it was first approved — is a supplemental jury instruction that a trial judge may give when a jury announces that it is unable to agree on a verdict. See *United States v. Hernandez*, 105 F.3d 1330, 1333-34 (9th Cir. 1997). Without being coercive, an Allen charge urges jurors to keep trying to reach a verdict. See *id.* It is designed to assist them in finding common ground by reminding them of their duties as jurors, encouraging them to give due deference to the arguments of fellow jurors and to reexamine their own views without abandoning their deeply felt beliefs. See *id.*; see also Ninth Circuit Manual of Model Criminal Jury Instructions, No. 7.6 (1997).

Eight weeks later, the district court granted defendants' renewed motion, vacated the new trial date, and entered judgment for the defendants, finding that "there is no reasonable basis for jurors to find that the officers' use of [pepper spray] was objectively unreasonable in light of the facts and circumstances confronting them." 1132 (Emphasis added). Plaintiffs timely appeal. We have jurisdiction to review the *1132 final order of the district court under 28 U.S.C. § 1291.

III. A. Judgment as a Matter of Law

We review de novo the district court's grant of judgment as a matter of law, see *Acosta v. City and County of San Francisco*, 83 F.3d 1143, 1145 (9th Cir. 1996), using "the same standard as the district court under Fed.R.Civ.P. 50(a)." *Forrett v. Richardson*, 112 F.3d 416, 419 (9th Cir. 1997), overruled on other grounds, *ChromaLighting v. GTE Products Corp.*, 127 F.3d 1136 (9th Cir. 1997). Rule 50(a)(1) provides in pertinent part that:

If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim. . . .

Fed.R.Civ.P. 50(a)(1).⁴

⁴ Technically, the district court here granted defendants' renewed motion for judgment as a matter of law pursuant to Rule 50(b). The fact that the motion was granted after a mistrial was declared because of jury deadlock does not alter the standard to be applied on appeal.

"Judgment as a matter of law is proper if the evidence, construed in the light most favorable to the non-moving party, allows only one reasonable conclusion " *Acosta*, 83 F.3d at 1145. "If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986). Indeed, "[i]f conflicting inferences may be drawn from the facts, the case must go to the jury." *Pierce v. Multnomah County, Oregon*, 76 F.3d 1032, 1037 (9th Cir. 1996) (quoting

1133 *Rutherford v. City of Berkeley*, 780 F.2d 1444, 1448 (9th Cir. 1986)).⁵ *1133

⁵ A jury's inability to reach a verdict does not necessarily preclude a judgment as a matter of law. See, e.g., *Demaine v. Bank One*, 904 F.2d 219, 220 (4th Cir. 1990). But none of the cases cited by the defendants in support of the directed verdict in this case involved charges of excessive force. Each were contract dispute cases in which the central issue was either the existence of a valid contract, see, e.g., *id.*; *Noonan v. Midland Capital Corp.*, 453 F.2d 459, 462 (2d Cir. 1972), or whether a contract fell within an exception to the antitrust laws, see *City and County of Honolulu v. Hawaii Newspaper Agency, Inc.*, 559 F.Supp. 1021, 1026 (D. Haw. 1983). Although we have reviewed excessive force cases in which directed verdicts in favor of defendants have been ordered after juries rendered verdicts in favor of the plaintiffs, see, e.g., *Forrester*, 112 F.3d at 419-21 (affirming district court's order); *Acosta*, 83 F.3d at 1145-47 (reversing district court's order), we know of no excessive force case that presents the unique procedural posture of this case, i.e., a directed verdict for the defendants after the jury deadlocked and a mistrial was declared.

Indeed, *Forrester v. City of San Diego*, 25 F.3d 804 (9th Cir. 1994), on which defendants primarily rely is procedurally wholly distinguishable from this case. In *Forrester*, the jury reached a verdict on the excessive force charge, the district court denied a motion for judgment notwithstanding the verdict, and the issue on appeal was whether substantial evidence supported the jury's verdict. See *id.* at 806.

Curiously, defendants here cite *Forrester* to support the contention that the existence of videotape footage of each of the incidents in question favors a determination of reasonableness as a matter of law. But this court's reference to the fact that videotape evidence existed in *Forrester* was made in the context of declaring that "the jury had more than a sufficient amount of evidence presented to them from which they could formulate their verdicts....." *Id.* at 807. Thus, this aspect of *Forrester* is inapposite to defendants' contention here. Moreover, the videotape evidence in *Forrester* aided the jury in reaching a verdict because it apparently "removed much argument and interpretation of the facts themselves." *Id.* The videotape evidence here appears to raise more questions than it answers, which in the context of a motion for judgment as a matter of law must be resolved in favor of the plaintiffs as the nonmoving parties.

Here, in its written decision granting defendants judgment as a matter of law, the district court acknowledged its obligation to view the evidence in the light most favorable to the plaintiffs as the nonmoving parties and to resolve all inferences and conflicts in the evidence in their favor. But, as the discussion below reveals, the district court failed to do so. Its decision is replete with assertions that the weight of the evidence favors the defendants and with conclusions that the court reached by resolving conflicts in the evidence against the nonmoving parties. In this regard, the district court erred. As the Supreme Court has held in ruling on a motion for judgment as a matter of law, the [district court] judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented.

Anderson, 477 U.S. at 252.

B. Excessive Force

The Fourth Amendment prohibition against unreasonable seizures permits law enforcement officers to use only such force to effect an arrest as is "objectively reasonable" under the circumstances. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see also *Chew*, 27 F.3d at 1440-41. As we have repeatedly said, whether the force used to effect an arrest is reasonable "is ordinarily a question of fact for the jury." *Liston v. County of Riverside*, 120 F.3d 965, 976 n. 10 (9th Cir. 1997) (citing, e.g., *Forrester v. City of San Diego*, 25 F.3d 804, 806 (9th Cir. 1994)); see also *Barlow v. Ground*, 943 F.2d 1132, 1135 (9th Cir. 1991). Although excessive force cases can be decided as a matter of law, they rarely are because the Fourth Amendment test for reasonableness is inherently fact-specific. See *Chew*, 27 F.3d at 1443 (citing *Reed v. Hoy*, 909 F.2d 324, 330 (9th Cir. 1989)). It is a test that escapes "mechanical application" and "requires careful attention to the facts and circumstances of each particular case," *Graham*, 490 U.S. at 396, and thus naturally favors jury resolution.

According to *Graham*, "[d]etermining whether the force used to effect a particular seizure is 'reasonable' under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." 490 U.S. at 396 (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)) (emphasis added). Assessing "the nature and quality" of a given "intrusion" requires the fact finder to evaluate "the type and amount of force inflicted." *Chew*, 27 F.3d at 1440. Weighing the governmental interests involved requires the fact finder to evaluate such factors as "(1) the severity of the crime at issue, (2) whether the suspect pose[d] an immediate threat to the safety of the officers or others, . . . (3) whether he [was] actively resisting arrest or attempting to evade arrest by flight," and any other "exigent circumstances [that] existed at the time of the arrest." *Chew*, 27 F.3d at 1440-41 n. 5. As we have previously explained, "the essence of the *Graham* objective reasonableness analysis" is that "[t]he force which was applied must be balanced against the need for that force: it is the need for force which is at the heart of the *Graham* factors." *Liston*, 120 F.3d at 976 (quoting *Alexander v. City and County of San Francisco*, 29 F.3d 1355, 1367 (9th Cir. 1994)) (emphasis added). Thus, where there is no need for force, any force used is constitutionally unreasonable. See *P.B. v. Koch*, 96 F.3d 1298, 1303-04 n. 4 (9th Cir. 1996).

We begin our analysis of the reasonableness of the force used in this case by examining the district court's assessment of the "nature" of the use of pepper spray and the "quality of the intrusion" caused on the protesters'

1134 bodily integrity under the Fourth Amendment. We will then *1134 examine the district court's assessment of the countervailing governmental interests at stake, focusing first on the interests on which the district court relied in granting defendants' motion for judgment as a matter of law. We will then examine the governmental interests addressed in Fourth Amendment jurisprudence that the district court failed to consider. Such interests include the safety threat, if any, posed by the protesters to the public, to the officers, or to themselves; the exigencies, if any, bearing on the decision to use pepper spray during each protest; the severity of the protesters' crimes; and the alternatives available to the police to effect the arrests of the protesters.

The Nature and Quality of the Intrusion

Here, the district court concluded that "the severity of the intrusion upon the arrestees' personal integrity was minimal" because it did not involve the threat of "deadly force or even . . . a significant level of physical force. Rather the force used was merely the infliction of transient pain without significant risk of physical injury." We disagree with this characterization of the intrusion.

Although the absence of deadly force or physical blows can mean that a intrusion on an arrestee is "less significant than most claims of force," *Forrester*, 25 F.3d at 807, that fact alone is not dispositive in excessive force cases. Under Fourth Amendment jurisprudence, the law is well settled that a plaintiff may recover "'nominal damages without proof of actual injury'" for unreasonable intrusions on one's bodily integrity. *Larez*, 946 F.2d at 640 (quoting *Carey v. Phipus*, 435 U.S. 247, 266 (1978) (holding nominal damages are available under 42 U.S.C. § 1983)). Indeed, in *Wilks v. Reyes*, 5 F.3d 412 (9th Cir. 1993), we expressly rejected the Fifth Circuit's requirement that a plaintiff show "significant injury" to establish an excessive force claim under the Fourth Amendment. *Id.* at 416 ("The law of this circuit entitles a plaintiff to an award of nominal damages if the defendant violated the plaintiff's constitutional right . . . even if the plaintiff suffered no actual damage." (emphasis added)). Thus here, the district court erred in focusing on the purported absence of evidence of a "significant risk of physical injury" from the use of pepper spray. Under *Graham* and *Forrester*, whether the use of force poses a risk of permanent or significant injury is a factor to be considered in evaluating the need for the force used in a particular case — but it is certainly not dispositive.

Moreover, the evidence in the record does not establish that the use of pepper spray here constituted a "minimal" intrusion on the protesters' bodily integrity as a matter of law. The evidence suggests that the protesters suffered excruciating pain when the OC was applied to their eyelids with a Q-tip — and even more so when sprayed into their faces in full blasts from inches away. In fact, the Humboldt County Sheriff's deputy in charge of chemical agent training testified that pepper spray is designed to cause intense pain, a burning sensation that causes mucus to come out of the nose, an involuntary closing of the eyes, a gagging reflex, and temporary paralysis of the larynx. He also testified that its known psychological effects are "disorientation, anxiety, and panic." On this record, a rational juror could readily conclude that the intrusion suffered was more 1135 than "minimal."⁶ *1135

⁶ We previously held that the use of pepper spray by a defendant during the commission of a felony may constitute use of a dangerous weapon, defined as "capable of inflicting death or serious bodily injury" for sentencing purposes. *United States v. Neill*, 166 F.3d 943, 949 (9th Cir. 1999) (citing U.S.S.G. § 1B1.1, cmt. n. 1(d),(j)). Admittedly, police use of pepper spray as a tactical tool to effect arrest is distinguishable from its use by a felon during the commission of a robbery. Nevertheless, the evidence in this case reveals that the police sprayed OC directly into some of the protesters' faces from only inches away in much the same manner as the defendant in *Neill*. And yet, Humboldt County's deputy in charge of chemical agent training testified that spraying OC into a person's face from less than 3 feet is not safe.

Indeed, our opinion in *Forrester* suggests that the nature and uncontrollable pain caused by pepper spray distinguishes it from the "pain compliance technique" found reasonable in that case. *Forrester* upheld the use of "Orcutt Police Nonchakus" or "OPNs," which are "two sticks of wood connected at one end by a cord." 25 F.3d at 805. "OPNs" are used to grip a resisting arrestee's wrist in a progressively tighter and more painful manner until the arrestee ceases resisting. See *id.* at 808 n. 5. In *Forrester*, the police used OPNs on hundreds of "Operation Rescue" demonstrators who were attempting to shut down the operations of an abortion clinic by blocking access to the facility and threatening injury to the medical staff and patients. See *id.* at 805, 807.⁷ In finding this use of OPNs "reasonable" under the circumstances, we stated:

⁷ According to the defendants, the demonstrators in *Forrester* were truly "passive" in that they went limp when police attempted to take them into custody, whereas the protesters here were not "passive," but "actively resisting" arrest because they used the lock-down devices. The fact that the demonstrators in *Forrester* posed an actual safety threat to the public does not seem to affect the defendants' assessment of the demonstrators "passive" or "active" stance. In fact, the defendants contend that because we upheld the jury's verdict in *Forrester* that declared the use of OPNs on "passive" demonstrators to be reasonable under the circumstances, we should therefore hold that the use of pepper spray on the "actively resisting" protesters in this case is also reasonable. This contention reflects a basic misunderstanding of the full factual breadth of the *Graham* balancing test. More importantly, this contention misses the point of the issue on appeal. We are not asked to decide whether the use of pepper spray in this case constituted excessive force or not. We are only to decide whether the district court erred in directing a verdict for the defendants in light of the evidence in the record.

Unlike the use of a lighted cigarette, which would create immediate and searing pain, the discomfort produced by the OPNs was gradual in nature. The videotape (which was seen by the jurors) illustrates that the police first applied a loose grip and then progressively tightened their hold until the demonstrators stood and ceased resistance. The moment the demonstrators complied, the police released the OPNs.

Id. at 808 n. 5.

Here, the videotape evidence reveals that the application of the pepper spray with a Q-tip and then by short full blasts created "immediate and searing pain." Yet the district court's ruling fails to mention this evidence, let alone view it in a light most favorable to the plaintiffs as the nonmoving parties.⁸

⁸ An example of the district court's failure to view the evidence in the light most favorable to the plaintiffs as the nonmoving parties and to resolve all conflicts in the evidence in their favor is the court's statement that "the videotape footage plainly demonstrates that the officers were not making any attempt to open plaintiffs' eyes." The court came to this conclusion despite plaintiff Portugal's contrary testimony, the cry of one of the young female protesters heard on the videotape asking the officers not to open her eyes, and the unclear images revealed on the videotape.

Moreover, unlike the use of OPNs as a "pain compliance technique," using pepper spray does not permit the police immediately to stop inflicting pain the moment the protesters comply with the officers' demands.

According to the defendants, the only way to relieve the pain caused by pepper spray is to flush it out thoroughly with water. Police training tapes recommend using a "free-flowing hose to wash the victim's face" or "the use of a big bucket of water in which the victim can actually stick [his or her] face down into to get relief." But here, the officers offered only to spray water in short bursts onto the protesters' faces from hand-held plastic bottles, which the evidence suggests may have actually exacerbated the pain by causing the OC to

1136 run into the protesters' 1136 noses and mouths rather than flushing it out. Moreover, whether water was offered at all for this purpose during each protest is disputed.

The Governmental Interests at Stake

The district court found that the primary governmental interests at stake during the three protests were in "quickly removing the trespassing plaintiffs" and in "preventing the organized lawlessness" of a "large group of protesters." The court stated:

In each incident, plaintiffs were part of a large group of protesters operating in an organized and concerted effort to invade private property, obstruct business and hinder law enforcement. Although these crimes are misdemeanors, "[t]he wholesale commission of common state-law crimes creates dangers that are far from ordinary. Even in the context of political protest, organized, premeditated lawlessness menaces in a unique way the capacity of a State to maintain order and preserve the rights of citizens." *Bray v. Alexandria Woman's Health Clinic*, 506 U.S. 263, 287 (1993) (Kennedy, J., concurring).

We disagree with the district court's characterization of the evidence. In assessing the governmental interests, the court failed to view the evidence in the record and all inferences that could be drawn therefrom in a light most favorable to the plaintiffs. Moreover, the court incorrectly applied the *Graham* test and Justice Kennedy's concurrence in *Bray*. When the evidence is viewed in the light most favorable to the plaintiffs, it is clear that the governmental interests at stake here do not compel the conclusion that the use of pepper spray — either with a Q-tip or by short full blasts — was reasonably necessary as a matter of law in the totality of the circumstances.

Speedy Arrests

The evidence in the record strongly suggests that the officers' decisions to use pepper spray during each protest had nothing to do with the government's purported interest in "quickly removing the trespassing plaintiffs." During the *Scotia* protest, the deputies allowed the three protesters who had complied with the police as soon as the pepper spray warnings were given to remain on site — and to continue to cheer on their still-resisting cohorts. If the officers used the pepper spray to hasten the removal of the protesters from private property,

failing to remove the protesters who had released from the "black bears" belied this intent. Moreover, the repeated applications of pepper spray actually prolonged the incident for over an hour. Once the decision was made to remove the protesters physically, all were out of the building and in custody within six minutes. Ten minutes later, all were safely ground-out of the lock-down devices.

During the Bear Creek incident, the officers delayed using the pepper spray for half an hour until the sheriff's videographer arrived. In addition, one of the officers was heard to say on the videotape that they "have all day to do this." At Congressman Riggs' office, after the initial applications of pepper spray, two of the protesters voluntarily released themselves from the lock-down devices, but they were not immediately removed from the premises. Nor did the officers physically remove the remaining two female protesters still in the lock-down devices, despite their youth and diminutive size. Instead, the officers chose to reapply the pepper spray in short full bursts into their faces. The evidence suggests that full blast sprays of pepper spray actually delayed the protesters' arrests and prolonged the incident.

Thus, the evidence simply does not support the district court's conclusion that the use of pepper spray was
1137 needed to remove the protesters from the premises quickly. *1137

i. Organized Lawlessness

The district court concluded that one of the reasons the officers needed to use the pepper spray to effect the arrests of the protesters was because "the officers had a substantial interest in preventing the organized lawlessness" of a "large group of protesters." Each incident involved two to seven protesters in lock-down devices — including six young women, two of whom were sixteen and seventeen years old. During both the Scotia and Riggs protests, the protesters in the lock-down devices were demonstrating inside the Pacific Lumber Company building and Congressman Riggs's office. They were physically and visually separated from the large peaceful demonstrations that were taking place outside the two buildings. The evidence regarding the Bear Creek protest is at best conflicting as to how many protesters — other than the four in lock-down devices — were present. The officers claim that many protesters were hiding in the woods. But there is no evidence that a large, lawless group was anywhere in sight.

Most importantly, the uncontroverted evidence is that the decision to use pepper spray on the protesters during each incident was not made because of the presence of "a large group of protesters." The officer in charge during each incident testified that the decision to use pepper spray was made solely because of the difficulty in using a Makita grinder to remove the "black bears." With respect to the Scotia and Riggs protests, all the officers who testified stated that the presence of the protesters outside the buildings was not a factor in the decision to use the pepper spray on the protesters inside the buildings.

In fact, the defendants consistently testified that the pepper spray was needed during each of the protests simply because a handful of protesters had used lock-down devices, which defendants argued constituted "active" resistance to arrest. But this characterization of the protesters' conduct is belied by the Eureka Police Department's own definition of "active resistance," with which Sheriff Lewis agreed. According to that written definition, "active resistance" occurs when the "subject is attempting to interfere with the officer's actions by inflicting pain or physical injury to the officer without the use of a weapon or object." No evidence in the record suggests that the protesters here attempted to inflict pain or serious injury on the arresting officers.

Indeed, there is no evidence supporting the notion that the police needed to use pepper spray in this case to "maintain order and preserve the rights of its citizens" against a "large group" of "lawless" and "menacing" protesters. Forrester, 25

F.3d at 807 (quoting *Bray*, 506 U.S. at 287 (Kennedy, J., concurring)). The force used to effect arrests can be deemed reasonable only on the basis of the facts and circumstances confronting the police when the arrests took place. Such force cannot be justified on the basis of abstract notions of law and order. *Bray* was not an excessive force case. Justice Kennedy's cautionary words were uttered in the context of describing when deficiencies in the resources of state and local law enforcement may necessitate the involvement of federal authorities "to protect the lives and property of citizens or to enforce the criminal law." *Bray*, 506 U.S. at 287- 88 (quoting 42 U.S.C. § 10502(3)). His words should not be invoked to justify the use of force to effect arrests in factual circumstances that do not justify the use of force.

ii. Safety of Others

Under our Fourth Amendment jurisprudence, "the most important single element" in the *Graham* analysis is "whether the suspect pose[d] an immediate threat to the safety of the officers or others." *Chew*, 27 F.3d at 1441. Here, the protesters were nonviolent and unarmed. Most were young women, two of whom were minors; none¹¹³⁸ were physically menacing. ¹¹³⁸ They posed no safety threat to themselves, the officers, or the public at large.

Unlike the protesters in *Forrester*, the protesters here did not block access to and from a medical clinic, "preventing patients, as well as physicians and medical staff, from entering the clinic to render or receive medical or counseling services." 25 F.3d at 805 n. 1 (quoting *Bray*, 506 U.S. at 309). Nor did they behave threateningly toward the police. To the contrary, the protesters repeatedly pleaded with the officers not to use the pepper spray because they posed no danger to anyone. Finally, the protesters posed no danger to themselves. Cf. *Monday v. Oullette*, 118 F.3d 1099 (6th Cir. 1997) (holding that the use of pepper spray to thwart a suicide attempt of a mentally ill man who refused treatment was reasonable). Because the protesters' conduct posed no danger to themselves or others, a reasonable fact finder could conclude that using pepper spray to effect their arrests bore "no reasonable relation to the need" for force. *Koch*, 96 F.3d at 1304.

iii. Split-Second Judgment

Throughout the trial and in their papers on appeal, defendants continually alluded to the ongoing battle the Humboldt County Sheriff's Department and the Eureka Police Department were having with environmental activists prior to the protests in question. But the proper focus of the analysis under *Graham* is on events immediately confronting the officers when they decided to use pepper spray. The fact that the defendants were increasingly frustrated by the protesters — who had developed techniques such as lock-down devices to prolong nonviolent civil protests — is irrelevant under *Graham*.

Under *Graham* and its progeny, "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene " *Graham*, 490 U.S. at 396 (emphasis added). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation." *Id.* at 396-97. "[W]hen we evaluate whether the police conduct was lawful or unlawful, we must do so in light of the dangerousness of the particular situation that confronted the police," *Washington v. Lambert*, 98 F.3d 1181, 1186 (9th Cir. 1996), "without regard to [the officers'] underlying intent or motivation," *Graham*, 490 U.S. at 397.

Nothing in the record suggests that the decision to use pepper spray during each of the three protests at issue in this case was a "split-second judgment" made "in circumstances that were 'rapidly evolving.'" *Chew*, 27 F.3d at 1443 (quoting *Graham*, 490 U.S. at 397)). To the contrary, the officers testified that the only exigency here was the use of the "black bear" lock-down devices. And they further testified that the decision authorizing pepper

spray's use on any protester using such a lock-down device was made before the officers were even called to the scenes of the protests. In light of this evidence, a reasonable fact finder could conclude that the decisions to use pepper spray during each of the protests were not made in the heat of the moment.

Severity of the Crime

The evidence in this case suggests that the only crime the protesters had committed when pepper-sprayed was trespass. Cf. *Lamb v. City of Decatur*, 947 F. Supp. 1261 (C.D.Ill. 1996) (holding that it was a jury question whether the use of pepper spray on two thousand, nonviolent, unarmed labor protesters who were exercising their First Amendment rights and whose only crime was trespass and therefore "negligible" was reasonable). Although the commission of a misdemeanor offense is "not to be taken lightly," it militates against finding the 1139 force used to *1139 effect an arrest reasonable where the suspect was also nonviolent and "posed no threat to the safety of the officers or others." *Hammer v. Gross*, 932 F.3d 842, [932 F.2d 842] 846 (9th Cir. 1991) (holding that the fact that the crime committed was a misdemeanor was a factor that the jury should consider in determining whether the force used by the arresting officer against a DUI suspect to obtain a blood sample over the suspect's verbal objection was reasonable); see also *Chew*, 27 F.3d at 1442 n. 9 (suggesting that a crime's "severity" in the excessive force context turns on whether it involves violence or an armed suspect).

Indeed, the severity of the protesters' crime and their nonviolent behavior stands in stark contrast to that of the felons on whom the use of pepper spray has been deemed reasonable by other courts. For example, the protesters were not belligerent felons resisting arrest for drunk driving as in *Passino v. State*, 669 N.Y.S.2d 793 (1998) (finding the use of pepper spray to induce cooperation reasonable). Nor were they narcotics suspects on the verge of swallowing contraband as in *United States v. Hallway*, 906 F. Supp. 1437 (D.Kan. 1995) (finding severity of crime and threat of swallowing contraband sufficient to justify use of pepper spray); *Singleton v. City of Newburgh*, 1 F. Supp.2d 306 (S.D.N.Y. 1998) (same). As these cases illustrate, the use of pepper spray on a suspect is not reasonable simply because the police have the legitimate objective of making an arrest. It is only reasonable if such force is needed to make an arrest in the circumstances. Here, a rational juror could conclude that the protesters' nonviolent misdemeanor offense of trespass did not render pepper spray necessary to effect their arrests.

iv. Alternatives Available

Because the protesters posed no immediate threat to the safety of anyone during the protests, the officers — and the district court in reviewing the reasonableness of their actions — were required to consider "[w]hat other tactics if any were available" to effect their arrest. *Chew*, 27 F.3d at 1443. But, in reviewing the availability of "other tactics," the district court erred. First, the court simply concluded that the "plaintiffs failed to present any evidence that the officers had a viable alternative means for effecting arrest." To the extent that the court regarded this finding to be determinative, it was mistaken. At most, whether alternatives existed is only a factor to be considered in assessing the need for the force used by the police. See *Alexander*, 29 F.3d at 1367.

Second, plaintiffs presented a great deal of evidence as to alternatives that were available during the protests, including: (a) negotiation; (b) using the Makita grinder or other tools to remove the lock-down devices; (c) physically removing the protesters; (d) and "waiting them out." The court, however, dismissed these alternatives out of hand, resolving all conflicts in the evidence and drawing all inferences therefrom against the plaintiffs. Defendants also presented evidence that they were legitimately concerned about the potential for a grinder's operation to cause a fire or accidental injuries to protesters or to police-operators. Before the protests occurred, defendants concluded that pepper spray was the "safer" tactic for securing the protesters' release from

the "black bears." They made this decision despite the officers' extensive training in the use of a Makita grinder and the fact that no injuries had yet occurred when the grinder had been used hundreds of times to remove these lock-down devices.

Given the conflicting evidence concerning available alternatives to pepper spray, the district court should not have directed a verdict in favor of defendants. Where the evidence suggests that "other tactics" were available to the police to effect an arrest, the reasonableness of the force used was for the jury to decide. Cf. *Chew*, 27 F.3d at 1443. The standard governing a court's decision whether to grant judgment as a matter of law does not
1140 *1140 permit otherwise. See *Anderson*, 477 U.S. at 252.

IV.

In sum, the district court's conclusion that the officers did not use excessive force to effect the arrests of the protesters as a matter of law is untenable given the evidence presented at trial. Whether the officers reasonably needed to apply pepper spray — either with Q-tips to the protesters' eyelids or by short full blasts into their faces — to arrest the protesters was in dispute. It is clear to us that a "fair-minded jury could return a verdict for the plaintiff[s] on the evidence presented." *Id.* The evidence reveals that the "nature and quality of the intrusion" caused by the pepper spray on the protesters' bodily integrity under the Fourth Amendment was more than "minimal," as the district court had concluded. Indeed, the pepper spray caused the protesters "immediate and searing pain," *Forrester*, 25 F.3d at 808 n. 5, which the officers could not instantly stop inflicting once the protesters agreed to release themselves from the "black bears." Under the Fourth Amendment, using such a "pain compliance technique" to effect the arrests of nonviolent protesters can only be deemed reasonable force if the countervailing governmental interests at stake were particularly strong. Our analysis of those interests here, however, reveals just the opposite. The protesters posed no safety threat to anyone. Their crime was trespass. The "black bear" lock-down devices they used meant that they could not "evade arrest by flight." *Graham*, 490 U.S. at 396. They were not "menacing" demonstrators seeking to intimidate the police or the public: most were young women; two were minors. Although the "black bear" devices posed an impediment to arrest, they did not render arrest impossible. Alternatives were available. And the use of pepper spray did not hasten the removal of the protesters from the premises, but prolonged the incidents. In these circumstances, the need for the force used during the protests falls far short of supporting a judgment as a matter of law in favor of the defendants.

The inherently fact-specific determination whether the force used to effect an arrest was reasonable under the Fourth Amendment should only be taken from the jury in rare cases. See *Chew*, 27 F.3d at 1443; *Barlow*, 943 F.2d at 1135. This is not such a case. Viewing all the evidence in the light most favorable to the plaintiffs as the nonmoving parties, a rational juror could easily conclude that there was sufficient evidence for a verdict in favor of the plaintiffs. Indeed, the fact that the district judge, after initially declaring a mistrial and ordering a new trial, stated that "reasonable people can differ" on the issue of excessive force in this case speaks directly to the wisdom of our decision now to reverse the court's grant of judgment as a matter of law in favor of the defendants.

A. Qualified Immunity

"The doctrine of qualified immunity protects government officials performing discretionary functions . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Katz v. United States*, 194 F.3d 962, 967 (9th Cir. 1999) (quoting *Somers v. Thurman*, 109 F.3d 614, 616-17 (9th Cir. 1997) (internal quotations omitted) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982))). "Qualified immunity protects 'all but the plainly incompetent

or those who knowingly violate the law." *Sloman v. Tadlock*, 21 F.3d 1462, 1466-67 (9th Cir. 1994) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). The determination whether an official is entitled to qualified immunity involves a two-step analysis: "1) Was the law governing the official's conduct clearly established? 2)

1141 *1141 Under that law, could a reasonable officer have believed the conduct was lawful?" *Act Up!/Portland v. Bagley*, 988 F.2d 868, 871 (9th Cir. 1993).

Clearly Established Law

"[W]hether the law was clearly established . . . is a pure question of law for the court to decide." *Mendoza v. Block*, 27 F.3d 1357, 1360 (9th Cir. 1994). For a right to be "clearly established," its "contours . . . must be sufficiently clear that [at the time the allegedly unlawful action is taken] a reasonable official would understand that what he is doing violates that right." *Id.* at 1361 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)) (alteration in original). Although plaintiffs need not show that the very action challenged was previously held unlawful, they must show that "in the light of pre-existing law the unlawfulness must be apparent." *Id.* (quoting *Anderson*, 483 U.S. at 640).

Here, the district court correctly ruled that the law concerning the use of excessive force is clearly established.

It is clearly established that the use of excessive force by police officers in an arrest violates the arrestee's Fourth Amendment right to be free from an unreasonable seizure. The reasonableness of force is analyzed in light of such factors as the requirements for the officer's safety, the motivation for the arrest, and the extent of the injury inflicted.

This analysis applies to any arrest situation where force is used, whether it involves physical restraint, use of a baton, use of a gun, or use of a dog. . . . An officer is not entitled to qualified immunity on the grounds that the law is not clearly established every time a novel method is used to inflict injury.

Id. at 1362 (internal quotation marks and citations omitted). Thus, even though police use of pepper spray on nonviolent protesters engaged in civil disobedience is unprecedented, Sheriff Lewis and Chief Deputy Sheriff Philp were aware of the law governing its use. Indeed, Sheriff Lewis personally issued Humboldt County Sheriff's Department's general order, which explains the law under *Graham* and its progeny concerning the relevant factors for assessing the limits on police use of force under the Fourth Amendment.

Objective Reasonableness

In a civil rights action in which qualified immunity is asserted, the reasonableness of an officer's conduct comes into play both "as an element of the officer's defense" and "as an element of the plaintiff's case." *Katz*, 194 F.3d at 967.

To determine whether an officer is entitled to the defense of qualified immunity when the use of force is in issue, the question asked is whether a hypothetical officer reasonably could have believed that the amount of force used was reasonable. To resolve the merits of an excessive force claim, the question is whether a reasonable officer could have believed that the force used was necessary under the circumstances. Because of this parity, [this court has] repeatedly held that the inquiry as to whether officers are entitled to qualified immunity for the use of excessive force is the same as the inquiry on the merits of the excessive force claim.

Id. at 968 (resolving an apparent intracircuit conflict between excessive force cases that equated the inquiry on the merits with the qualified immunity analysis and other cases that suggested the two lines of inquiry are distinct) (internal quotation marks and citations omitted). Whether the trial judge or jury should ultimately

decide if an officer is entitled to qualified immunity in a given case "has not been definitely resolved." *Sinaloa Lake Owners Ass'n v. City of Simi Valley*, 70 F.3d 1095, 1100 (9th Cir. 1995) (citing *Sloman*, 21 F.3d at 1467- 69). But where essential historical facts concerning what an official knew or did are in dispute, "it is clear that 1142 *1142 these are questions of fact for the jury to determine." *Id.* at 1099; see also *Katz*, 194 F.3d at 969 (holding that if disputed facts prevent the court from deciding whether excessive force was used as a matter of law, then the court cannot decide whether officials are entitled to qualified immunity for the use of that force as a matter of law either).

Here, because historical facts are in dispute concerning "the amount of force used" and "the circumstances that might justify the amount of force used," *id.*, the district court erred in granting qualified immunity to Sheriff Lewis and Chief Deputy Sheriff Philp as a matter of law. The disputed facts concerning the amount of force used here include: (1) whether the pepper spray was uniformly applied to closed or open eyes; (2) whether the applications of OC with a Q-tip were necessary; (3) whether full blasts of OC sprayed onto the protesters' faces were necessary and executed at a safe distance; (4) whether the application of water by spray bottle to the protesters' eyelids and faces exacerbated the pain caused by the pepper spray or actually provided relief from the OC; and (5) the nature and extent of pain and emotional trauma caused by the Q-tip applications and the full blast spray applications.

The disputed facts concerning the circumstances justifying the use of force include: (1) the severity of the crime committed; (2) the danger, if any, posed by the protesters to the public and to the police; (3) whether use of a lock-down device constituted "active resistance" to arrest; (4) whether protesters other than those in lock- down devices posed any threat to the police or the public; (5) whether negotiation, "waiting them out," physically carrying the protesters out, and using the Makita grinder constituted viable and reasonable alternatives; and (6) whether any other exigencies were present to justify applying pepper spray with a Q-tip to the protesters' eyelids and again by full spray blasts into their faces.

In addition, Sheriff Lewis's and Chief Deputy Sheriff Philp's individual liability is not just based on the determination whether the use of pepper spray constituted excessive force under the circumstances. Their individual liability to the plaintiffs is also based on the extent to which they:

"set in motion a series of acts by others, or knowingly refused to terminate a series of acts by others, which [they] knew or reasonably should have known, would cause others to inflict the constitutional injury." A supervisor can be liable in his individual capacity "for his own culpable action or inaction in the training, supervision, or control of his subordinates; [or] for his acquiescence in the constitutional deprivation "

Watkins v. City of Oakland, 145 F.3d 1087, 1093 (9th Cir. 1998) (quoting *Larez*, 946 F.2d at 645). Thus, if what they knew and did when they authorized the use of pepper spray on nonviolent protesters is in dispute, their entitlement to qualified immunity cannot be decided as a matter of law by the court. See *Sinaloa*, 70 F.3d at 1099-1100.

Here, much of what Lewis and Philp knew and did is in dispute. For example, Philp testified that in authorizing pepper spray to be used on the protesters, he specifically "told [the officers that he] did not want them to give a full face blast, that [he] wanted them to avoid the direct application to the nose and mouth area, keep it up in the area on more a limited basis and that they were not to apply it [in] close proximity to the open eyeball." Yet, the officer in charge during each of the protests testified that Philp and Lewis authorized full spray blasts of

OC, not just Q-tip applications. The officer who applied the pepper spray to the protesters also testified that Philp never instructed him on whether the pepper spray could or should be reapplied, how often, at what intervals, or under what circumstances.

¹¹⁴³ In addition, Lewis and Philp testified that they consulted with the district attorney ^{*1143} about the legality and advisability of pepper spray's use on nonviolent protesters. But the district attorney expressly limited his opinion to the issue of criminal liability for an unspecified use of pepper spray, advised that he could not opine as to civil liability, and recommended that defendants obtain a separate opinion about civil liability before using the pepper spray.

Lewis also testified that prior to the incidents in this case, he and the County risk manager "discussed the lock devices, what we were encountering and [I] shared with her the concept of the Q-tip application of pepper spray." But the risk manager's testimony contradicts this. She testified that she could not recall a conversation with Philp, Lewis, or any other police official before the incidents at issue concerning the use of OC by Q-tips on nonviolent protesters. She did recall a conversation with Lewis, however, that occurred about a week before the Scotia protest, which was very brief and took place in the hallway outside her office. During that conversation, she spoke with Philp about a specific incident and the possibility of using OC on protesters who locked-down by using concrete, instead of using jackhammers to remove the concrete.

Moreover, when Lewis and Philp authorized their officers to use the pepper spray on the plaintiffs, although they fully reviewed the law and consulted then-current literature on law enforcement's tactical use of pepper spray, they both admitted knowing that: (1) the California Department of Justice had only approved the use of pepper spray on "hostile or violent" subjects; (2) the California Highway Patrol's use of force policy specifically prohibits the use of pepper spray as it was used here; and (3) pepper spray had never before been used in this manner in Humboldt County, the State of California, or anywhere in the nation. They also conceded that Humboldt County's only written policy statement on the proper use of pepper spray described it as a "defensive weapon," only to be used in "attempting to subdue an attacker or a violently resisting suspect, or under other circumstances which under the law permit the lawful and necessary use of force . . . by . . . chemical agent."

Defendants contend that the use of pepper spray here falls under the category of "other circumstances which under the law permit the lawful and necessary use of force . . . by . . . chemical agent." The determination whether that is correct is inextricably linked with the factual question whether the use of pepper spray in this case constituted excessive force. Therefore, under Rule 50, the district court should not have granted defendants' motion for judgment as a matter of law on qualified immunity grounds.

In sum, because historical facts were in dispute concerning the reasonableness of the use of pepper spray in this case, as well as what Lewis and Philps knew and did when they authorized its use, the district court erred in deciding that these officials were entitled to qualified immunity as a matter of law.

Accordingly, we REVERSE the district court's decisions to enter judgment as a matter of law for defendants Humboldt County and its Sheriff's Department and the City of Eureka and its police department and to dismiss Sheriff Lewis and Chief Deputy Sheriff Philp on the basis of qualified immunity. We REMAND this action for a new trial in accordance with the views herein expressed.

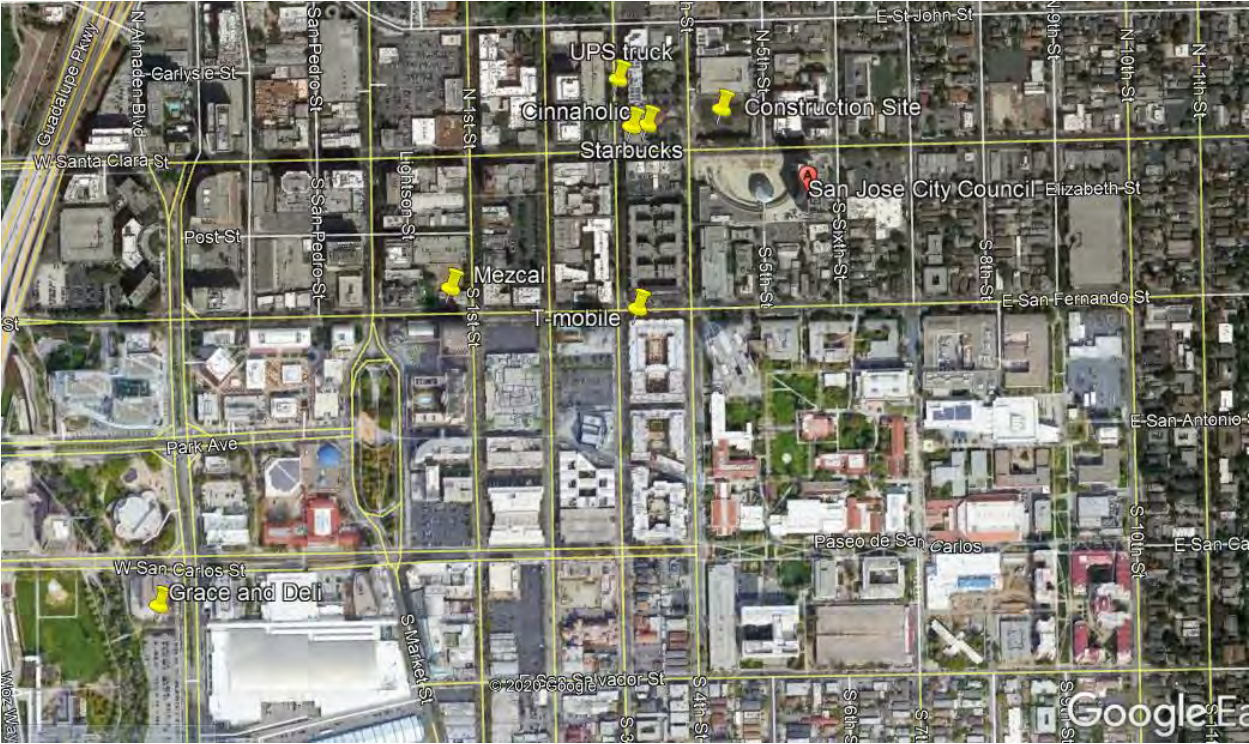
[89] BRIGHT, Circuit Judge, concurring separately:

I concur but add these comments.

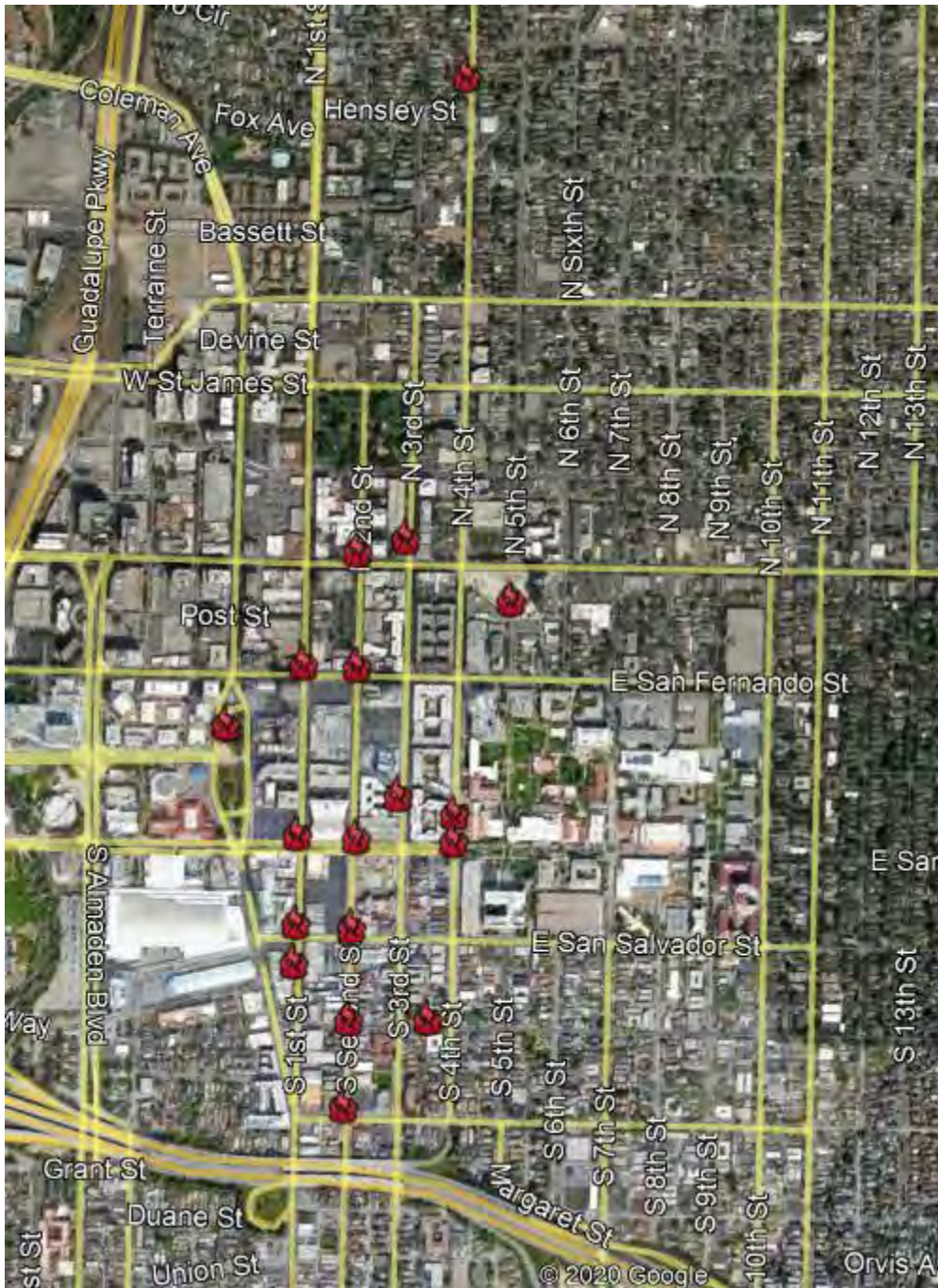
Now that this court has established that the use of pepper spray in the eyes and on the faces of nonviolent, passive protesters may amount to an unreasonable use of force in violation of the Fourth Amendment of the ¹¹⁴⁴ United States Constitution, ^{*1144} the most important issue in the case has been resolved.

This is a close case. I would urge the parties to compromise the respective positions of each and settle this case rather than hazard a second trial that may well result in another tie. If retried, this judge entertains great doubt that a second jury will be any more successful than the hung jury in the first case. The protesters suffered no permanent injury. Whether the protesters, as a matter of fact, can recover damages against defendants is highly uncertain.

29.20. Maps of Looting in Downtown Corridor



29.21. Map of Arson Events City Wide



Each of the  symbols indicates an incident of Arson. Some locations may have recorded multiple arson events over the course of the civil unrest.

29.22. Curfew Order

DECLARATION OF THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF SAN JOSE IMPOSING A CURFEW WITH LIMITED EXCEPTIONS AND SUPERSEDING THE MAY 31, 2020 DECLARATION IMPOSING A CURFEW

WHEREAS, on May 31, 2020, I proclaimed a local state of emergency within the City of San José resulting from the civil unrest following the death of George Floyd in Minneapolis, Minnesota; and

WHEREAS, on May 31, 2020, I ordered the imposition of a city-wide curfew starting at 8:30 p.m. and ending at 5:00 a.m. on the following day, and during which no person shall be upon the public street, avenue, alley, park, or other public place or unimproved public realty within the limits of the City of San José; and

WHEREAS, pursuant to California Government Code Section 8634 and San José Municipal Code Section 8.08.250, I am empowered upon the proclamation of a local emergency to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; and

WHEREAS, under conditions of the emergency, it is deemed necessary in the interest of public safety to restrict the use of certain public areas of the City of San José and allow for limited exceptions; and

WHEREAS, life and property are deemed to be in peril and speed is of the essence;

NOW, THEREFORE, BE IT RESOLVED, I, David Sykes, as Director of Emergency Services, declare that commencing on June 1, 2020, a curfew be in effect starting at 8:30 p.m. and ending at 5:00 a.m. on the following day, and during which no person shall be upon the public street, avenue, alley, park, or other public place or unimproved public realty within the limits of the City of San José.

This Order shall not apply to the following:

- a. Police officers, peace officers, firefighters, or other emergency personnel or civilians engaged in police, emergency, or government work,
- b. Any persons experiencing homelessness;
- c. Individuals who are travelling to and from the airport;
- d. Individuals providing necessary care for a family member or pet in another household who has no other source of care.
- e. Individuals who are providing any services or performing any work necessary to the operation and maintenance of “Essential Infrastructure,” including airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, recycling, and processing facilities), and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).

- f. Individuals who are travelling to and from Essential Businesses to provide Minimum Basic Operations.
 - I. For the purposes of this Order, “Minimum Basic Operations” means the following activities for businesses:
 - 1. The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions.
 - 2. The minimum necessary activities to facilitate owners, personnel, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.
 - II. The following are “Essential Businesses” and include any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure:
 - 1. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure;
 - 2. Food cultivation;
 - 3. Businesses that provide shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
 - 4. Newspapers, television, radio, and other media services;
 - 5. Home-based care for seniors, adults, children, and pets;
 - 6. Residential facilities and shelters for seniors, adults, and children;
 - 7. Production facilities that manufacture medical devices or defense-related devices.

Nothing herein is intended to or shall be interpreted to allow any activity that is not allowed under the Santa Clara County Public Health Orders, as may be amended from time to time.

This Order shall supersede the May 31, 2020 Declaration by the Director of Emergency Services Imposing a Curfew.

Any violation of this Order shall be subject to enforcement and penalty as provided under San José Municipal Code Section 8.08.260.

BE IT FURTHER RESOLVED that this regulation shall remain in effect until such time as it is terminated by either the Director of Emergency Services, the City Council, or the termination of the local state of emergency resulting from the civil unrest following the death of George Floyd.

6/2/20
Date


David Sykes
Director of Emergency Services

29.23. SJPD Call for Service Time Averages

COMPARISON OF RESPONSE TIME AVERAGES - INITIAL PRIORITIES 1 & 2
 TIME PERIOD: 5/15/2020 - 5/24/2020 vs 5/29/2020 - 6/7/2020
 1500HRS - 0100HRS

INITIAL PRIORITY	DISTRICT	#CALLS		AVG OVERALL	% CHANGE	AVG FB EVENT CREATION		% CHANGE	AVG QUEUING TIME		% CHANGE	AVG DRIVE TIME		% CHANGE	AVG ONSCENE		% CHANGE
		5/15-5/24	5/29-6/7			5/15-5/24	5/29-6/7		5/15-5/24	5/29-6/7		5/15-5/24	5/29-6/7		5/15-5/24	5/29-6/7	
		8	4	6.42	-41.0%	1.39	1.25	-10.1%	0.76	0.31	-59.3%	4.27	2.24	-47.3%	63.93	3.69	-94.3%
1	A	8	4	6.42	-41.0%	1.39	1.25	-10.1%	0.76	0.31	-59.3%	4.27	2.24	-47.3%	63.93	3.69	-94.3%
1	C	14	5	5.66	-53.7%	1.72	0.77	-55.2%	0.70	0.29	-58.6%	3.24	4.27	31.8%	73.77	50.24	-31.8%
1	D	1	0	1.89	-100.0%	1.17	-	-100.0%	0.55	-	-100.0%	0.17	-	-100.0%	34.52	-	-100.0%
1	E	9	16	5.00	60.0%	1.55	1.25	-18.7%	0.38	30.49	7023.7%	3.05	3.74	21.4%	61.05	66.55	9.0%
1	F	11	7	6.55	-34.5%	0.87	1.80	100.0%	0.52	2.16	315.4%	5.56	5.42	-2.5%	111.97	115.97	3.6%
1	K	5	9	6.28	23.0%	1.50	1.48	-1.3%	0.53	0.53	1.0%	4.26	5.68	33.0%	70.35	64.55	-8.3%
1	L	15	15	5.49	0.0%	1.49	0.80	-46.3%	0.54	0.47	-13.0%	3.46	4.70	35.8%	67.85	75.10	10.7%
1	M	9	9	4.32	0.0%	1.41	1.89	34.0%	0.30	0.35	16.7%	2.62	4.73	80.5%	173.07	101.52	-41.3%
1	N	5	3	6.04	-41.2%	1.56	1.17	-25.0%	0.37	0.46	24.3%	4.12	2.49	-39.6%	107.48	107.31	-0.2%
1	P	7	6	3.82	-5.3%	1.17	1.40	19.7%	0.66	0.42	-36.4%	2.00	3.41	70.5%	71.28	120.20	68.6%
1	R	4	8	6.30	32.7%	1.00	1.14	14.0%	0.40	0.46	15.0%	4.91	6.76	37.2%	154.32	51.81	-66.8%
1	S	7	10	5.73	9.7%	1.24	0.66	-45.2%	0.50	0.57	14.0%	3.59	6.12	70.5%	107.54	127.32	18.4%
1	T	7	11	4.40	60.7%	1.13	1.12	-0.8%	0.40	0.45	12.5%	2.56	5.55	116.8%	36.87	99.89	170.9%
1	V	5	4	4.88	-20.0%	1.13	1.37	21.2%	0.47	0.45	-4.3%	3.38	5.76	70.4%	66.77	44.13	-33.4%
1	W	5	3	3.50	-20.0%	1.58	0.93	-41.8%	0.54	0.69	27.8%	3.37	4.98	47.8%	34.10	133.43	284.8%
1	X	16	11	4.67	-23.0%	1.09	0.80	-26.6%	0.35	0.40	14.3%	3.22	4.57	41.9%	76.33	83.59	9.5%
1	Y	7	6	7.37	-17.3%	0.90	0.81	-10.0%	0.36	0.32	-11.1%	6.11	3.50	-42.7%	151.49	57.76	-61.8%
PRI 1 OVERALL		135	127	5.47	-12.2%	1.37	1.15	-16.1%	0.40	0.34	-15.0%	3.07	4.05	31.9%	102.03	64.00	-37.1%
2	A	57	54	23.38	-1.3%	1.58	1.57	-0.6%	9.54	29.95	313.2%	12.25	7.32	-40.3%	73.51	78.62	6.9%
2	C	87	85	19.89	-2.5%	1.45	1.42	-2.1%	6.73	11.85	76.5%	11.71	12.61	7.7%	45.41	46.88	3.2%
2	D	4	10	8.67	113.2%	0.85	1.31	48.8%	3.82	3.95	4.5%	4.27	6.02	41.0%	50.22	61.44	22.3%
2	E	79	72	11.75	-6.1%	1.40	1.63	16.4%	3.39	33.63	523.0%	4.56	6.15	34.0%	48.59	48.59	0.0%
2	F	86	66	14.95	-23.9%	1.26	1.30	3.2%	6.04	13.63	125.0%	7.66	11.06	44.0%	52.76	30.18	-42.8%
2	K	97	78	17.47	-21.7%	1.33	1.60	20.3%	9.85	23.42	139.0%	6.29	10.95	74.1%	53.44	70.65	32.2%
2	L	110	121	21.36	32.5%	1.48	1.56	5.4%	12.54	23.42	86.8%	7.35	7.51	2.2%	37.57	34.80	-7.4%
2	M	80	66	14.87	-9.2%	2.09	1.29	-38.3%	6.21	18.36	195.5%	6.58	7.44	13.1%	39.68	51.18	29.0%
2	N	74	52	19.02	-30.4%	1.65	1.42	-13.9%	7.82	25.21	222.4%	9.55	11.30	18.3%	49.04	51.75	5.5%
2	P	74	50	16.32	-24.5%	1.39	1.44	3.6%	6.17	35.62	477.5%	8.75	8.27	-5.6%	47.04	54.61	16.1%
2	R	56	56	16.55	0.0%	1.60	1.62	1.3%	5.71	48.45	746.5%	9.24	9.01	-2.5%	49.44	47.67	-3.6%
2	S	94	85	28.04	-9.8%	1.24	1.42	14.5%	17.42	51.46	195.4%	7.35	8.33	13.3%	51.54	45.35	-12.0%
2	T	84	45	15.91	-38.6%	1.29	1.25	-3.1%	5.70	20.79	104.1%	8.92	14.84	64.7%	40.10	41.54	3.6%
2	V	75	76	21.24	4.7%	1.84	1.40	-23.9%	12.47	64.51	417.5%	6.59	9.49	44.0%	50.15	65.13	31.7%
2	W	55	59	22.20	18.2%	1.49	1.49	0.0%	14.20	25.37	78.7%	6.51	10.07	54.0%	55.49	41.62	-25.0%
2	X	97	57	23.74	-40.7%	1.55	1.52	-1.9%	10.61	28.91	181.0%	11.58	6.73	-41.8%	39.47	71.07	80.1%
2	Y	73	86	32.14	38.5%	1.36	1.24	-8.8%	22.74	28.32	24.5%	8.04	8.95	11.3%	46.22	47.43	2.6%
PRI 2 OVERALL		1294	1138	19.75	-12.3%	1.40	1.45	3.6%	9.94	30.04	202.2%	8.37	9.20	10.7%	48.25	52.70	9.2%
PRI 1 & 2 TOTAL		1429	1255														

NOTE:
 District information is derived from initial dispatched peak.
 The sum of the overall data used to calculate the Avg Overall was derived from FB Event Creation, Queuing
 Time, and Drive Time data (to exclude Onscene time).
 Data excludes ADV, CAV, DUP, & DUPLICATION dispositions.
 When dealing with small numbers, minor changes result in large percentage changes which can be
 misleading.

Report by District
 SOURCE: CAD

SAN JOSE POLICE DEPARTMENT - CRIME ANALYSIS UNIT

CAU #20-810
 7/27/2020 13:30

29.24. Table of Videos

Section	Video:
4.1	<u>https://youtu.be/IWVWkxiqt1I</u>
4.2	<u>https://youtu.be/HBZTNhAHMqc</u>
4.5	<u>https://youtu.be/gwOF7hDTbhA</u>
4.7	<u>https://youtu.be/Jn1b7UMunnY</u>
4.8	<u>https://youtu.be/1w9uYsxSAaI</u>
4.9	<u>https://youtu.be/Y0f1iwFb3oc</u>
4.9	<u>https://youtu.be/R5FYn0Veo6s</u>
6.1	<u>https://youtu.be/ACdQYtoveLo</u>
8.1	<u>https://youtu.be/bFQDpV00i5Q</u>
14.1	<u>https://youtu.be/SolVM0rAJdg</u>
16	<u>https://youtu.be/9Wcrh1x2pP4</u>
16.14	<u>https://youtu.be/OUaqiYv0xY8</u>
17.5	<u>https://youtu.be/IDefF6kpvZ8</u>
17.5	<u>https://youtu.be/QGcAUP17RU</u>
21	<u>https://youtu.be/UNZg_zCfB7g</u>
21	<u>https://youtu.be/Y1zqp3xeI7I</u>
22	<u>https://youtu.be/7NXKe9dvOa0</u>
22	<u>https://youtu.be/VQTPoFDLTLw</u>

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