

COUNCIL AGENDA: 12-08-09
ITEM: 3.7

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Lee Price, MMC
City Clerk 

SUBJECT: SEE BELOW

DATE: 11-24-09

SUBJECT: REVIEW OF INITIATIVES UNDERWAY DEALING WITH THE USE OF FORCE BY THE SAN JOSÉ POLICE DEPARTMENT.

RECOMMENDATION

As recommended by the Public Safety, Finance and Strategic Support Committee on November 19, 2009 and outlined in the attached memos previously submitted to the Public Safety, Finance and Strategic Support Committee:

- (a) Accept the report outlining current efforts underway to review the San José Police Department's use of force;
- (b) Accept the Mayor's recommendation that the City Manager convene a working group including the Independent Police Auditor and the City Auditor to review the San José Police Department's use of force in 2009 and report back to the City Council through the Public Safety, Finance and Strategic Support Committee within 90 days; and
- (c) Direct the City Manager to meet with the San José Police Officers Association regarding the formation of the working group. Refer for City Council consideration the inclusion of a member of the public on the working group in view of confidentiality issues.

ATTACHMENTS

Memorandum from Chief of Police Robert L Davis to the Public Safety, Finance and Strategic Support Committee dated November 19, 2009

Memorandum from Mayor Reed to the Public Safety, Finance and Strategic Support Committee dated November 16, 2009



Memorandum

TO: PUBLIC SAFETY,
FINANCE & STRATEGIC SUPPORT
COMMITTEE

FROM: ROBERT L. DAVIS
Chief of Police

SUBJECT: USE-OF-FORCE

DATE: November 19, 2009

Approved

Deana Sauter

Date

11/17/09

RECOMMENDATION

Accept this report that outlines current efforts underway to review the San Jose Police Department's (Department) use-of-force.

BACKGROUND

On November 9, the Rules & Open Government approved a request from Mayor Reed and Councilmember Nguyen, dated November 2, 2009, to have the Department review all initiatives underway dealing with the use-of-force by officers at the November 19 Public Safety, Finance and Strategic Support Committee (PSFSSC). The memorandum also requested additional Department recommendations with respect to Early Warning Systems, review of force records, training for supervisors, and related time lines and performance measures.

ANALYSIS

This informational memorandum provides the PSFSSC with an overview of all Department initiatives involving use-of-force issues. The Department is committed to consistently improving its capabilities in addressing concerns related to use-of-force issues, both for officers and community members, so as to ensure the highest possible levels of officer safety, performance and accountability to the community served. Listed below are the programs and processes currently being examined or used by the Department.

- **Supervisory Review of Arrests:** The Department has refreshed business practices, training and policies that center on enhanced report writing and uniform supervisory review and sign-off, so that improvements can be applied to all in-custody arrests. In particular, on November 7, 2008, the SJPD implemented a requirement for supervisory review and approval for all in-custody arrests through a change in Department policy. As a result, SJPD now requires ongoing review of report documentation on all in-custody

arrests. This is important because it increases the interaction of supervisors with line-level officers involved in use-of-force events, so as to improve the quality of information captured on reports, ensure the completeness of investigations, and make certain that data is fully and properly documented. It also ensures that reports related to police responses involving use-of-force events are submitted on a timely basis.

- **Arrest Reports Spot Audits:** To sustain quality improvements over time, the Department's Bureau of Field Operations (BFO) coordinates random spot checks on the quality of documentation in arrest reports, to include accurate narrative information, timeliness of report turn-in, comprehensiveness of offense elements, and proper supervisor review and sign-off. This process, based on a sampling of reports, can discover report-writing and investigative issues related to use-of-force events and reports and inform changes to practices and training.
- **Early Intervention System:** The Department is in the process of implementing a Department work-plan that will strengthen the Early Intervention System (EIS). The current EIS seeks to identify officers and supervisors who may be experiencing difficulties on the job and to provide those officers with the appropriate counseling and/or training. The EIS can connect data from several different sources such as performance reviews, citizen complaints and police activity tracking from the Computer Aided Dispatch (CAD) systems/ Records Management System (RMS) to improve organizational awareness of potential leading indicators about an officer's performance. Once a review is initiated based on a pre-defined data threshold, it is also likely that the EIS will provide an opportunity for constructive dialogue and positive reinforcement based on appropriate officer actions. The EIS remains responsive to the needs of the individual officer while also helping to improve overall organizational health, performance and accountability. The preliminary EIS work plan was included in a staff report to the PSFSS Committee in October and is attached for additional reference (Attachment A).
- **CPLE Statistical Review:** The Department has been working with the Consortium for Police Leadership in Equity (CPL) to help better understand the way we gather police data. The CPL has begun reviewing the Department's long-term data across many categories of arrest statistics and will perform analyses, including comparisons among comparable cities throughout the nation. As it pertains to force issues, the CPL will provide recommendations on future use-of-force related reports, both in terms of content and format. Until then, the Department will continue to capture and collect force-response reports for all reportable use-of-force events.
- **Two-Tier Department Use-of-force Review:** As a starting point toward ensuring police officers are in compliance with Department use-of-force policies and procedures and Constitutional law requirements, and that policies and procedures are appropriate, the following preliminary initiatives have been initiated:

1. **Policy & Training Review:** The Department created an internal advisory group comprised of command officers, supervisors and training personnel to review use-of-force training curriculum being taught in the Police Academy and in Officer Update Courses to ensure it complies with state standards and SJPD policies and procedures.
2. **Incident Review:** The Department is in the process of creating a panel to review use-of-force cases on a regular basis to ensure compliance with policies and procedures and identify training issues.

The purpose of the review process is to provide the SJPD an opportunity to identify emerging use-of-force patterns and trends that will enable the Department to make near-real-time changes to training and corrections or additions to Department policies, practices and procedures.

Members have been reviewing best practice processes that are already being utilized at other major police departments. The force review process involves three inter-related components: investigation, oversight and review. An internal panel consisting of multi-bureau personnel representing different disciplines throughout the Department (e.g., Patrol, Training, Investigations, IA, POA, and R&D) was selected to help establish and inform the investigative and review process. The criteria for the review process will be based on an "objectively reasonable" standard as reflected in law and current policy.

Objectively Reasonable¹: The legal standard used to determine the lawfulness of a use-of-force is the Fourth Amendment to the United States Constitution. It is stated in *Graham versus Connor*, 490 U.S. 386 (1989), "The reasonableness of a particular use-of-force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. 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. The test of reasonableness is not capable of precise definition or mechanical application." The force must be reasonable under the circumstances known to the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard, rather than a subjective standard.

Factors Used to Determine Reasonableness: The Department examines reasonableness using *Graham* and from the articulated facts from the perspective of a San Jose Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case.

¹ Los Angeles Police Department. Use-of-force-Tactics Directive, Use-of-force Policy-Revised, Directive No.1, July 2009, pp.1-2.

Those factors may include, but are not limited to:

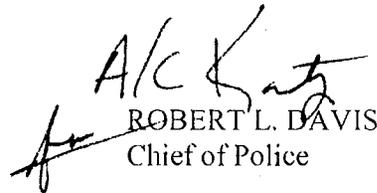
- The seriousness of the crime or suspected offense;
 - The level of threat or resistance presented by the subject;
 - Whether the subject was posing an imminent threat to officers or a danger to the community;
 - The potential for injury to citizens, officers or subjects;
 - The risk or apparent attempt by the subject to escape;
 - The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
 - The time available to an officer to make a decision;
 - The availability of other resources;
 - The training and experience of the officer;
 - The proximity or access of weapons to the subject;
 - Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,
 - The environmental factors and/or other exigent circumstances.
- **ICMA Nationwide Use-of-force Policy Best Practice Research:** The City recently consulted with the International City/County Managers Association (ICMA) to review public safety practices and service delivery models. As part of this work, the ICMA will complete a review of nationwide best practices with respect to use-of-force. This information will serve as additional background toward informing current efforts underway and additional efforts that could be implemented. The consultant report is pending.
 - **AXON Camera System:** The Department is in process of entering a pilot program with TASER International. This pilot will involve the use of the AXON, an on-officer camera system. The AXON will provide the Department with video of citizen contacts, including use-of-force incidents, from the officer's point of view. The San Jose Police Department will be the first major city in the country to deploy the AXON.
 - **Police Officer Training:** Officers receive training on a routine basis through the Department's Continuous Professional Training program (CPT). As part of the training, all sworn members throughout all ranks will receive updated training and information pertaining to ongoing use-of-force issues, as well as updates to policies, practices, and procedures. A focus of the training will be to ensure that all members understand issues pertaining to use-of-force in a standardized manner, with an overall goal to improve the quality of report writing, police practices and refreshed training based on timely analysis of use-of-force trends and patterns.

CONCLUSION

The Department takes seriously each and every concern regarding use-of-force events and strives to improve the organizational capacity for professional and effective training, policies and practices, as well as enhancing the community's awareness of use-of-force tactics, policies and procedures. The Department, working in concert with City Administration and community-based stakeholders, remains committed to continuous improvement on use-of-force related issues and police officer safety.

As the SJPD moves forward with efforts to improve operational oversight dealing with use-of-force issues, as well as to address community concerns regarding use-of-force issues, the Department is planning to implement best practices that combine an appropriate balance of tested police practices with transparency. These efforts will include identifying opportunities for training improvements, a near-real-time review of policy/procedures, enhancing the Department's organizational health through the forthcoming Early Intervention System (EIS), and increasing the dialogue on use-of-force issues with community stakeholders.

With the above stated, it is important to acknowledge the volume of police services administered over a one year period for the purpose of beginning this public discussion and addressing these concerns. The San Jose Police Department handles more than 400,000 calls-for-service, completes more than 100,000 police reports and makes more than 35,000 arrests. In approximately 97% of the 35,000 arrests, there is no use of reportable force. In approximately 3% of all arrests, the officer employs force in order to safely make an arrest. While these numbers are relatively low, the Police Department is mindful that these numbers represent an incident where an individual experienced some level of force and, based on the last Force Response report compiled by the SJPD in 2007, approximately three-quarters of the cases involved the lowest possible level of force response by officers (e.g., compliance holds, body force, etc.). In no way are these numbers intended to discount the community concerns regarding the use of force. By way of comparison, the Police Department shares the concern that in 2008, the Department's Internal Affairs (IA) Unit received 117 citizen complaints (.33% or 1/3 of 1% of total arrests) regarding alleged excessive use-of-force. As previously stated, the Department is committed to consistently improving its capabilities in addressing concerns related to use-of-force issues, both for officers and community members, so as to ensure the highest possible levels of officer safety, performance and accountability to the community served.


ROBERT L. DAVIS
Chief of Police

Memorandum

TO: Public Safety Committee

FROM: Mayor Chuck Reed

SUBJECT: Police Use of Force

DATE: November 16, 2009

APPROVED:

Chuck Reed

DATE:

11/16/09

RECOMMENDATION

Direct the City Manager to convene a working group that includes the Independent Police Auditor and the City Auditor to do the following and report back to the City Council through the Public Safety Committee within 90 days:

1. Review police use of force reports for the year 2009 in all instances when the only charge was resisting arrest or interfering with a police officer (Penal Code Section 148).
2. Based on that review, attempt to answer the following questions:
 - a) Are a small number of officers involved in a high percentage of use of force in those incidents?
 - b) Are there officers who appear to repeatedly engage in use of force when involved in these arrests?
 - c) Should there be any changes to the SJPD duty manual or other policies on the use of force?
 - d) Should the working group review additional use of force reports?
 - e) Should the working group review other SJPD records?
3. In addition answer the following questions:
 - a) Were any officers disciplined for use of excessive force in 2009?
 - b) Were any other actions taken for use of excessive force in 2009?
 - c) Does the SJPD use the reports to inform an early warning system?
4. Make recommendations as the working group deems appropriate.
5. Make a verbal status report to the Public Safety Committee within 45 days.

Public Safety Committee
Subject: Police Use of Force
November 16, 2009
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BACKGROUND

The SJPD Duty Manual limits the situations in which officers may use force:

Duty Manual Policy L 2600 - The San Jose Police Department recognizes and understands the complexity of those situations necessitating the use of force. Department members 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 public safety. Attempts will be made to achieve control through advice, warnings, and persuasion. However, in situations where resistance, a threat to life, or a threat to 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 will be conducted. All use of force will be appropriately investigated, documented and reviewed by supervisory/command staff.

We expect that every officer in the SJPD to have skills to be able to defuse difficult situations, the judgment to avoid escalating routine encounters into use of force, and the discipline to use only the reasonable force necessary when making an arrest.

The CPLE may be looking at some of the same questions and documents, but their work may take a long time. The work of the working group will allow the City Manager, the Police Chief, the Council and the community to understand the current situation and take action as may be appropriate sooner.

Since the City Manager has the authority to review police records and to invite the IPA and the City Auditor to participate with her in a confidential review of records, there is no need to expend a lot of time and resources redacting records before the work can begin.