COUNCIL AGENDA: 05-04-10
ITEM: 8.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Lee Price, MMC
City Clerk

SUBJECT: **SEE BELOW**

DATE: 04-20-10

SUBJECT: STATUS REPORT ON THE IMPLEMENTATION OF PUBLIC INTOXICATION TASK FORCE RECOMMENDATIONS.

RECOMMENDATION

As recommended by the Public Safety, Finance and Strategic Support Committee on April 15, 2010 and outlined in the attached memo previously submitted to the Public Safety, Finance and Strategic Support Committee, accept the status report on the implementation of the Public Intoxication Task Force recommendations.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: PUBLIC SAFETY, FINANCE AND STRATEGIC SUPPORT COMMITTEE

FROM: Robert L. Davis

SUBJECT: SEE BELOW

DATE: April 5, 2010

Approved

Date 4-6-10

SUBJECT: STATUS REPORT ON THE IMPLEMENTATION OF PUBLIC INTOXICATION PILOT PROJECT

RECOMMENDATION

Accept this six month status report on the implementation of the City's Public Intoxication Pilot Project.

BACKGROUND

This report provides the Public Safety, Finance and Strategic Support Committee (PSFSSC) with an initial six-month update for the Penal Code §647(f) [§647(f)] pilot project developed to address public intoxication enforcement in San Jose. Information in this update represents study results from July 1, 2009 through December 31, 2009. Information and data were provided by the San Jose Police Department (Department), Santa Clara County District Attorney's Office (DA), Adult Probation Department, Santa Clara County Department of Corrections (DOC), and the Public Defender's Office.

ANALYSIS

Analysis of the relevant data compiled by the Department and the DA is provided below. The statistics represent "stand-alone" §647(f) violations and prosecutions. In order to qualify for deferred prosecution under this pilot project, individuals must have met the threshold of six arrests for §647(f) within a rolling twelve-month period.

Court Liaison Unit (CLU) Data Tracking

There have been approximately 851 Department "stand-alone" arrests for violations of § 647(f) for the period from July 1, 2009 to December 31, 2009. The 851 stand-alone arrests were not derived from the Department's Records Management System (RMS); rather, the cases were compiled by CLU staff based on their manual tracking of arrest reports in support of this pilot project.

- Since some persons were arrested more than once for violations of § 647(f) within that time period – the actual number of persons arrested is 686;
- Of the 686 individuals arrested for "stand alone" §647(f), the number of offenses per arrestee is as follows:

# of offenses	1	2	3	4	5	6	7	8
# of arrestees	595	59	10	12	3	5	1	1

- Seven (7) arrestees have qualified for deferred prosecution under the pilot project;
  - In one (1) of those cases, the defendant was also convicted of a felony crime occurring approximately four days after the most recent violation of § 647(f);
  - In one (1) of those cases the defendant was also convicted of misdemeanor sex crimes occurring approximately two weeks after the most recent violation of § 647(f);
- All seven cases have resolved by way of convictions:
  - Jail sentences were as follows: 5 days, 90 days, 180 days (two individuals), 270 days, 6 months (two individuals). It should be noted that, for a variety of reasons, actual time served often differs drastically from the initial sentence imposed. For example, one of the individuals sentenced to 180 days actually served 47 days.
- The race, ethnicity and gender of defendants prosecuted under the pilot project are as follows:
  - 1 White Female
  - 1 White Male;
  - 3 Hispanic Males;
  - 1 Black Male, and;
  - 1 Middle Eastern Male.

- Each of the seven individuals provided one Preliminary Alcohol Screening (PAS) sample. The average Blood Alcohol Content (BAC) result was 0.213%.

Bureau of Field Operations Administrative Unit (BFO Admin) Data Tracking

As part of the Department's overall goal of improving accuracy and quality of all §647(f)-related reports, BFO Admin staff manually reviews each report and tracks key data points including:

Incident number, police district of occurrence, PAS information, suspect race, and San Jose residency status.

Based on data tracked by the BFO Admin Unit for the period from July 1, 2009 to December 31, 2009, the total number of individuals arrested for §647(f), including other charges, is 1,091. This number reflects the 851 stand-alone § 647(f) arrests, as tracked by CLU (referenced above), as well as an additional 240 multiple charge arrests. The 1,091 §647(f) arrests for the six month period in 2009 represents a 54% decrease as compared with the same period in 2008, when there were 2382 arrests. Key points for the 2009 data set are provided below:

- An average of 42 individuals per week were arrested in San Jose for §647(f);
- The pilot protocol requires that an individual be offered a PAS device test when circumstances allow. The PAS device was offered for approximately 91.5% of the cases. This means that approximately 8.5% of the individuals were not offered a PAS test due to their intoxication level or other circumstances (i.e., the persons' level of consciousness was such that a PAS test was not practical or could not be completed, conditions at the scene were hazardous, or the person was combative);
- When a PAS device was offered, individuals refused the test in 81% of the cases;
- Of those individuals who completed the PAS test, the average BAC level was 0.203% (for reference, the legal limit for driving under the influence is 0.08% BAC.);
- Approximately 4.75% of all §647(f) arrests occurred in District Edward (commonly referred to as the Entertainment Zone), and;
- Approximately 12.4% of all persons arrested for §647(f) in San Jose reported that they were not San Jose residents at the time of booking.

The following information reflects the race and ethnicity of the 1,091 arrestees:

- 10% Black
- 4% Asian
- 52% Hispanic
- 30% White
- 4% Other

AGENCY EFFECTS

San Jose Police Department

The Department has observed a decrease in arrests for violations of § 647(f) during the first half of the pilot period as compared with the same time period one year ago. This decrease is believed to be a function of several factors including the implementation of the new Public Intoxication Pilot project, as well as increased training, revised report-writing standards and enhanced awareness of the conservation of available patrol officer resources. Specifically, officers are now urged to consider alternatives to arrest and incarceration (i.e., assisting in the facilitation of contacting relatives and/or friends of suspects as persons who can assist in

transporting the suspects safely home) in appropriate cases. A Department Memorandum detailing these new procedures has been issued and is currently in practice department wide. On an ongoing basis, the CLU is also providing information to BFO's patrol division that serves to refresh business practices pertaining to accurate and timely report-writing specific to drunk-in-public arrests. The Department also went forward with officer training and implementation of a tailored report to better capture drunk-in-public-related data. The Department's newly implemented §647(f) form has been adopted for use in all "stand alone" §647(f) arrests. The new form helps to ensure the highest possible levels of quality and completeness on §647(f) arrests. As an additional layer of quality control, supervisor review has been mandated for all §647(f) reports since November, 2008.

The Department has also proactively sought to leverage additional resources in support of the §647(f) pilot project that were not contemplated at the project outset. In particular, the Homeless Liaison Detail has been providing ongoing support to individuals who qualify for deferred prosecution through the pilot project and coordinates so that the appropriate medical and social services are aligned in a responsive manner with the circumstances of each qualifying individual.

The CLU has designated one full-time sworn officer to manage the tracking of all stand-alone §647(f) arrests, populate the Department's internal database to provide accurate pilot project data and to ensure that appropriate forms are mailed to the Court and the individuals. In particular, CLU staff mails a *Notice of No Complaint* to the Superior Court to vacate the scheduled data for the §647(f) arrest. In addition, CLU mails a *Certificate of Detention* to individuals so that they are advised that the arrest was down-converted by the Department to a "detention-only". Thus far, the reduced number of §647(f) arrests and the relatively small number of persons qualifying for prosecution under the pilot project has resulted in a manageable workload for CLU staff; this allows for efficient and timely communication with other agencies, units and individuals (i.e., Superior Court, Records Division, individual, etc.).

OTHER CRIMINAL JUSTICE AGENCY STAKEHOLDERS

Department of Correction

The DOC resources continue to be consumed in direct proportion to the number of arrestees booked, not as a function of the number of cases prosecuted. As a result, DOC has not noticed a substantial impact on its operation as a result of the pilot project implementation.

Based on input from DOC, it should be noted that enhanced DOC staff attention continues to be required with respect to this population of arrestees as a result of their impairment and inability to care for themselves. The physical and mental condition of these arrestees tend to be such that they require greater DOC staff supervision, direction and support than other inmates.

Office of the District Attorney

The DA resources devoted to prosecution of these case have been reduced as reflected in the relatively small number of persons prosecuted under the pilot project in comparison to the total number of persons arrested for violations of § 647(f) during the first half of the pilot period.

If one assumes that, absent the pilot project procedures, almost all of the 851 arrests would have resulted in criminal charges, then the pilot project has resulted in a significant §647(f) caseload reduction for both the Superior Court (referenced below) and the Office of the DA.

Efforts are being made to assign those cases which do qualify for prosecution to a Deputy DA at an early stage in the process. In this way, the assigned lawyer can review and summarize the criminal history of the defendant and, within the restrictions of other casework, appear at all court appearances, including arraignment, to advocate for enhanced sentences and specific probation conditions. Given the relatively small number of persons qualifying for the pilot project to date, these efforts are manageable with available resources.

According to the Santa Clara County DA's Office, countywide implementation of this project could result in an increased number of defendants who will qualify for special prosecution with the required DA involvement described above. This, in turn, will result in more court appearances requiring prosecution attendance. This could result in a need for correspondingly increased DA staffing and related resources to maintain appropriate operations.

Adult Probation Department

The Adult Probation Department has not noticed a substantial impact on its operation as a result of the pilot project implementation. They believe this is due to the fact that persons found guilty of violating § 647(f), even repeatedly, do not typically receive formal probation grants. Such persons are usually placed on court (informal) probation. Thus, even a significant reduction in the number of persons prosecuted and found guilty of § 647(f) will not substantially affect the workload of the Adult Probation Department.

Superior Court

The Superior Court has noticed an increase in the number of cases appearing on the "no complaint calendar" (i.e., cases for which the court does not receive a charging document by time of arraignment and which are automatically continued to a later date). The Court Clerk's Office is receiving the *Notice of No Complaint* forms from Department which should allow for these cases to be deleted from arraignment calendars with no further scheduled court actions, but staffing levels and workload demands have often precluded these notices being matched with the appropriate case before the scheduled arraignment date. Making the same assumptions set forth in the above section dealing with effects on the Office of the District Attorney, the Superior Court experienced a reduction of approximately 600 cases during the first half of the pilot project.

Office of the Public Defender

The Office of the Public Defender has noticed a decrease in the number of public intoxication cases appearing on misdemeanor pretrial calendars. Although they have not quantified the actual reduction, this would seem consistent with the ratio of the Department's §647(f) arrests to new prosecutions commenced during the pilot project period. To date, the Office of the Public Defender has been able to staff the existing prosecutions with available resources.

/s/
ROBERT L. DAVIS
Chief of Police

RLD: TS: JB