

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Barbara Attard, IPA  
Les White, City Manager

**SUBJECT:** Acceptance of the IPA Mid-Year  
Report Policy Recommendations

**DATE:** February 15, 2006

---

Council District: Citywide

## RECOMMENDATION

Acceptance of the Independent Police Auditor's (IPA) 2005 Mid-Year Report Policy Recommendations and Police Department's (SJPD) Response.

- (a) Acceptance of the San Jose Police Department Taser Usage Guidelines presented to Council on November 29, 2005, and,
- (b) Acceptance of the IPA's recommendation that the IPA receive copies of the homicide reports for SJPD's officer-involved shootings and in-custody deaths.

## BACKGROUND

In November 2005, at the time the IPA presented the Mid-Year Report to the Mayor and City Council, there was disagreement between the IPA and SJPD about the IPA policy recommendations. The Council directed the City Attorney, the Independent Police Auditor, the Police Chief and the Manager to confer and return to Council in January 2006 with a recommendation for codifying or otherwise adopting by reference the San Jose Police Department TASER Use Guidelines. The presentation of this item to Council was postponed to enable further discussion between the IPA and SJPD.

## ANALYSIS

- a) Establishment of written directives for TASER use by SJPD officers:

The IPA has agreed that the written guidelines developed by SJPD that were presented to the City Council on November 29 will provide appropriate guidance to officers for TASER use. The guidelines will be formally issued to all officers as a numbered Training Bulletin and will become part of the training curriculum. The Chief of Police has ensured the Council and the IPA that the guidelines will be binding to officers and fully enforceable. Officers will be held accountable to the training guidelines as they are to policies in the Duty Manual.

February 15, 2006

Subject: Acceptance of the IPA Mid-Year Report Policy Recommendations

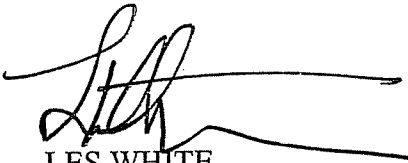
Page 2

b) Provision of SJPd homicide reports to the IPA for review of officer-involved shooting and death in custody cases:

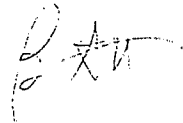
Chief Davis and the IPA have agreed that the SJPd will provide the IPA with copies of homicide reports for IPA review in officer-involved shooting and in-custody death cases. As with all police records, the IPA will ensure that the homicide file is reviewed only by confidential IPA staff. The IPA agrees to make no copies of the homicide file and will return the report after all analysis is completed. The reports will be secured in a locked file when not in use.

**COORDINATION**

This memorandum has been coordinated with the Police Department, the Office of the City Manager, the Office of the City Attorney, and the Office of the Independent Police Auditor.



LES WHITE  
City Manager



BARBARA J. ATTARD  
Independent Police Auditor

Attachments:

SJPd August 18, 2005 Memorandum, "Duty Manual Additions Sections A 2312 and E 1204-Training Bulletins"

SJPd Taser Usage Guidelines

# Memorandum

**TO:** All Department Personnel

**FROM:** Robert L. Davis  
Chief of Police

**SUBJECT: DUTY MANUAL ADDITIONS  
SECTIONS A 2312 and E 1204 -  
TRAINING BULLETINS**

**DATE:** August 18, 2005

---

Approved

Date 05-026

---

## BACKGROUND

The San Jose Police Department often receives various updates, bulletins and other information related to law enforcement. These notifications could include legal updates, vendor specific product/training issues, or officer safety information such as concealed or disguised weapons. However, there is no formal process currently in place to disseminate time-critical information to the appropriate personnel.

## ANALYSIS

To address this need, the Department has developed a mechanism in which time-sensitive information shall be disseminated to Department personnel. A San Jose Police Department "Training Bulletin" has been developed, which will be distributed to Department personnel on an "as needed" basis.

The Department's Training Unit will be responsible for coordinating distribution of the Training Bulletin through the Research and Development Unit (R&D). These Bulletins will be published when legal updates, product/training issues, or officer-safety concerns are discovered. The Bulletin format will be written in free form and will include photographs if appropriate. The Bulletins will be distributed in the same manner as Department Orders, and will also be available on the Department's Intranet under "Policies and Procedures."

The Training Bulletin is to be considered an official Police document. Each Bulletin will be assigned a Training Bulletin number and distributed through R&D. Members of the Department are expected to review each Bulletin and apply its contents to ongoing Police operations.

## Training Bulletin Procedures

The Department's Training Unit and R&D staff will determine the appropriate information to be disseminated through the Training Bulletin process.

Personnel who become aware of issues that might require immediate Department-wide notification should follow the procedures described as follows:

- Department personnel should contact a Training Unit supervisor or the R&D Unit to determine if the information meets the criteria to issue a SJPD Training Bulletin.
- The information should be submitted as a memorandum and can be written in free form with no specific format. The memorandum should include any supporting articles or photographs, if available.
- The Training Unit will review the submission and forward to the R&D Unit for final review and processing.

Additions to the San Jose Police Department Duty Manual to reflect this process are shown below in *bold italics*.

A 2312      **TRAINING BULLETINS**

*Added 08/18/05*

*Training Bulletins are issued under the authority of the Chief of Police to address those instances where critical or time sensitive information related to police operations should be quickly disseminated. Instances where a Training Bulletin might be appropriate include legal updates, vendor specific product/training issues, or officer safety information such as concealed or disguised weapons.*

E 1205      **SUBMITTAL OF TRAINING BULLETIN INFORMATION**

*Added 08/18/05*

*Department members who become aware of issues that they feel might require immediate notification to Department personnel will contact a Department Training Unit supervisor or the Research and Development Unit. The information should be submitted as a memorandum and can be written in free form with no specific format. The memorandum should include any supporting articles or photographs, if available.*

**ORDER**

Effective immediately, all Department Personnel will adhere to the San Jose Police Department Training Bulletin policy guidelines.



ROBERT L. DAVIS  
Chief of Police

RLD:GLK:EF:CE





---

Foreword

San Jose Police Department (SJPD) Duty Manual Sections L 2600 to L 2641 outline when officers may use force in the line of duty to effect a detention, prevent an escape, overcome resistance, defend one's self, or defend others. As outlined in these sections, the philosophy and policy of the Department is to use the *least* amount of force necessary to make an arrest or to defend one's self or others.

One of the force option devices available to all patrol personnel is the electronic Taser. This tool has already proven itself to be invaluable to San Jose officers, in that it has allowed officers to use force that typically causes less injury to a resistant suspect than would a baton, rifle, shotgun, or other impact device. In addition, the device has led to a reduction in injuries to officers and suspects. Yet for all of the success surrounding Taser usage around the world, recent nationwide incidents in which a suspect has died after a Taser device was used have led to calls for more study about the Taser, as well as requests for police departments to establish written guidelines for Taser usage.

To address these concerns, Lt. Gary Kirby of the SJPD Research and Development Unit was assigned to attend a national conference in October 2005 led by the Police Executive Research Forum (PERF). PERF is an organization dedicated to providing police chiefs and management staff with data and information to help improve police operations. The conference focused on establishing best practices and guidelines for Taser usage. Lt. Kirby played an active role in outlining PERF's written guidelines, and he coordinated an update of the initial Taser training imparted to each officer issued a Taser. Lt. Kirby also assisted in providing updates to the current Taser Update course being provided during this year's Continuous Professional Training (CPT) course.

Lt. Kirby and the Research and Development Unit staff have also used the PERF recommendations to establish this set of written guidelines for SJPD Taser usage. While it is recognized that split-second use of force decisions are among the most difficult decisions an officer makes, and that no use of force guidelines can account for all of the many circumstances that drive an officer's decision to use a particular type of force, these written SJPD Taser Guidelines will provide additional direction on how San Jose officers should be using the Taser in field situations.

It is anticipated that these Taser Usage Guidelines will be updated on an ongoing basis as more information is learned about Tasers worldwide.



---

The general provisions of the San Jose Police Department's (SJPD) Use of Force Policies are found in Duty Manual Sections L 2600 – 2605, L 2614 and L 2616 – 2617. All uses of the Taser by SJPD officers must conform to these Duty Manual policies, and the guidelines outlined below will assist officers in this effort.

I. Taser Training:

- A. All officers will complete the *San Jose Police Department Electronic Weapons User Course* prior to carrying and deploying a Taser device in the field.
- B. Officers will only carry and deploy on-duty Taser devices that have been issued by the SJPD.
- C. All officers will attend the mandatory *Taser Update Course* in the Continuous Professional Training Course (CPT) the Training Unit provides.
- D. All officers will adhere to future training directives regarding Taser usage as outlined in the ongoing Training Bulletins the Research and Development Unit issues.

II. Taser Usage

- A. Absent exigent circumstances, the Taser should only be used against persons who are actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others.
- B. Absent exigent circumstances, officers should avoid activating multiple Taser devices against a single suspect at the same time.
- C. In general, the Taser should be deployed for the shortest period possible to take a suspect safely into custody. After each application of a five-second cycle of the Taser, an officer should weigh the circumstances involved to determine whether additional Taser discharges would be effective in safely taking the suspect into custody or whether another force option should be considered. In general, attempts should be made to use the Taser no more than three five-second cycles. In any event, the circumstances surrounding the number of Taser discharges will be documented in the Use of Force Crime Report.



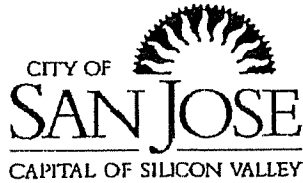
- D. Absent exigent circumstances, Tasers should not be used against obviously pregnant women, elderly persons, young children, or visibly frail persons. An example of an exigent circumstance would be a situation in which an obviously pregnant woman was in the process of harming herself or another person, and more intrusive force, such as a baton, would be necessary if not for the use of a Taser.
- E. Absent exigent circumstances, Tasers should not be deployed against handcuffed persons unless they are actively resisting or exhibiting active aggression, and only in order to prevent such persons from harming themselves or others.
- F. Absent exigent circumstances, Tasers should not be deployed in locations where a suspect's fall may cause substantial injury or death.
- G. Whenever a Taser is discharged on a suspect, an official hospital medical clearance will be obtained prior to the suspect's booking. If a suspect exhibits the need for medical attention at the scene of the arrest, emergency medical assistance will be summoned immediately.
- H. Officers should avoid firing Taser darts at a subject's head, neck and genitalia.
- I. The preferred method for Taser deployment is the Probe Method, with the Drive Stun method generally used as a secondary option.
- J. Absent exigent circumstances, Tasers should not be used against suspects in physical control of a vehicle in motion, to include automobiles, trucks, motorcycles, ATVs, bicycles, and scooters.
- K. If circumstances permit, a verbal warning should be given to a suspect and other officers present prior to activating the Taser unless to do so would place another person at risk or a tactical advantage would be lost.
- L. A patrol supervisor should respond to all incident scenes in which a Taser was activated to ensure Department policies and procedures are followed.



- M. Tasers have been shown to be an effective tool against aggressive animals. Tasers may be used against animals if an animal poses a threat to officers or others.

III. Taser Usage Reporting Requirements:

- A. All activations of the Taser, other than spark testing, will be documented. Targeting of a suspect with a Taser laser sight, or arcing a Taser for purposes of gaining voluntary compliance, will be documented in the Computer-Aided Dispatch (CAD) event. Actual deployment of a Taser against a person will be documented in a Crime Report and a Use of Force Tracking Report. Accidental discharges of a Taser will be documented on a Departmental Memorandum addressed to the Chief of Police, which is then forwarded up through the entire chain of command.
- B. Officers are responsible for submitting written documentation of Taser deployment to a supervisor for review and signature prior to submission to the Records Division.
- C. A supervisor presented with Taser documentation will conduct a thorough review for compliance with all policies and procedures prior to signing the report or transmittal form.



# Memorandum

**TO: Honorable Mayor and City Council**      **FROM: Barbara J. Attard**

**SUBJECT: Independent Police Auditor Outreach Plan**      **DATE: February 14, 2006**

## RECOMMENDATION

Accept the Independent Police Auditor (IPA) Outreach Plan report.

## BACKGROUND

Mayor Gonzales and the City Council requested that the IPA update the agency's outreach plan and inform the Council of its program to increase awareness of the IPA office in the San José community.

## ANALYSIS

The mission of the Independent Police Auditor is to provide independent review of police misconduct investigations and to promote public awareness of the citizen complaint process, thereby increasing accountability and community confidence in the San José Police Department.

Community outreach is critical to the function of the Office of the Independent Police Auditor. In order to fulfill our mission and better inform the community, the IPA proactively seeks engagements and plans presentations at a variety of community events and meetings, youth/student venues and diverse media outlets. The IPA consistently works with neighborhood associations, speakers bureaus, and local business associations and through programs such as the Strong Neighborhoods Initiative (SNI), schools, and community agencies to reach the San Jose community. The IPA will continue to make outreach a high priority, particularly outreach to youth, and plans an average of one presentation per week.

In 2005, the IPA increased outreach efforts by 35%, participating in 72 events, an increase from 53 in 2004. Through these events the office reached approximately 4,400 community members directly. Throughout the year a variety of print articles were initiated, and radio and television interviews were conducted to inform the larger community of the services of the IPA.

## OUTREACH PLAN

<b>Objectives:</b>	<b>2006 Strategies:</b>
IPA Advisory Committee	<p><b>IPA will work cooperatively with the IPAAC members to increase the IPA's visibility:</b></p> <ul style="list-style-type: none"> <li>• Increase IPAAC membership</li> <li>• Plan town hall meetings to increase IPA's visibility and obtain feedback from community</li> </ul>

<p><b>Outreach to Youth</b></p> <p>Target Middle and High Schools, and at-risk youth</p> <p>Update and reprint, in conjunction with the SJPd, the "Student's Guide to Police Practices" Booklets and CD's</p>	<p><b>Collaboration with School District Programs, Youth Service Delivery Organizations, and Community Based Organizations:</b></p> <ul style="list-style-type: none"><li>• Santa Clara County Office of Education for at-risk youth programs</li><li>• Presentations in Juvenile Hall</li><li>• Network at the Mayor's Gang Task Force meeting with other youth providers</li><li>• Attend youth commission meetings</li><li>• Present at youth centers</li><li>• Attend and present at PTA and other parent meetings</li></ul>
<p><b>Outreach to the Community</b></p> <p>Target: SNI's/PACT/ACORN/Weed &amp; Seed, and Community and Neighborhoods Associations</p>	<p><b>Collaboration with Groups and Associations:</b></p> <ul style="list-style-type: none"><li>• Presentations at community forums</li><li>• Participate in council district resource fairs and events</li><li>• Work with refugee and immigrant service providers and faith-based organizations</li><li>• Network with consulates and other immigration resource centers</li><li>• Send out IPA information through neighborhood e-newsletters</li></ul>
<p><b>Outreach to Lesbian, Gay, Bisexual and Transgender community</b></p> <p>Target: Support Groups</p>	<p><b>Work with Billy De Frank Center and other service providers:</b></p> <ul style="list-style-type: none"><li>• Bi-lingual and monolingual support groups</li><li>• Youth support groups</li></ul>
<p><b>Outreach to Community Colleges and San José State University</b></p> <p>Target: Evergreen Valley College, San José City College, SJSU and other vocational/business private colleges</p> <p>Focus on Social Science Fields, Administration of Justice, Education and Social Work schools</p>	<p><b>Reach out to local colleges and student organizations</b></p> <ul style="list-style-type: none"><li>• Utilize college newspapers to inform readership of the IPA's services</li><li>• Present to college classes (guest speaker)</li><li>• Meet with the college law enforcement personnel</li><li>• Participate in student forums dealing with students-police relationship</li><li>• Meet with college/university clubs and organizations</li><li>• Place IPA material at student unions, libraries, counseling centers and resource fairs</li></ul>

Honorable Mayor And City Council

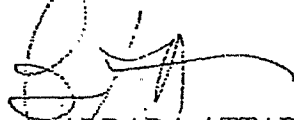
Re: IPA Outreach Plan

Date: February 14, 2006

Page 3

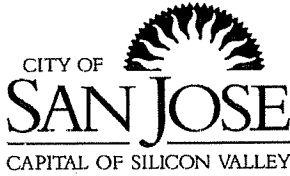
<p><b>Outreach to the Business Community:</b></p> <p>Target: Business Chambers of Commerce, Business Associations and Ethnic Chambers of Commerce</p>	<p><b>Work with local chambers of commerce to improve communication with the business community:</b></p> <ul style="list-style-type: none"><li>• Present at monthly membership/mixer meetings</li><li>• Distribute IPA materials to members</li><li>• Send out IPA information through e-newsletters</li></ul>
---	--

Respectfully Submitted,



BARBARA ATTARD  
Independent Police Auditor





**SAN JOSÉ, CALIFORNIA**

**TUESDAY, FEBRUARY 28, 2006**

The Council of the City of San José convened in regular session at 9:30 a.m. in the Mayor's Conference Room T1841, at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:32 a.m. to a Closed Session in Room T1841, (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the case of: (1) In re Babineau; (2) City of San José, et al. v. County of Santa Clara, et al.; (3) County of Santa Clara, v. City of San José, et al.; (4) Pham v. City of San José, et al.; (5) Morales v. City of San José, et al. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, with respect to anticipated litigation (1) subsection (b) significant exposure in one (1) matter; (2) subsection (c) with respect to initiation of litigation in one (1) matter. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters; (3) Operating Engineers, Local 3.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:20 a.m. and reconvened at 1:35 p.m. in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

## **INVOCATION**

Alex Mordwinow and Tiffani Sturges, Santa Teresa High School students, performed "Dangerous Game" from the play "Jekyll and Hyde". (District 2)

Access the video, the agenda and related reports for this meeting by visiting the City's website at [www.sanjoseca.gov/clerk/MeetingArchive.asp](http://www.sanjoseca.gov/clerk/MeetingArchive.asp)

## **PUBLIC SAFETY SERVICES**

- 8.1 Acceptance of the 2005 Annex A update on the roles of elected officials during declared disasters as part of the City's Emergency Operations Plan. CEQA: Not a Project. (Emergency Services)  
(Deferred from 1/10/06 – Item 8.1 and 2/14/06 – Item 8.1)**

Action: Deferred to March 21, 2006.

- 8.2 Adoption of a resolution ordering, on the Council's own motion, the submission to the electors of the City, at the Municipal Election to be held on June 6, 2006, a measure entitled "Fire Station Construction – Silver Creek Linear Park". CEQA: Exempt PP06-009. Council District: 8. (Fire/Public Works/Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Fire Chief Jeffrey Clet, Director of Public Works Katy Allen and Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated February 8, 2006, recommending adoption of a resolution.

Public Comment: Debra Murphy, Silver Creek Valley Community Association, spoke in favor of the Staff recommendation.

Action: Upon motion by Council Member Cortese, seconded by Council Member Pyle and carried unanimously, Resolution No. 73084, entitled: "A Resolution of the Council of the City of San José Ordering On Its Own Motion, the Submission to the Electors of the City of San José, at the General Municipal Election to be Held on June 6, 2006, A Measure Entitled Fire Station Construction – Silver Creek Park", was adopted. (10-0-1. Absent: Reed)

- 8.3 Acceptance of the Independent Police Auditor's (IPA) 2005 Mid-Year Report Policy recommendations and the San José Police Department's (SJPD) Response.**  
**(a) Acceptance of the San José Police Department Taser Usage Guidelines presented to City Council on November 29, 2005, and;**

Documents Filed: (1) Memorandum from Independent Police Auditor Barbara Attard and City Manager Les White, dated February 15, 2006, recommending acceptance of the reports. (2) Three items from the public dated February 28, 2006.

Public Comment: Speaking against the use of tasers were: Darlene Wallach, Aram James, Daniel McCall, Kenneth Stettem and Mark Trout.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Chirco and carried unanimously, the report was accepted, with Staff directed to: (1) Route an information memorandum of the glossary of terms used in the Duty Manual Guidelines; (2) Return in one year with an update. (11-0.)

- 8.3 (b) **Acceptance of the IPA's recommendation that the IPA receive copies of the homicide reports for the SJPD's officer-involved shootings and in-custody deaths.**

**(IPA/City Manager's Office)**

Motion: Vice Mayor Chavez recommended approval of the Independent Police Auditor's recommendation. Council Member Williams seconded the motion.

Council Member LeZotte stated that personal information in a homicide report should be protected and expressed concern about the effect on privacy rights of individuals and their families.

Action: On a call for the question, the motion carried, and the report was accepted. (10-1. Noes: LeZotte.)

- 8.4 **Acceptance of the Independent Police Auditor (IPA) Outreach Plan. (IPA)**

Documents Filed: Memorandum from Independent Police Auditor Barbara Attard, dated February 14, 2006, recommending acceptance of the report.

Independent Police Auditor Barbara Attard responded to Council questions.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Pyle and carried unanimously, the report was accepted. (10-0-1. Absent: Cortese.)

## **JOINT COUNCIL/REDEVELOPMENT AGENCY**

- 9.1 **Acceptance of the Quarterly Report on the Citywide Capital Improvement Program (CIP) including Parks, Library, and Public Safety Bond Projects, Strong Neighborhoods Initiative (SNI) Projects, and Redevelopment Agency funded projects. CEQA: Not a Project. (City Manager's Office/Redevelopment Agency)**

Action: Deferred to March 7, 2006.

- 9.2 (a) **Adoption of a resolution by the City Council determining that the public interest and necessity require the acquisition of the 25% undivided real property interest owned by Sal Petronio in the real property located at 114 Alma Avenue, in San Jose, California (APN 434-23-143) in the Strong Neighborhoods Initiative-Washington Area and authorizing the City Attorney to file suit in eminent domain to acquire his undivided real property interest, to apply for an order of possession before judgment and to prosecute the action to final judgment, and authorizing the deposit of \$53,475 in court for possession of his real property from the funds lawfully available.**