

February 5, 2010

Assemblymember Joe Coto
State Capitol, Room 2013
P. O. Box 942849
Sacramento, CA 94249-0022

Assemblymember Paul Fong
State Capitol
P. O. Box 942849
Sacramento, CA 94249-0022

Dear Assemblymember Coto and Assemblymember Fong,

Please find the attached copy of a Status Report on the City's Use of Force Efforts which describes our efforts to evaluate issues raised about police use of force.

San Jose is one of the safest big cities in the country with one of the best police departments in the nation that has strong community support. Your request for an audit implies that there is something seriously wrong with our police force and that we are not capable of dealing with it at the local level. Both implications are wrong. Unfortunately, your actions have been perceived as an attack on the men and women of our police department and as interfering with our efforts that are in progress.

Last year the men and women of our department responded to over 400,000 calls for service and made over 25,000 arrests. Even though arrests involving use of force are only a small percentage of the arrests made, we take use of force issues seriously and have several initiatives underway to identify potential improvement to policies, procedures and practices. Those initiatives are described in the attached memo. The City Manager's advisory group, which includes our Independent Police Auditor and our City Auditor, will report to the City Council in March.

We are very proud of the men and women of our police department, and we are not afraid of scrutiny from anyone. However, your audit request appears to have been based on misinformation given to you. Rhetorical excesses around this issue have been unfair to the men and women of our police department and unproductive in working toward solutions.

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Assemblymember Paul Fong
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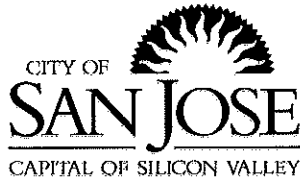
I am certain we can and will answer all your questions about police use of force and our efforts to improve. Perhaps, if you wait until our work has been completed, you will have a better view of the issues in San Jose and will not need to use taxpayer funds to do an audit that will essentially duplicate work we are already doing.

I would be happy to discuss these issues with you at your convenience.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Reed". The signature is written in a cursive style with a large, prominent "C" at the beginning.

Chuck Reed
Mayor



SENT TO COUNCIL:

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Debra Figone

SUBJECT: STATUS REPORT ON THE
CITY'S USE OF FORCE EFFORTS

DATE: February 5, 2010

INFORMATION

The purpose of this Information Memo is to provide a status report on the various efforts underway by the Administration to address questions regarding the San Jose Police Department's (SJPD) use of force and to provide a status report on the referral issued to the Administration regarding use of force where the only booking charge was resisting arrest or interfering with a police officer (California Penal Code section 148).

BACKGROUND

Following the October 14, 2009 Special Public Safety, Finance and Strategic Support (PSFSS) Committee meeting on police services, the City Council identified use of force as a key priority to add to the San Jose Police Department's workplan. On December 8, 2009, the City Council accepted the San Jose Police Department's (SJPD) report outlining efforts underway to review and address questions regarding the SJPD's use of force. The City Council approved a report from Mayor Chuck Reed (Attachment A) to have the City Manager, with the assistance of an advisory group:

- (1) Review calendar year 2009 use of force reports where the only booking charge was resisting arrest or interfering with a police officer (Penal Code Section 148) and
- (2) Answer specific questions based on the review of the cases.

Preliminary Summary of Use of Force Statistics

In September 2009, the SJPD provided a statistical report to the PSFSS Committee on Disturbing the Peace (P.C. section 415) and Resisting Arrest (P.C. section 148) and provided related crime statistics (Attachment B), as well as other crime categories for calendar year 2008 and the first five months of calendar year 2009 (January through May). This report also outlined the state Penal Code provisions for Disturbing the Peace and Resisting Arrest.

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It is important to note that the SJPD has a high volume of contacts or interactions with the community that go well beyond the number of calls for service or arrests which are not tracked; therefore, assessing police performance is somewhat limited, or incomplete, when evaluating data based on these two categories alone, i.e., calls for service and arrests. Nevertheless, in order to provide some context for use of force and other crime categories, the following information is provided:

- For calendar year 2008, the SJPD handled 436,855 9-1-1 or other emergency calls. For the same period, there were 30,321 arrests. Of the total arrests, 875 (2.9%) included a violation of Penal Code section 148 as a booking charge, and in 64 of those arrests (0.2% of the total arrests) a violation of Penal Code section 148 was the sole booking charge. It is also very important to note that not all violations of Penal Code section 148, including sole violations of Penal Code section 148, entail the use of force. The relevant provisions of Penal Code section 148 prohibit resisting, delaying, or obstructing a peace officer in the discharge of his/her duties, so the conduct giving rise to these booking charges could have included any one or a combination of these prohibited activities.
- For calendar year 2009, the SJPD handled 405,848 9-1-1 or other emergency calls. For the same period, there were 25,968 arrests. Of these arrests, 606 (2.3%) included a violation of Penal Code section 148 as a booking charge, and in 53 of those arrests (0.2% of the total arrests) a violation of Penal Code section 148 was the sole booking charge. Additionally, I am including a CY 2009 summary of Part 1 Crimes and Other Crimes (Attachment C) to provide additional context of crime statistics, as provided for CY 2008.

Table 1: 2008 and 2009 (Preliminary) Review of Use of Force Statistics

Category	2008	2009
Calls for Service (9-1-1 or Other Emergency Calls)	436,855	405,848
Total Arrests	30,321	25,968
Resisting Arrest Booking Charge (As a percent of total arrests)	875 (2.9%)	606 (2.3%)
<u>Sole</u> (aka "Stand Alone") Resisting Arrest Booking Charge (As a percent of Total Arrests)	64 (0.2%)	≈53 (0.2%)

*Data Source: Record Management System CY 2008 and 2009

≈ Indicates "approximate" value.

The City Manager's Use of Force Advisory Group, in conjunction with the SJPD, is in process of determining the use of force statistics for violations where the sole booking charge was Penal Code section 148 which involved the use of force.

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City Manager's Use of Force Advisory Group (Advisory Group)

The purpose of the Advisory Group is to identify potential improvements that could be made to current SJPD policies, practices, procedures, and/or training, as part of the Department's ongoing effort to employ "best practices." More specifically, its focus and current work is to evaluate SJPD's use of force reports for "stand alone" P.C. section 148 arrests in 2009 for the purpose of (1) providing input toward strengthening training, procedures and policies and (2) assisting the City Manager with responding to the City Council questions as referred in Attachment A. Members of the Advisory Group include:

- City Manager Debra Figone (Chair)
- City Auditor Sharon Erickson
- Acting Independent Police Auditor Shivaun Nurre
- Deputy City Manager Deanna Santana
- Police Captain Gary Kirby

Staff support and legal advisors for this effort includes Risk Manager John Dam, Senior Executive Analyst Vilcia Rodriguez, Assistant City Attorney George Rios, and Senior Deputy City Attorney Steve Dippell.

The Advisory Group began meeting in December 2009 and has received copies of all "stand alone" P.C. section 148 arrest reports, including Police Reports, Pre-Booking Information Sheets, Force Response Reports, etc. Preliminary review of this information revealed the complexity of the incidents our police officers are faced with, and the issues pertaining to use of force in those incidents. Through the review of the referenced reports, I am working with the Advisory Group to better define its focus with respect to responding to the specific questions posed in Attachment A.

SJPD's Use of Force Efforts

The SJPD recently reviewed the Los Angeles Police Department's use of force policies which were approved by the federal court in conjunction with a Consent Decree. The LAPD model is a nationwide "best practices" approach toward managing use of force within a police department and results in a multi-tiered review process of use of force. SJPD is in the process of modifying its supervisory oversight and investigation practices based on this model, after adapting the framework of the internal review to conform to the SJPD's command and organizational structure. Specifically, the following initiatives are underway:

- ***Policy & Training Review:*** An internal advisory body comprised of command officers, supervisors and training personnel is being created to review use of force training curriculum taught in the Police Academy and in Officer Update Courses, and ensure that the curriculum complies with state standards and SJPD policies and procedures.

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- ***Development of Multi-Tiered Internal Incident Review Process:*** Once fully implemented, the purpose of the review process will be to strengthen accountability and 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.

Additionally, in September 2009, the SJPD presented several initiatives underway to address both concerns regarding Public Intoxication and Resisting Arrest booking charges. The information below is restated to provide a more complete picture of all of the efforts underway:

Community Relations

- ***Spanish-Speaking Citizen's Police Academy:*** The SJPD is continuing its outreach to community stakeholders and has held a Spanish-speaking citizen's police academy which began on October 14, 2009. The Chief of Police worked with Council offices and community groups such as La Raza and Strong Neighborhood Initiative (SNI) representatives to identify monolingual attendees for this innovative opportunity. Approximately twenty people were enrolled in the Academy. The SJPD is in process of planning for a Vietnamese-Speaking Citizen's Police Academy.
- ***Community of San Jose Video:*** To further enhance training of SJPD officers, a special *Community of San Jose* video with a Latino focus is being developed to highlight some of the cultural diversity and sensitivity issues commonly encountered between law enforcement and community members in the course of police work.
- ***Consortium for Police Leadership in Equity:*** The SJPD has been working with the Consortium for Police Leadership in Equity's (CPL) review of SJPD's long-term data across many categories of arrest statistics. An important focus of CPL's initial research will center on compiling and reporting arrest statistics and related race-based data to report back to the City so that a more in-depth understanding of these complex issues can be achieved. One of the first research projects to be undertaken by CPL is aimed at studying police interactions with members of different racial groups and detecting whether any bias-based policing exists.

Police Accountability

- ***Early Warning System:*** The SJPD is in the process of implementing a Department work plan that will strengthen the existing Early Warning System (EWS), with an estimated completion date of fall/winter 2010. The current EWS seeks to identify officers and supervisors who may be having problems on the job and to provide those officers with appropriate counseling or training. The EWS remains responsive to the needs of the individual officer while also helping to improve overall organization health, performance and accountability.
- ***Enhanced Report Writing and Uniform Supervisory Review:*** The SJPD has refreshed practices, training and policies in the areas of enhanced report writing and uniform

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supervisory review and sign-off so that improvements can be applied to all in-custody arrests, including Disturbing the Peace (P.C. section 415) and Resisting Arrest (P.C. section 148). 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.

- **Random Spot Checks:** To sustain quality improvements over time, the SJPD'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.

Training

- **Public Intoxication Efforts:** In December 2008, officers received refresher training emphasizing documentation of Field Sobriety Exercises (FSE's) in Police Reports.
 - The SJPD Training Unit has enhanced the Department's training program in areas such as utilizing the newly created Public Intoxication arrest form; consistent, accurate and timely report writing; and the uniform documentation of probable cause elements in reports.
 - The SJPD has expanded the training provided at the Police Academy from a one-hour training block on Public Intoxication arrests to a three hour block, including scenario testing and report writing.
 - The SJPD began offering Preliminary Alcohol Screening (PAS) tests to those suspected of public intoxication in November 2008.
 - The SJPD has provided training to approximately 130 officers who work in the Downtown Entertainment Zone.
- **Resisting Arrest/Disturbing the Peace:** The SJPD has already initiated additional training for police officers and supervisors. Coordinated by the SJPD Training Unit, the training seeks to strengthen and expand related curriculum dealing with Public Intoxication, Resisting Arrest and Disturbing the Peace arrest practices. Training bulletins are employed on a more frequent basis to help deliver pertinent updates on a variety of issues with the goal of enhanced report writing.

Innovations

- **Mobile Camera System:** As part of the ongoing efforts to attempt to integrate new technologies in law enforcement, the SJPD partnered with TASER International to become the first law enforcement agency in the nation to test the utilization of the AXON mobile camera system. The AXON mobile cameras were recently outfitted directly on a test group of police officers so that audio and video coverage of arrests in the field can be recorded for review at a later time if need be.
- **New Public Intoxication Arrest Report:** The SJPD created a new Public Intoxication Arrest Report to document objective evidence captured in the field leading to the basis for

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arrest. The form is a collaborative effort between the SJPD, the Office of the District Attorney (DA) and the Office of the City Attorney.

- ***Public Intoxication Arrest Program:*** In June 2009, the SJPD was directed by Council to develop and implement, in coordination with the District Attorney's Office, Department of Corrections and Superior Court, a program that would not seek prosecution of Public Intoxication arrests until an individual is arrested for a sixth offense in a rolling twelve month period. This direction was implemented the following month, in July of last year. Status reports on the implementation of this effort are presented to the PSFSS Committee.
- ***Entertainment Zone (EZ) Policing Model Regarding Alcohol Server Training:*** Part of the new EZ Policing Model included alcohol server training. The SJPD was successful in receiving a grant from the Alcoholic Beverage Control (ABC) to help facilitate these trainings. The first training was held at City Hall and approximately 100 employees and managers from downtown and Santana Row attended the training.

Community Engagement and Timeline

As the City Council directed, the City Manager will provide a status report to the PSFSS Committee on March 18, 2010. This report is a check-in opportunity to share with the Council Committee members and the public the workplan and scope that the Review Group has adopted and any preliminary issues that have been identified toward shaping public policy.

To ensure that there is a formal community input process, in addition to the above public meeting, staff proposes to use the April 14, 2010 Special PSFSS Committee meeting on public safety to elicit feedback from community members on preliminary policy actions and to provide a status report on SJPD approaches regarding use of force. Community input will be documented, summarized, and reported to the full City Council in the May/June timeframe and, where appropriate, it will further inform the preliminary public policy recommendations under consideration by the City Manager.

Similar to the outreach efforts used for the October 14, 2009 Special PSFSS Committee Meeting, information about the April 14 meeting will be available on the City's web site and emailed to the City's roster of neighborhood associations, community- and faith-based groups, businesses, etc. Information will also be translated into Spanish and Vietnamese and posted at libraries and community centers.

Conclusion

Given the high level of concern from the community and SJPD, it was prudent and responsible for the SJPD to initiate the various efforts noted in this report. I want to thank the SJPD workforce for stepping up to initiate immediate action, while I lead a longer term review of use

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of force issues. Both concurrent efforts, as well as the upcoming community engagement, ensure that the City addresses concerns expressed by the community.



DEBRA FIGONE
City Manager

Attachments

- A. Mayor Chuck Reed's Memo dated November 16, 2009
- B. September 17, 2009 PSFSS Committee Report Re Police Statistical Data
- C. CY 2009 Part 1 Crimes and Other Crimes

Memorandum

TO: Public Safety Committee
SUBJECT: Police Use of Force

FROM: Mayor Chuck Reed
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.

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BACKGROUND

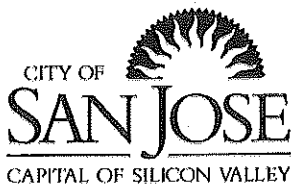
The SJPD Duty Manual limits the situations in which officers may use force:

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 Manger, 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.



Memorandum

TO: PUBLIC SAFETY, FINANCE AND
STRATEGIC SUPPORT COMMITTEE

FROM: Robert L. Davis
Chief of Police

SUBJECT: POLICE STATISTICAL DATA

DATE: September 10, 2009

Approved

Date

9/11/09

RECOMMENDATION

Transmit to the Public Safety, Finance and Strategic Support Committee (PSFSSC) the San Jose Police Department's (SJPD) statistical data report pertaining to Disturbing the Peace (§ 415 P.C.) and Resisting Arrest (§ 148 P.C.), as well as other crime categories for calendar year 2008 and the first five months of calendar year 2009 (January through May).

OUTCOME

This report responds to the City Council's request to provide police statistical data pertaining to two crime categories: Disturbing the Peace (§ 415 P.C.) and Resisting Arrest (§ 148 P.C.), as well as other crime categories.

BACKGROUND

Through the PSFSS Committee work plan development process, the City Council requested that the SJPD provide data pertaining to two categories of crimes¹, Disturbing the Peace (§ 415 P.C.) and Resisting Arrest (§ 148 P.C.). This report responds to the City Council's request.

Based on discussion at the City Council level regarding public intoxication, questions were raised regarding police arrest statistics. It was noted that some community members were concerned that the disproportionately high number of Hispanics among those arrests could indicate bias-based actions by members of the department. The City understands the concerns raised regarding the police arrests statistics for resisting arrest and disturbing the peace. It is important to note that the City has taken these concerns seriously and has taken proactive measures to address concerns, but also acknowledges that we do not know what conclusions to draw from the complete set of statistics presented. While at first glance these numbers may be of concern, we need a more in-depth understanding of their significance before any substantive conclusions can be drawn.

¹ Please see Attachment A for Penal Code definitions of; Disturbing the Peace & Resisting Arrest

Whether or not the issues raised by the statistics are real or perceived, only objective and informed analyses of the data will assist with meaningful and continued discourse, something CPLE will assist in providing the City.

ANALYSIS

The SJPD is committed to delivering professional public safety services in the most transparent and effective way possible. This section of the report provides general background of the recent issues discussed with the Rules & Open Government Committee regarding the reporting of statistics in a biased manner, transmits the statistical data requested, and discusses proactive measures underway to address concerns raised in previous discussions.

Statistical Reporting

It is important to note that the data contained in this report are simply summary, descriptive numbers. No attempt should be made at inferring if, or to what degree, bias-based policing may have contributed to any perceived inequities solely on the basis of these numbers. In terms of studying such complex issues, such as the role of race in concerns of bias-based policing, it is critically important to collect, analyze and report data that is scientifically complete. Statistical disparities and percentage differences alone, however, do not provide an adequate basis for drawing any type of informed conclusions on such complex issues as police practices and procedures related to, or perceptions of, bias-based policing. Rigorous research, thorough analyses and sophisticated reporting of numerous related factors, are required in order to distinguish accurately whether or not bias-based policing is discernible.

To help guide the City planning process effectively through the numerous technical pitfalls associated with prior reporting on these complex issues, and to provide direction for collecting, analyzing and reporting data in the future, the City invited the Executive Director of Research and co-founder of the Consortium for Police Leadership in Equity (CPLE), Phil Goff, Ph.D., to attend the Rules & Open Government Committee meeting on April 22, 2009.² Dr. Goff is a recognized expert in researching, analyzing and reporting on contemporary forms of racial bias and discrimination. A detailed listing of Dr. Goff's academic credentials and professional research and publications can be accessed at the UCLA website.³

Dr. Goff's comments at that meeting are worth noting for the PSFSS Committee as it reviews crime statistics. Dr. Goff began by advising the Rules & Open Government Committee that he was troubled by the manner in which data had been previously compiled and reported. Given the previous focus on primarily drunk-in-public data, Dr. Goff emphasized the value of compiling a broader "swath" of data that go beyond solely discretionary arrest categories, to reflect how the City is policed in general.

² Phil Atiba Goff, Ph.D., Personal Communication, City of San Jose, Rules & Open Government Committee meeting on April 22, 2009

³ http://www.psych.ucla.edu/faculty/faculty_page?id=147&area=7

Dr. Goff stated, "So there have been disparities in the past with regard to vehicle stops, with regard to public intoxication..." He continued, "Those look very similar with regard to property crime and other crimes that are not officer discretionary power, that is, with regards to the race of the victim." Dr. Goff added, "...but with regards to public discourse, if you have people who are focusing on officer discretionary power to the exclusion of a broader picture, then what you have is a biased picture from ostensibly objective statistics..." The focus on only a select number of arrest categories is limiting for meaningful analysis.

To reiterate Dr. Goff's last point, he emphasized "All I can tell is ... the wrong metric is the data that has been collected so far, particularly when it seems to focus on issues of police discretionary power, to the exclusion of things like aggravated assault, violent crimes, property crimes, which seem to have the same sort of statistics but you would be less willing to say that's a result of police bias." Dr. Goff continued, "Looking only at those statistics as if it tells you a complete picture, is actually biasing you in favor of conversations that are going to be relatively contentious and unpleasant."

Transmittal of Statistical Data

Based on the above issues noted above by Dr. Goff regarding data collection, analysis and reporting limitations, the SJPD has provided arrest statistics on a broader basis (Attachment B-1, B-2). In particular, arrest statistics were compiled from the SJPD's Records Management System (RMS) for an expansive list of crime categories, detailing violent and property offenses and spanning CY 2008 and the first five months of CY 2009 (January through May).⁴

The goal in providing more arrest categories, as compared to limiting data to just disturbing the peace and resisting arrest categories is to demonstrate that statistical disparities are not evidenced solely in discretionary arrest categories. The vast majority of arrest categories detailed in the attached tables do not reflect discretionary arrest practices. The primary reason for the police-citizen interactions that resulted in an arrest stemmed from a victim or reporting party calling the Police Department, requesting service and providing investigative leads to the police as to the nature of the crime and the attributes of the suspect(s), to include racial or ethnic characteristics.

Police Department Proactive Law Enforcement Measures

Based on the Department's recent experience working with the Public Intoxication Task Force in an effort to understand issues pertaining to drunk-in-public [647(f)] arrests in the City, the SJPD implemented important changes dealing with police practices involving disturbing the peace and resisting arrest issues. Below is a discussion of proactive measures taken by the Police Department.

Report Writing/Supervisory Sign Off: The SJPD 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, including disturbing the peace and resisting arrest. In particular, on November 7, 2008, the SJPD implemented a requirement for

⁴ Attachments B-1 (2008), B-2 (2009, January through May)

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. To sustain quality improvements over time, the SJPD'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.

Training: The SJPD has initiated additional training for police officers and supervisors that seek to strengthen and expand related curriculum dealing with public intoxication, resisting arrest and disturbing the peace arrest practices. Training bulletins are employed on a more frequent basis to help deliver pertinent updates on a variety of issues with the goal of enhanced report writing. To further enhance training of SJPD officers, a special *Community of San Jose* video with a Latino focus is in the process of being developed to highlight some of the cultural diversity and sensitivity issues commonly encountered between law enforcement and community members in the course of police work. Due to the ongoing focus on the downtown entertainment zone, routine training updates are issued to patrol officers that provide information on enforcement methods and special event-related training issues.

Spanish-Speaking Citizens' Police Academy: The SJPD continues ongoing outreach to community stakeholders and has already planned for an upcoming Spanish-speaking citizens' police academy. The Chief of Police worked with Council offices and community groups such as La Raza and Strong Neighborhood Initiative (SNI) representatives to identify mono-lingual attendees for this innovative opportunity. The purpose of the Citizen Police Academy, scheduled to commence on October 14, 2009, is to give community members an overview of the operations and programs of the Police Department and to expose them to the work the work of officers. There is also a community engagement piece so the Department can learn from the participants how to enhance communication in the community. To date, approximately twenty people have enrolled in the Academy.

Mobile Camera Demonstration Project: As part of the ongoing efforts to attempt to integrate new technologies in law enforcement, the SJPD has agreed to partner with TASER International to become the first law enforcement agency in the nation to test the utilization of the AXON mobile camera system. The AXON mobile camera will be outfitted directly on police officers so that audio and video coverage of arrests in the field can be recorded for review at a later time if need be.

CPLE's Statistical Research & Projects: The SJPD has been working together with the Consortium for Police Leadership in Equity (CPL) to advance the project.

One of the first research projects to be undertaken by CPL is aimed at studying police interactions with members of different racial groups and detecting whether any biased-based policing exists. CPL will request that the San Jose Police Department provide access to 20 years of data, or as far back as records allow, for each demographic group in the City on arrest rates (discretionary vs. nondiscretionary), use of force, and victims of crime. This data will

allow the CPLE research team to study aggregate trends and disparities beyond the focus of recent public debate, as well as the role of discretion in producing these inequitable outcomes.⁵

Following the completion of the Memorandum of Understanding (MOU) between the CPLE and the City, the CPLE will begin reviewing SJPD long-term data across many categories of arrest statistics and will perform analyses, including comparisons among comparable cities throughout the nation. An important focus of CPLE's initial phase of research will center on compiling and reporting arrest statistics and related race-based data to report back to the City so that a more in-depth understanding of these complex issues can be achieved.

PUBLIC OUTREACH/INTEREST

Information will be posted on the City's website for the September 17, 2009 PSFSS Committee meeting per the Council Agenda process.

COORDINATION

This report was coordinated with the offices of the City Manager and City Attorney.

CEQA

Exempt.



ROBERT L. DAVIS
Chief of Police

RLD: GLK

⁵ Consortium for Police Leadership in Equity (CPLE), San Jose Police Department, City Briefing, August 20, 2009, pp.1-2.

Attachment A

Disturbing the Peace

415. Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine:

(1) Any person who unlawfully fights in a public place or challenges another person in a public place to fight.

(2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

(3) Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

To assist with understanding how this section of the California Penal Code applies to the discussion at hand, an expanded explanation of the code is provided here for review.

Disturbing the Peace occurs when:

- *Section (1): Any person who willfully fights or challenges another to fight in a public place. A police officer can be a victim of this section when they are "challenged" to fight. If a person willfully completes the challenge and "hits" a police officer then that is a different crime. This section also does not apply to when a suspect resists being taken into lawful custody, that is considered to be "resisting arrest" and not "fighting" as described in this section*
- *Section (2): Any person who maliciously and willfully disturbs the peace of another by the use of loud and unreasonable noises. A police officer can not be a victim of this crime. For this section to be enforced the police officer needs a willing victim to come forward and make a complaint*
- *Section (3): Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction. A police office can not be a victim of this crime. For this crime to be enforced, a victim must be willing to come forward and make a complaint and explain how the offensive words had the effect of provoking an immediate and violent reaction.*

When a query is made against the data stored in the current SJPD Records Management System (RMS) for all arrests made for a violation of "disturbing the peace" (415PC), Penal Code sections 404(a), 626.6(a) and 653m(a) are also cataloged under this section. This is a common practice in Law Enforcement where limited computer space is an inherent system constraint. As a mater of convenience, descriptions of these sections are included for review.

Disturbing the Peace: Riot

404. (a) Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

Trespassing on School Grounds

626.6. (a) If a person who is not a student, officer or employee of a college or university and who is not required by his or her employment to be on the campus or any other facility owned,

operated, or controlled by the governing board of that college or university, enters a campus or facility, and it reasonably appears to the chief administrative officer of the campus or facility, or to an officer or employee designated by the chief administrative officer to maintain order on the campus or facility, that the person is committing any act likely to interfere with the peaceful conduct of the activities of the campus or facility, or has entered the campus or facility for the purpose of committing any such act, the chief administrative officer or his or her designee may direct the person to leave the campus or facility. If that person fails to do so or if the person willfully and knowingly reenters upon the campus or facility within seven days after being directed to leave, he or she is guilty of a misdemeanor

Harassing Phone Calls

653m. (a) Every person who, with intent to annoy, telephones or makes contact by means of an electronic communication device with another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the person or property of the person addressed or any member of his or her family, is guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith.

Resisting Arrest

148. (a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

The definition provided by the State of California for a violation of "resisting arrest" can be confusing to even the trained practitioner. This section has three distinct considerations (resist, delay, obstruct) that can be individually or collectively violated. To assist with understanding how this section of the California Penal Code applies to the discussion at hand, an expanded explanation of the code is provided here for review.

Resisting Arrest occurs when one or more of the three elements are violated:

- Resistance occurs when the person to be arrested physically resists the efforts of the officer(s) to be lawfully taken into custody
- Delaying an officer in the performance of their duty by providing statements that are known to be misleading or untruthful, lying about ones true identity when it is integral to the investigation or running from the immediate presence of the police during a criminal investigation when you are the subject of suspected criminal activity
- Obstructing an officer in the performance of their duty by willfully providing advance warning to the presence of the police in an effort to aid in the escape of a suspect, become or present a physical barrier that police must overcome to continue their investigation.

Note: The examples provided in this discussion are designed to assist in understanding how the police view a criminal activity and apply the law; they are by no means exhaustive.

Attachment B-1

CALENDAR 2008

PART I CRIMES	Afr- Amer	% of Total	Asian	% of Total	Euro- Amer	% of Total	Hispanic	% of Total	Other**	% of Total	Total
Murder	2	7%	6	21%	3	11%	17	61%	0	0%	28
Forcible Rape	4	12%	3	9%	6	18%	19	56%	2	6%	34
Armed Robbery	27	18%	14	9%	18	12%	85	56%	7	5%	151
Strong Arm Robbery	36	14%	7	3%	41	16%	157	63%	8	3%	249
Attempted Robbery	11	20%	2	4%	2	4%	39	70%	2	4%	56
Home Invasion	1	10%	0	0%	3	30%	6	60%	0	0%	10
Carjacking	2	9%	0	0%	1	5%	13	59%	6	27%	22
Aggravated Assault	104	10%	85	8%	154	15%	658	62%	60	6%	1061
Residential Burglary	11	8%	11	8%	31	23%	73	53%	11	8%	137
Commercial Burglary	9	16%	0	0%	20	36%	25	46%	2	4%	56
School Burglary	8	15%	1	2%	16	30%	28	52%	1	2%	54
Attempted Burglary	3	7%	9	21%	1	2%	23	53%	7	16%	43
Grand Theft	57	11%	79	15%	96	18%	261	50%	34	6%	527
Auto Theft*	15	4%	25	6%	16	4%	197	49%	150	37%	403
Petty Theft	252	9%	374	13%	653	23%	1380	49%	144	5%	2803
Auto Burglary	8	5%	15	9%	26	15%	122	70%	3	2%	174
TOTAL PART I CRIMES	550	9%	631	11%	1087	19%	3103	53%	437	8%	5808

OTHER CRIMES	Afr- Amer	% of Total	Asian	% of Total	Euro- Amer	% of Total	Hispanic	% of Total	Other*	% of Total	Total
Narcotics	793	12%	445	7%	1430	22%	3512	55%	224	3%	6404
Other Felony	111	8%	97	7%	200	14%	1018	70%	35	2%	1461
Simple Assault	235	10%	243	10%	402	17%	1395	58%	123	5%	2398
Assault On Peace Officer	46	12%	21	6%	81	21%	214	57%	15	4%	377
Resisting Arrest	126	14%	65	7%	137	16%	515	59%	32	4%	875
Child Annoying/Endangerment	7	20%	1	3%	5	14%	20	57%	2	6%	35
Unlawful Intercourse	9	9%	12	12%	16	16%	62	60%	4	4%	103
Indecent Exposure	4	7%	4	7%	19	35%	27	49%	1	2%	55
Lewd & Lascivious	16	12%	12	9%	21	16%	73	54%	12	9%	134
Other Sex Offenses	28	17%	6	4%	55	33%	74	45%	2	1%	165
Disturbing The Peace	84	7%	94	8%	115	10%	803	70%	51	4%	1147
Drunk In Public	435	10%	319	7%	1158	25%	2460	54%	189	4%	4561
Malicious Mischief	55	6%	39	4%	171	19%	602	66%	40	4%	907
Other Misdemeanor	494	8%	436	7%	1143	19%	3574	61%	244	4%	5891
TOTAL OTHER CRIMES	2443	10%	1794	7%	4953	20%	14349	59%	974	4%	24513

TOTAL ALL CRIMES	2993	10%	2426	8%	6040	20%	17452	58%	1411	5%	30321
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NOTE: RMS is the data source with the exception of Murder, which is obtained from the Homicide Unit. Counts include all offenses reported to the San Jose Police Department except for vehicular manslaughter, traffic, credit card and check offenses, and embezzlement.

*Auto Theft may contain offenses of non-return of car rentals and auto thefts committed by family or friends.

**Other: Includes Native American Indian, Pacific Islander, Middle Eastern, Unclassified, and Unknown.

Attachment B-2

CALENDAR 2009 (January through May)

PART I CRIMES	Afr- Amer	% of Total	Asian	% of Total	Euro- Amer	% of Total	Hispanic	% of Total	Other**	% of Total	Total
Murder	0	0%	0	0%	1	7%	14	93%	0	0%	15
Forcible Rape	1	7%	1	7%	1	7%	11	79%	0	0%	14
Armed Robbery	9	17%	1	2%	9	17%	32	62%	1	2%	52
Strong Arm Robbery	24	24%	4	4%	12	12%	53	54%	5	5%	98
Attempted Robbery	5	24%	0	0%	5	24%	11	52%	0	0%	21
Home Invasion	0	0%	0	0%	0	0%	2	100%	0	0%	2
Carjacking	1	50%	0	0%	0	0%	1	50%	0	0%	2
Aggravated Assault	37	8%	44	9%	86	19%	269	58%	28	6%	464
Residential Burglary	4	5%	23	31%	14	19%	26	35%	7	9%	74
Commercial Burglary	2	22%	2	22%	3	33%	2	22%	0	0%	9
School Burglary	2	9%	1	4%	4	17%	15	65%	1	4%	23
Attempted Burglary	1	13%	3	38%	3	38%	1	13%	0	0%	8
Grand Theft	22	11%	20	10%	45	23%	97	49%	15	8%	199
Auto Theft*	4	2%	13	6%	7	3%	101	49%	82	40%	207
Petty Theft	107	7%	183	13%	313	21%	753	52%	100	7%	1456
Auto Burglary	1	2%	1	2%	7	16%	35	80%	0	0%	44
TOTAL PART I CRIMES	220	8%	296	11%	510	19%	1423	53%	239	9%	2688

OTHER CRIMES	Afr- Amer	% of Total	Asian	% of Total	Euro- Amer	% of Total	Hispanic	% of Total	Other*	% of Total	Total
Narcotics	272	12%	195	8%	518	22%	1283	55%	72	3%	2340
Other Felony	51	8%	59	9%	89	14%	403	64%	30	5%	632
Simple Assault	111	11%	80	8%	165	16%	593	59%	53	5%	1002
Assault On Peace Officer	15	9%	13	8%	30	19%	100	63%	1	1%	159
Resisting Arrest	33	12%	16	6%	53	20%	155	58%	9	3%	266
Child Annoying/Endangerment	3	27%	1	9%	2	18%	5	45%	0	0%	11
Unlawful Intercourse	5	16%	2	6%	2	6%	20	65%	2	6%	31
Indecent Exposure	2	13%	1	6%	4	25%	9	56%	0	0%	16
Lewd & Lascivious	4	8%	3	6%	9	17%	33	63%	3	6%	52
Other Sex Offenses	10	18%	7	12%	9	16%	30	53%	1	2%	57
Disturbing The Peace	51	10%	47	9%	43	8%	359	69%	24	5%	524
Drunk In Public	78	8%	59	6%	294	29%	536	53%	36	4%	1003
Mallicious Mischief	22	5%	30	7%	62	15%	283	68%	20	5%	417
Other Misdemeanor	191	9%	170	8%	413	19%	1258	59%	93	4%	2125
TOTAL OTHER CRIMES	848	10%	683	8%	1693	20%	5067	59%	344	4%	8635

TOTAL ALL CRIMES	1068	9%	979	9%	2203	19%	6490	57%	583	5%	11323
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NOTE: RMS is the data source with the exception of Murder, which is obtained from the Homicide Unit. Counts include all offenses reported to the San Jose Police Department except for vehicular manslaughter, traffic, credit card and check offenses, and embezzlement.

*Auto Theft may contain offenses of non-return of car rentals and auto thefts committed by family or friends.

**Other: Includes Native American Indian, Pacific Islander, Middle Eastern, Unclassified, and Unknown.

ARREST INFORMATION

CALENDAR YEAR 2009

PART I CRIMES	Afr-Amer	% of Total	Asian	% of Total	Euro-Amer	% of Total	Hispanic	% of Total	Other**	% of Total	Total
Murder	1	3%	4	11%	4	11%	26	74%	0	0%	35
Forcible Rape	4	8%	3	6%	6	12%	36	72%	1	2%	50
Armed Robbery	19	14%	7	5%	18	13%	89	66%	1	1%	134
Strong Arm Robbery	58	23%	11	4%	34	14%	131	53%	13	5%	247
Attempted Robbery	7	15%	1	2%	7	15%	31	65%	2	4%	48
Home Invasion	3	50%	0	0%	0	0%	2	33%	1	17%	6
Carjacking	1	17%	0	0%	0	0%	3	50%	2	33%	6
Aggravated Assault	99	10%	101	10%	179	18%	587	58%	52	5%	1018
Residential Burglary	14	8%	32	19%	35	20%	79	46%	12	7%	172
Commercial Burglary	4	13%	3	9%	13	41%	11	34%	1	3%	32
School Burglary	4	9%	4	9%	6	14%	28	64%	2	5%	44
Attempted Burglary	11	28%	8	20%	5	13%	15	38%	1	3%	40
Grand Theft	53	11%	59	12%	87	18%	248	51%	41	8%	488
Auto Theft*	12	3%	20	5%	21	5%	177	43%	185	45%	415
Petty Theft	251	8%	440	13%	692	21%	1710	52%	217	7%	3310
Auto Burglary	5	5%	5	5%	20	19%	77	72%	0	0%	107
TOTAL PART I CRIMES	546	9%	698	11%	1127	18%	3250	53%	531	9%	6152

OTHER CRIMES	Afr-Amer	% of Total	Asian	% of Total	Euro-Amer	% of Total	Hispanic	% of Total	Other*	% of Total	Total
Narcotics	605	11%	434	8%	1265	23%	3021	55%	189	3%	5514
Other Felony	104	8%	105	8%	197	14%	918	67%	47	3%	1371
Simple Assault	237	10%	175	8%	406	18%	1326	59%	119	5%	2263
Assault On Peace Officer	45	12%	18	5%	65	18%	233	63%	10	3%	371
Resisting Arrest	90	15%	35	6%	110	18%	345	57%	26	4%	606
Child Annoying/Endangerment	3	12%	4	16%	2	8%	14	56%	2	8%	25
Unlawful Intercourse	5	8%	5	8%	6	9%	47	71%	3	5%	66
Indecent Exposure	2	6%	2	6%	11	33%	17	52%	1	3%	33
Lewd & Lascivious	8	7%	6	6%	13	12%	78	72%	3	3%	108
Other Sex Offenses	20	15%	12	9%	25	19%	66	50%	9	7%	132
Disturbing The Peace	104	10%	76	7%	98	9%	718	69%	44	4%	1040
Drunk In Public	196	9%	107	5%	635	29%	1170	53%	97	4%	2205
Malicious Mischief	53	6%	64	7%	164	18%	576	65%	34	4%	891
Other Misdemeanor	464	9%	412	8%	977	19%	3109	60%	229	4%	5191
TOTAL OTHER CRIMES	1936	10%	1455	7%	3974	20%	11638	59%	813	4%	19816

TOTAL ALL CRIMES	2482	10%	2153	8%	5101	20%	14888	57%	1344	5%	25968
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NOTE: RMS is the data source with the exception of Murder, which is obtained from the Homicide Unit. Counts include all offenses reported to the San Jose Police Department except for vehicular manslaughter, traffic, credit card and check offenses, and embezzlement.

*Auto Theft may contain offenses of non-return of car rentals and auto thefts committed by family or friends.

**Other: Includes Native American Indian, Pacific Islander, Middle Eastern, Unclassified, and Unknown.