



SAN JOSE POLICE OFFICERS' ASSOCIATION'S COMPREHENSIVE PROPOSAL ON POLICE REFORMS, RETENTION, AND RECRUITMENT

1. PREAMBLE

The City of San Jose Annual Report on City Services 2019-20 reveals several troubling pieces of information with regard to our police department and its inability to meet Council-established policy goals to ensure residents are provided with basic public safety services.

According to the report authored by the City Auditor, the SJPD did not meet its 911 emergency response time goals for either Priority 1 or Priority 2 calls for service. In fact, Priority 1 responses deteriorated by a dramatic 16.66% from six (6) to seven (7) minutes citywide and it is much worse for Priority 2 calls.

The City continues to struggle to recruit and retain officers to reach its authorized staffing levels. Chronic understaffing of police officers has negatively impacted the Department's ability to prevent major crimes¹ and successfully investigate those crimes after they are committed.

From the Auditor's report:

- In 2019-2020, the citywide average response time for Priority 1 calls was 7 minutes (target: 6 minutes).
- The citywide average of 21 minutes response time for Priority 2 calls was well above the target of 11 minutes.²
- San José experienced 2,858 major crimes per 100,000 residents in 2019. Although the rate of major crimes per 100,000 residents in San José has historically been slightly below the national and state rates, in 2018, San José's rate rose slightly above both the state and national rates and continued to exceed those rates in 2019.³

¹ City of San Jose Annual Report on City Services 2019-2020, pg. 120, Crime in San Jose: "Major crimes include violent crimes (homicide, rape, robbery, and aggravated assault) and property crimes (burglary, larceny, and vehicle theft)."

² City of San Jose Annual Report on City Services 2019-2020, pg.119, Police Response Times.

³ City of San Jose Annual Report on City Services 2019-2020, pg. 120, Crime in San Jose

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- In 2019, the clearance rate in San José for major violent crimes was 35 percent, compared to 46 percent for both the U.S. and California.⁴
- SJPD has faced high vacancy rates among street-ready officers. Of the 1,149 authorized sworn positions, only 954 were actual full-duty, street-ready officers as of June 2020 (this excludes vacancies, officers in training, or those on modified duty or disability/other leave). There were 115 sworn hires in 2019-2020 and 126 sworn vacant positions as of June 30, 2020.⁵

The Auditor's report spells out challenges we must overcome collectively when it comes to crime, response times, and understaffing. To that end, it is important to note that during these challenging times the San Jose Police Officers' Association (SJPOA) has worked collaboratively with the City of San Jose and the San Jose Police Department (SJPD) to successfully implement numerous improvements to our operations that have resulted in a more transparent, trained, and efficient department. These improvements include, but are not limited to:

- In 2015, the SJPOA agreed to roll out a multi-faceted, department-wide Body Worn Camera program;
- In 2017, the SJPOA proposed and advocated for all officers to receive rigorous Crisis Intervention Training;
- In 2020, the SJPOA agreed to expand the scope and authority of the Independent Police Auditor, through a ballot measure to amend our City Charter, to include the ability to review internal investigation complaints and to allow access to redacted Police records and reports, and to provide the means for further expansion of IPA authority through the meet and confer process;
- In 2020, the SJPOA proposed and expeditiously agreed to a revised and more transparent Critical Incident Video Release policy; and
- In 2020, the SJPOA supported efforts to revise our duty manual to fully comply with standards contained in AB 392. In addition, the SJPOA advocated for AB 392 Use of Force training.

At the same time, staffing challenges continue to beset the SJPD. San Jose has the lowest per capita staffing when compared to the 30 largest cities in America, as ranked by population. Due to the incredibly high cost of living, limited promotional opportunities, and uncertainty at the State and local level as to the depth and types of law enforcement policies being contemplated by elected leaders, the SJPD remains acutely challenged in its ability to recruit and retain the most qualified candidates, who exhibit the highest ethical and educational standards, to be police officers.

Examples of the challenges we collectively face include, but are not limited to, the following:

⁴ City of San Jose Annual Report on City Services 2019-2020, pg. 120, Investigative Services.

⁵ City of San Jose Annual Report on City Services 2019-2020, pg.116.

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- i. Recruiting applicants **dropped 60%** from calendar year 2019 to 2020;
- ii. June 2020 Academy (50 recruits) was **cancelled**;
- iii. Recent academies and the FTO Program have a **combined 30%+ failure rate**—this translates to a full academy producing at most 35 new recruits; and,
- iv. For the past 5 years, SJPD has **averaged a loss of 90+ police officers** due to retirement, resignation, and termination.

These issues continue to undermine SJPD's ability to provide safe neighborhoods throughout the City. The number one priority of any government is to keep its community safe. The average person and family must be safe in their daily lives. Without quality police officers, and enough of them, our residents and businesses will suffer.

To that end, the SJPOA submits this comprehensive proposal regarding improvements to police operations, streamlining officer disciplinary procedures and modest increases to wages to not only recruit but to retain the highest quality police officers to successfully manage the ever-changing landscape of how San Jose is policed. Strengthening transparency and trust are critical components to a successful community and police relationship and this proposal strikes the correct balance.

2. POLICE DISCIPLINE

a. Expediting Skelly Hearings

At the Chief of Police's sole discretion, she/he may create and deploy a Critical Incident Investigation Team to expedite the investigation and completion of the required steps to schedule an expedited Skelly Hearing as quickly as the City/Chief of Police determines. The department and the POA must meet certain timelines to complete the process. We remain open to expediting discovery, scheduling, and any briefing process.

b. Transparency in Disciplinary Arbitration

The SJPOA recognizes the importance of public confidence in the fair, transparent and ethical determination of police officer discipline. To that end, any officer who elects discipline arbitration shall do so knowing that any final Arbitrator's Award will be published by the City. The officer's name and other identifying features will be redacted from any award to protect their privacy.

c. Arbitration Panel

The parties shall agree upon the means for selecting a permanent panel of five (5) qualified arbitrators to determine police discipline cases. Selected arbitrators will be rotated on an agreed upon basis.

SJPOA reserves the right to add to, delete from, and/or modify this proposal at any time during the course of negotiations.

3. IMPROVEMENT TO TRANSPARENT POLICE OPERATIONS

a. Use of Force Review

i. Codify Review Protocols

The parties shall codify the following protocols for uses of force by officers:

1) *Category 1: Any use of Force that causes a minor injury or complaint of pain*

Review: Sgt. investigates (if Sgt. uses force, Lt. investigates) and forwards the results of the investigation up the chain of command—all investigative findings and accompanying paperwork must be forwarded up the chain of command for review and disposition

2) *Category 2: Deployment of TASER, Impacts Weapons, OC Spray or Projectile Impact Weapons*

Review: Lt. responds to scene; completes Supplemental Report; may direct Sgt. to submit documentation – if so, Lt. must complete Command Review Memorandum

3) *Category 3: Impact Weapon or Projectile Impact Weapon (strike to the head); Projectile Impact Weapon (more than 4 rounds strike the suspect); kicks to the head; 2 or more officers deploy less-than-lethal force on one suspect; 4 or more officers use reportable force on one suspect; force resulting in bone fracture; canine apprehension (dog bite); carotid restraint applied; force resulting in loss of consciousness; or hospital admission as direct result of the force*

Review: Lt. responds to the scene; Sgt. submits documentation of incident within 7 days; Lt. shall complete Supplemental Report; Lt. must complete Command Review Memorandum

4) *Category 4: Deadly force.*

Review: Officer-Involved Incident Guidelines shall apply

ii. Notification to IPA of Use of Force Incident

The IPA shall receive notification within 24 hours of all incidents arising to the level of Category 3 or above.

b. Less-Than-Lethal Uses of Force Options

The SJPD and the SJPOA will create a Task Force that will include subject matter experts to investigate, explore, and report back to the Council about any emerging less-than-lethal options that could reduce the need for police to rely upon the use of a baton, projectiles, or firearms. The Task Force will issue a report to the City Council and Chief of Police within 90 days.

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c. Ongoing De-escalation Training

The parties agree that officers shall be subject to a minimum of 8 hours of de-escalation training each quarter.

d. Implicit Bias Training

Increase the frequency of implicit bias training and incorporate emerging scientific data and theories into those trainings.

e. Early Intervention System

The City and the SJPOA will complete the meet and confer process within 90 days of adoption of this agreement to improve the database that tracks officers pursuits, uses of force, and complaints. The information culled from this data will inform the creation of an improved early intervention system that identifies and compares individual officers to agreed-upon standards for each category within their peer group. This Early Intervention System shall not be punitive in nature, but rather shall be used as a continuous improvement instrument to identify officers in need of additional training, mentoring, and/or other assistance to reduce the categorized items to an acceptable level within their peer group.

If the Early Intervention System results in a Department-Initiated Investigation, the IPA shall receive notification.

4. REIMAGINING RESPONSES TO EMERGENCY CALLS FOR SERVICE

Currently, Police Officers are the initial responders and primary resource on certain calls for service that may be better suited to mental health or non-sworn law enforcement professionals. The City should amend and/or end the use of Police Officers to respond to certain calls for service, including calls related to non-criminal or non-violent activity, and to instead provide for an alternate type of response to these calls.

The calls that should be redirected for non-Police response include, but may not be limited to, the following:

1. Non-criminal and/or non-violent homeless and quality of life related calls.
2. Non-criminal mental health calls.
3. Well-being checks where there is not a crime in progress.
4. Juvenile disturbance or juveniles beyond parental control calls.
5. Calls to schools unless the school administration is initiating a call for an emergency police response or making a mandatory reporting notification.
6. Certain Public Health Order violations. (COVID)

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7. Transports for other City departments (APS, CPS).
8. Calls for service at City parks.
9. Under the influence calls (alcohol and/or drugs) where there is no other crime in progress.
10. 10-33A – Commercial, Residential & Vehicular Alarm Code
11. 10-53 – Person Down
12. Welfare Check – WELCK
 - a. Non-Criminal
 - b. Courtesy request from Drs/Hospitals
13. Non-Fatal Vehicle Accidents – 1181/1182/1183/1179
 - a. Non-DUI/Non-Criminal
14. Parking violations.
15. Driveway tow.
16. Abandoned vehicles.
17. Person dumping trash.
18. Vicious and dangerous dog complaints.
19. Calls for service for loud noise, loud music, or ‘party’ calls that are anonymous or have no victim.

The SJPOA agrees to immediately cease responding to the calls listed above once the City initiates a new response protocol and will work with the City/Department to implement safe protocols if a SJPD response becomes necessary once a non-sworn law enforcement responder arrives on scene and evaluates the incident.

5. WAGES

Base Wage Increases:

- a. 1/21 – 5%
- b. 7/21 - 5%
- c. MOU expires 7/1/22

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6. RETIREE REHIRE PROGRAM

The parties agree to create a retiree rehire program mutually within 90 days of this agreement to support officer retention efforts, maintain experienced officers, and ensure minimum staffing levels.

7. REOPENER

If the City receives stimulus monies from the federal or state government during the term of this agreement, the parties will meet and confer to agree upon a formula to target portions of the monies to retain officers and increase staffing.

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