

ITEM:



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo
Vice Mayor Chappie Jones
Councilmember Raul Peralez
Councilmember Lan Diep
Councilmember Magdalena Carrasco

SUBJECT: SEE BELOW

DATE: June 11, 2020

APPROVED:

DATE: 06/11/20

Lan Diep

SUBJECT: BAN THE USE OF RUBBER BULLETS FOR CROWD CONTROL

RECOMMENDATION

- 1) Direct the City Manager to amend the SJPD Duty Manual, or alternatively direct the City Attorney to amend San Jose Municipal Code Section 10.32– to prohibit the use of kinetic impact projectiles (KIP), i.e., rubber or foam bullets, within a dense crowd as a measure of crowd control, and to make this action immediate.
- 2) Direct the Independent Police Auditor (IPA) to:
 - a. Create an avenue to receive reports from anyone who either attended or were bystanders of the May 29th through June 4th protests and were injured by forced police response.
 - b. Return to Council by August 2020 with a special report to Council on the quantity and type of complaints received by the IPA relative to the period of civil unrest and police response beginning on May 29th and ending when the Council rescinds the Emergency Declaration related to Civil Unrest.

DISCUSSION

In keeping with the June 5, 2020 memorandum “DISCUSSION AND ACTIONS RELATED TO POLICE USE OF FORCE AND CROWD CONTROL MEASURES”, the research noted in the June 5 memo discussion section (portion copied below for reference), combined with more recently-revealed experience of injuries among members of our own community, lead us to call

for a prohibition on the use of kinetic impact projectiles (KIPs) including rubber bullets, as a measure of crowd control.

We appreciate that the overwhelming majority of our police force has responded lawfully and with appropriate restraint to protesters, but there have been several troubling incidents that require investigation, accountability, and consequences.

We appreciate the need for the police to deploy crowd dispersal tactics when confronting a small number of violent or destructive individuals mixed in with a larger, peaceful crowd—as we saw last Friday and Saturday—to avoid more serious violence that can result with continued violence. However, too many peaceful protesters and journalists were injured by KIPs deployed during crowd control efforts; Derrick Sanderlin’s serious injury stands out as the worst example. We apologize to Derrick, and vow to ensure that we will not revisit this harm on other members of our community. The risk of further harm to the public clearly outweighs reported benefits of this method of crowd dispersal.

We have been seeing more accounts via social media, and new outlets of injured protesters and bystanders and we as a Council need to understand the full extent of the injuries in our community. We applaud the Office of the Independent Police Auditor for the increased workload they are taking on to outreach to the community and conduct additional intake. We would ordinarily see the status of the intake and complaints as part of the IPA annual report, but that will not be scheduled to occur until mid-2021. Given the extraordinary circumstances and requests for greater and timelier transparency, we need to ask our IPA and her team to come back with a special report to Council within the upcoming months that, at the very least, daylight the amount and type of complaints and offers a high level perspective of the trends that are developing, along with any recommended actions.

Discussion from June 5 memo that applies to KIPS:

The murder of George Floyd at the hands of officers in the Minneapolis Police Department has shaken our nation, and exposed longstanding wounds created by generations of racism. Protests expressing outrage are righteous and necessary. We are fortunate to live in a community in which the overwhelming majority of participants in these protests have exercised their First Amendment rights peacefully.

There have been exceptions, however, and the episodes of assaults, bottle-throwing, arson, window-smashing, looting, and the like have forced our exhausted police officers to take actions to respond to violence and destructive activity while ensuring that protesters can safely continue to express themselves. Throughout the several recent days of tense standoffs between protesters and police, we have observed commendable restraint by the overwhelming majority of police officers forced to dodge rocks, bottles, exploding fireworks, and even accelerating automobiles. We fully expect and demand that any exceptions to that exemplary restraint—that is, where any officer is alleged to have used force unlawfully or excessively— will be fully investigated and met with serious consequence.

However, as these demonstrations wear on, it remains imperative for the Council and the public to fully understand whether our uses of force for what is commonly referred to as “crowd control” meet our high standards for the San Jose Police Department.

In particular, we express concern and a desire to closely scrutinize the use of KIP's—rubber or foam bullets—under the relatively chaotic circumstances of a large, fast-moving crowd. Anecdotal evidence—of journalists and seemingly non-violent protesters being struck by the rubber bullets—demonstrates what appears to be well-known: this is a very imprecise tool, with a high probability of inaccuracy. While typically shot toward the ground to reduce the likelihood of head strike, the ricochet of the rubber bullets continues to expose members of the public to risk of a rising bullet striking their head, where the risk of harm rises sharply. As evidenced by the piercing of 2nd and 3rd story windows along East Santa Clara Street, the ricochet of these bullets appears very difficult to control.

More troubling are sources of academic and health research suggesting that KIP's pose a significant risk of unintentional death or serious injury. Kaiser Health report raises serious concerns, citing a 2017 study of all kinetic-impact-projectiles (KIP)—including rubber, plastic, and bean-bag bullets—with disturbingly high (3%) mortality rate and a 15% rate of serious injury. ¹ Another source identifies that seven individuals struck by rubber bullets in the U.S. since 1971 have died, a phenomenon that typically results from ocular penetration of the bullet. ² In the British medical journal, *The Lancet*, a 2002 study of the use of rubber bullets for crowd control in Israel determined that three of the 151 people suffering rubber-bullet injury died, and 59 others incurred penetrating injury of varying severity. The study's abstract recites its conclusion, "Inaccuracy of rubber bullets and improper aiming and range of use resulted in severe injury and death in a substantial number of people. This ammunition should therefore not be considered a safe method of crowd control." ³ An older study, published in 1975, of 90 persons struck by rubber bullets in Great Britain identified one death and seventeen suffering permanent disability or deformity. Forty-one of the patients had injuries requiring admission to a hospital. ⁴ Of course, it remains critical for us to know to what extent rubber bullets have been made safer in design or composition since the time of these studies, and what less-than-lethal options may remain for police officers without them. For that reason, we seek to probe further, and understand more about the weapon and its use, and whether there are viable, less harmful alternatives.

¹ <https://khn.org/news/police-use-rubber-bullets-on-protesters-that-can-kill-blind-or-maim-for-life/>

² <https://slate.com/news-and-politics/2000/10/what-are-rubber-bullets.html>

³ <https://www.sciencedirect.com/science/article/pii/S0140673602087081>

⁴ <https://doi.org/10.1002/bjs.1800620613>