



## **PUBLIC INTOXICATION TASK FORCE MEETING – REVISED SYNOPSIS**

**MEETING DATE: 1/15/09**

**MEMBERS:** PETE CARILLO, DOLORES CARR, RAUL COLUNGA, KATHY CORDOVA, EDWARD FLORES, MARY GREENWOOD, RAJ JAYADEV, SHEILA E. MITCHELL, JEFF MOORE II, SHIVAUN NURRE, VICTOR RODRIGUEZ, ANDRE SEGURA (on behalf of Skyler Porras), OTIS WATSON, JORGE WONG

**ABSENT:** MELANIE ESPINO, ROSE LEE, ALFREDO MORALES, ROD SCHISLER, WALTER WILSON

**CHAIR:** DEBRA FIGONE, CITY MANAGER

**STAFF:** ROB DAVIS, CHIEF OF POLICE, NORBERTO DUENAS, DEPUTY CITY MANAGER, GEORGE RIOS, ASSISTANT CITY ATTORNEY

**FACILITATOR:** SHAWN SPANO

### **Welcome/Introductions**

- Debra Figone called meeting to order at 6:09 p.m.
- Ms. Figone, City Manager for the City of San Jose, will also serve as the Chair of the Task Force. Ms. Figone welcomed Task Force members and thanked them for their commitment to solving this issue.
- Task Force members and staff introduce themselves (name and group affiliation); including their background. (Organization Roster is posted at <http://www.sanjoseca.gov/PublicIntoxTaskForce.asp> )

### **Previewing the Council Direction for Task Force, Outcomes, Topics and Schedule**

- a. Background: On November 18, 2008, the City Council held a public hearing to discuss the issue of public intoxication. At that meeting, Council directed the City Manager to establish a task force that is charged with addressing the issue of arrests for public intoxication.
- b. Council Direction, Task Force Purpose:
  - To develop recommendations for non-criminal sanctions and diversionary approaches that might apply to some persons who might otherwise face arrest under penal code 647(f).

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- To develop recommendations for additional procedures that an officer should satisfy to obtain objective evidence to support his or her findings to arrest under Penal Code Section 647(f).

c. Expected Outcomes of the Task Force

- Broad-based assessment of the problem of public intoxication in San José as it relates to arrests and evidence used to support arrests.
- Identification of possible solutions to the problem (i.e. non-criminal sanctions and objective evidence); to include solutions derived from multiple sources.
- Analysis of possible solutions according to agreed-upon criteria.
- Prioritization of solutions to recommend to City Council.

d. Topics and Schedule

Topics and schedule set to ensure completion of final report and recommendations to Council in April – 90 day timeframe.

- Phase 1: Identifying the Nature of the Problem (January 15 & 29)
- Phase 2: Identification and Analysis of Solutions (February 26)
- Phase 3: Prioritization of Solutions (March 12)
- March 26: Hold as needed

e. Meeting Structure and Format

- Designed to provide a balance between open dialogue and rich conversation while ensuring the Task Force stays focused on the direction of the City Council.
- Given the tight time frame (90 days), it will be necessary to find alternative ways of addressing those parts of the problem with 647(f) arrests that do not bear directly on the purpose of the Task Force.
- Ground Rules for promoting good communication:
  - Speak candidly
  - Listen openly
  - Maximize participation
  - Avoid jargon and specialized language

Questions/Comments:

Q: How does the lawsuit affect the dialogue?

A: Purpose of task force is not to discuss the litigation.

Q: Is the issue of alcoholism going to be a part of the discussion? If it is not going to be discussed then the City Council should be made aware of this to ensure that there is no misunderstanding.

A: This issue was discussed in the Council City Manager's memorandum so staff would be prepared to discuss should the task force raise this issue. It is not currently planned as a discussion topic.

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Comment: Task Force member addressed the selection of Chair and concerned with role and potential conflict of interest.

Comment: Task Force member suggested having public comment at the beginning of the meetings.

Comment: Task Force member expressed concern that the name of task force is somewhat misleading as the issue is the level of public intoxication not solely being intoxicated in public.

Question: What is the likelihood that the recommendations would be implemented given the current economy and the potential costs to the City?

### **Identifying the Nature of the Problem**

A summary of the public comments from the November 18 City Council meeting were organized into thematic categories and used to initiate task force discussion of the problem. Task force members expanded on and added to the public comments. A synopsis of the discussion is captured in the thematic categories below

#### Thematic Category 1: Goals and Visions/What the Community Wants

- Fairness, trust and respect.
- Racial equality.
- Transparency and openness.
- Community input.
- Education of community and government officials.
- Decriminalization of 647(f) charges.
- Ensure that the community's voices are heard and responded to.

#### Thematic Category 2: Issues and Concerns

- Race-based arrests: Why are Hispanics being arrested under 647 (f) disproportionately compared to the rest of the population?
- Attitude arrests (Includes bystander arrests).
- Lack of objective criteria to arrest under 647(f).
- Police reports do not detail accounts of the arrest.
- Accountability: personal and business.
- Reduce the number of class action law suits
- 40% of 647(f) are not citizen complaints/calls
- How is 647(f) implemented, what is it about this law that allows them to make these arrests?
- San Jose Police Officers are misusing their discretion and authority; the data is evidence of that problem.
- Concern that a decrease in 647(f) arrests will trigger an increase in 148(resisting arrest) arrests.
- Need hard data and statistics about downtown demographics and 647(f) arrests to move forward with this conversation; want a third party to analyze the data.
- Arrest reports are not very detailed which makes it difficult to evaluate. Objective information substantiates the facts that the officer observed and would help officers to recall the incident.
- 647(f) completely bypasses Santa Clara County District Attorney's office if it is not accompanied by another more serious crime.
- A significant number of people feel that there was no basis/validity for their arrests.

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- Police often anticipate problems and therefore arrest an individual. The police are allowed too much discretion in almost all arrests.

### Thematic Category 3: Negative Effects of 647(f) Arrests

- Community trust in the Police Department is questioned
- Community is reluctant to approach or ask Police Officers for the assistance
- Community lacks confidence in Police
- Fosters feelings of anger and resentment toward Police Department
- 647(f) arrests are detrimental to an application for Legal Residency in the U.S.
- 647(f) arrests take care of the immediate problem but there are ramifications that are long-standing which do not cost the City because they are part of a different system.
- The underlying arrest can lead to a lack of confidence in the justice system that can linger for long periods of time and negatively effect people's perceptions; it has a ripple affect.
- If an individual feels they were wrongfully charged, it only enhances the community's lack of trust in the justice system.
- Arrests have a significant economic impact on local government.

### Clarifying and Updating Possible Solutions

Task force members read from Councilmember Sam Liccardo's memo to City Council outlining possible solutions for non-criminal sanctions for 647(f) arrests and objective criteria by which to support arrests (see below). While some of these solutions were mentioned in subsequent discussion, the task force will need to examine them in more detail in later meetings. Task force members can also bring forth additional solutions.

- Sobering stations for intoxicated persons.
- Enforcement of Municipal Code provisions that entail non-criminal sanctions, particularly where police response costs can be recovered under Municipal Code Section 10.16.100.
- Enforcement of any new or proposed Municipal Code provisions that Council might create to impose fines or other non-criminal penalties.
- Requiring officers to offer PAS testing (Preliminary Alcohol Screening Device) to arrestees, but ensuring that a suspect's refusals could be documented in the officer's report.
- Requiring officers to offer blood or urine chemical testing at the option of the arrestee, but with the expense of such test incurred by the arrestee.
- Conducting coordination tests, such as line walking and standing balance tests, in all Section 674(f) arrests in which a person appears to have sufficient control over their motor skills

### Requests for Information:

- Definition of 647 (f) law
- Records of arrests to be made public.
- Prepare a synopsis of what other cities have done with the issue of public intoxication

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- Document from the Office of the District Attorney describing the judicial/court process of 647(f) arrests
- County 647(f) arrest/citation form which SJPD utilizes
- Data and statistics describing downtown demographics and 647(f) arrests, to include ethnicity and race of the arrestee and the arresting police officer.
- Question: Has there been a decline in arrests since the implementation of PAS?
- Question: Has a threshold been established when using the PAS system?
- Question: What has been done since the 12/18 meeting?
- Question: What percentage of 647(f) arrests go to trial, filed by DA, dropped?
- Question: When did the City cut the sobering stations out of their budget?

### Public Comment:

- Why does the City have a high arrest rate in San Jose?
- Citizen feels that Task Force is incorrectly named; public intoxication is not the issue.
- It would be good to study other cities that do not have high 647(f) arrest rates.
- 647(f) arrests have long-term consequences.
- Public has seen many unlawful arrests and violation of individuals' constitutional rights.
- Arrests are preventing patrons from frequenting businesses downtown.
- 647(f), 148, 415 have all been an issue in San Jose.
- There has not been probable cause in many cases; how can you decipher differing positions without seeing reports.
- The public is concerned with rudeness of police officers at previous meeting with the Independent Police Auditor's Office hearings.
- Scope of the meetings should be limited to 647 arrests.

The following questions were submitted via e-mail on January 23, 2009 in response to a request at the Task Force meeting:

- How are officers trained with respect to 647(f), especially on the elements and how to determine if the element of able to care for self or others is met?
- How does the department determine if the officer is able to appropriately make the determination that all of the elements are met?
- How does the department monitor its officers to determine if they are appropriately making arrests for 647(f)?
- How many 647(f) cases referred for prosecution were actually filed?
- How many 647(f) cases referred for prosecution were rejected?
- How many 647(f) cases that were referred for prosecution were ultimately dismissed?
- How many 647(f) cases that were referred for prosecution resulted in a conviction by plea?
- How many 647(f) cases that were referred for prosecution resulted in a conviction by verdict?
- Has the department prior to these requests ever made an attempt to determine if officers were appropriately utilizing 647(f) and, if so, when, how, and with what results?

**Closing:** Next meeting will take place on January 29<sup>th</sup>, 6:00 – 9:00 pm, at City Hall in Wing Rooms 118-120.

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Concerns and/or questions can be emailed to [Norberto.Duenas@sanjoseca.gov](mailto:Norberto.Duenas@sanjoseca.gov), please type "Public Intoxication Task Force" in the subject line. He can also be contacted at (408) 535-8180.

Meeting was adjourned at 9:15 pm

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