



**City of Seattle**  
Mayor Jenny A. Durkan

June 29, 2020

Monica Martinez Simmons  
Seattle City Clerk  
600 4<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
Seattle, WA 98124

Dear Ms. Martinez Simmons,

I have returned Council Bill 119805, passed unanimously by the council, unsigned, understanding it will become law 30 days upon my return of the legislation pursuant to SMC 1.04.020. While I share the Council's concerns about the Seattle Police Department's ("SPD") crowd management tactics to respond to recent protests, the Council's actions:

1) undermined the authority of the three SPD civilian accountability oversight bodies, the Office of Police Accountability ("OPA"), Office of the Inspector General ("OIG"), and Community Police Commission ("CPC"). In part on my request made on June 5<sup>th</sup>, those entities are reviewing SPD's crowd control practices, policies and actions and were asked to make recommendations in 30 days, which would be July 5<sup>th</sup>. Unfortunately, Council set a date of August 15<sup>th</sup> to receive the accountability partners report, which is after this legislation goes into effect. While I understand the issue is significant, I am hopeful that the accountability partners are able to return recommendations under the original timeframe and certainly before the legislation goes into effect and that Council should amend the legislation consistent with the recommendations. This review is critical to ensure we have crowd management policies and practices that enhance public safety and reduce use of force by officers;

2) the law directly impacts and possibly contravenes SPD policies developed and approved by federal court judge James Robart in the consent decree litigation. These policies were subject to review by Council, the previous Mayor, the accountability partners, U.S. Department of Justice and the federal Court Monitor. If the ordinance is found in conflict with court orders under the consent decree, it could bring the city out of compliance with the court orders;

3) the legislation effectively attempts to expand or overrule an order entered by federal court Judge Richard Jones, entered on June 12, 2020. This order was entered in litigation against the city for the actions taken by SPD during the protests and unrest. U.S. District Judge Jones, has entered a temporary order regarding crowd control measures, including the use of less than lethal options like tear gas, flash bangs and pepper spray. Until the city adopts a permanent crowd control policy, I support the Court's ruling and the preliminary injunction that is in place and extending it. Notably, there were extensive arguments urging an outright ban of the less than lethal options. Yet, Judge Jones instead struck a balance and his order allows specified uses where there is an imminent identifiable threat to life safety

and property. The Council's legislation has no such exemption for the imminent threat and risk of life; therefore is inconsistent with Judge Jones's federal court order; and

4) could result in significant financial and legal liability for the city, because the legislation allows anyone, including bystanders, who participated in a mass demonstration to seek compensation from the City for emotional or physical injuries regardless of whether they actually sustained an injury directly caused by a crowd control device. It also provides that even when police are using pepper spray as lawfully allowed by policy, the City is liable.

The ordinance states:

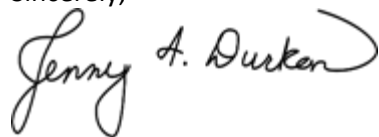
"When used to subdue an individual in the process of committing a criminal act or presenting an imminent danger to others, it lands on anyone other than that individual.

E. A person shall have a right of action against the City for physical or emotional injuries proximately caused by the use of crowd control weapons for crowd dispersal that occur after this ordinance takes effect.

F. Absent evidence establishing a greater amount of damages, the damages payable to an individual for injuries proximately caused in violation of this Section 3.28.146 shall be \$10,000, added to attorney fees and court fees."

Given these concerns and that we are waiting for the accountability partners to give their recommendations, I am returning this legislation unsigned. It is my hope that Council will review the accountability recommendations and amend the bill before its effective date a month from now. I have stated the crowd control actions by SPD during the protests failed appropriately to de-escalate conflicts and used a disproportional response that impacted people lawfully exercising First Amendment rights. However, I share the concerns of accountability partners and the Chief that the removal of all less than lethal crowd control measures could result in more direct use of force being used.

Sincerely,

A handwritten signature in black ink that reads "Jenny A. Durkan". The signature is written in a cursive, flowing style.

Jenny A. Durkan  
Mayor of Seattle