

June 21, 2021

MEMORANDUM

To: Members of the Public Safety and Human Services Committee
From: Lise Kaye, Analyst
Subject: Proposed Council Bill on Less Lethal Weapons

On June 22, 2021, the Public Safety and Human Services Committee (Committee) will discuss [Council Bill \(CB\) 120105](#), which would restrict the use of some less lethal weapons.¹ This memorandum provides brief background information and describes key elements of the proposed Council Bill. Attachment 1 to this memo provides a table summarizing how CB 120105 would regulate the City's use of Less Lethal Weapons.

The Committee voted on February 9, 2021 to send a draft bill to the Court-appointed Monitor (Monitor) and the Department of Justice (DOJ) for review. CB 120105 responds to comments received during that review.² CB 120105 would replace the total ban on less lethal weapons imposed by [Ordinance 126102](#), which was passed by Council on June 15, 2020 and is currently subject to a preliminary injunction by the United States District Court.³ Should Council pass CB 120105, the Monitor and DOJ will review any resultant Seattle Police Department (SPD) policy changes, consistent with Consent Decree requirements.⁴

Background

On September 11, 2020, the Committee heard recommendations from the three accountability agencies⁵ with respect to the SPD's policies on crowd management and use of less lethal weapons. On December 17, 2020, the Committee reviewed a "base bill" structured around the four recommendations agreed to by all three of the accountability agencies.⁶ At its January 12, 2021 meeting, the Committee discussed potential additional policies, and the Committee approved a series of amendments to a draft bill at its January 25, 2021 and February 9, 2021 meetings.

Also on February 9, 2021, the Committee approved a motion to submit the draft bill as amended to the Monitor and DOJ. Feedback on the draft bill included concern that some of the

¹ The CB 120105 is part of the Introduction and Referral Calendar that will be voted on at the June 21, 2021 Council meeting.

² SPD has been under federal oversight since 2012 after a Department of Justice investigation found that SPD had a pattern of using excessive force and also had policies and practices that could result in bias against minorities.

³ Background on the Court's findings with respect to Ordinance 126102 may be found in the [January 25, 2021 staff memo](#) to this Committee.

⁴ The Consent Decree requires the Monitor and the Department of Justice to review SPD's revised policies relating to the use of force. The Monitor and DOJ reviewed the draft bill, and a revised bill would be provided to them for information only.

⁵ Community Police Commission, Office of Inspector General, and Office of Police Accountability

⁶ The four recommendations were: to allow specific, non-crowd control uses for Pepper Spray, 40-millimeter Launchers and Noise Flash Diversionary Devices, and to ban Patrol use of Tear Gas. However, the base bill was written to ban all uses of tear gas, with the understanding that the PSHS Committee intended to have further deliberation on whether to provide any exceptions.

bill's restrictions could prevent SPD from responding in a targeted fashion to small groups of individuals committing unlawful acts during a demonstration and from using tear gas in a hostage situation or to gain access to a barricaded individual. Additional feedback noted that SPD would need sufficient time to revise its policies to align with the bill and to train its personnel to the new policies and that the bill could be constructed more clearly.

Council Bill 120105

The following section summarizes key provisions in CB 120105. These descriptions also note areas where CB 120105 would revise the draft bill sent to the Monitor and DOJ:

- Owning, Purchasing, Renting, Storing, Using (Section 1A) and Mutual Aid Agreements (Section 1B) – Prohibit City departments from owning, purchasing, renting, storing or using less lethal weapons, unless exempted or excepted in this bill; and prohibit other law enforcement agencies operating under mutual aid agreements from using less lethal weapons in a manner inconsistent with the provisions of [SMC 3.28.146](#). Those agreements must include that prohibition. Note: this section adds the clause that other law enforcement agencies must not use the less lethal weapons “in a manner inconsistent with SMC 3.28.146.”
- Definitions (Section 1C) – Defines “for the purpose of crowd control,” “less lethal weapons” and “violent public disturbance.” Note: Definition of the “purpose of crowd control” added clarity to subsequent restrictions on the deployment of some less lethal weapons.
- Noise Flash Diversionary Devices (Section 1D) – Prohibits use of Noise Flash Diversionary Devices (NFDDs) for any purpose at a demonstration or rally. Allows use of NFDDs in settings outside of a demonstration or rally but only in circumstances in which the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders. Note: this section clarifies language from the draft bill that could have been interpreted to allow use of NFDDs in a demonstration or rally for purposes other than crowd control.
- 40-Millimeter Launchers (Section 1E) – Allows use of 40-millimeter launchers used to deploy chemical irritants (including pepper spray) to Special Weapons and Tactics (SWAT) officers either (a) outside the setting of a demonstration or rally or (b) in a demonstration or rally for purposes other than crowd control. In either circumstance, the risk of serious bodily injury from violent actions must outweigh the risk of harm to bystanders. Note: this Section adds a risk consideration that was not included in the draft bill.
- Pepper Spray (Section 1F) – Allows the following uses of pepper spray only when the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders: 1. outside a demonstration or rally; 2. during a demonstration or rally for purposes other than crowd control; and 3. for crowd control during a violent public disturbance at a demonstration or rally. Note: this Section adds authority to use pepper spray to target individuals or small groups during a demonstration or rally and clarifies that it may be used outside a demonstration or rally, both uses of which require consideration of risk.

- Tear Gas (Section 1G)– Allows the following uses of tear gas by SWAT officers at or outside a demonstration or rally only if all four conditions are met: (1) during a violent public disturbance, (2) at direction of and by recently trained officers, (3) with a detailed tactical plan, and (4) use is reasonably necessary to prevent threat of imminent loss of life or serious injury and the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders. Note: this Section adds authority to use tear gas outside a demonstration or rally and conditions any use of tear gas both upon reasonable necessity to prevent threat of imminent loss of life or serious injury and upon the risk of serious bodily injury form violent action outweighing the risk of harm to bystanders.
- Private Right of Action (Section 1H) – Provides a right of action against the City for injuries caused by the use of less lethal weapons in a gathering that is not a violent public disturbance. It excludes from this right a person who, in the judgment of a reasonable person, commits a criminal offense at or immediately prior to the use of less lethal force. This section is identical to language in the draft bill.
- Notice (Sections 2 and 3) – Direct that notice of this action to be submitted to the DOJ and the Monitor and commit Council to engaging with the Labor Relations Director and staff in implementation of the bill. These Sections are unchanged from the draft bill.
- SPD Policy Revisions (Section 4) – Requires SPD to draft revisions to the Seattle Police Manual to bring it into compliance with the bill within 60 days after the bill takes effect and to publish the revisions on its website. This Section is new.
- Effective Date (Section 5) – Provides for the ordinance to take effect 30 days after the Court has approved the revised policies required by Section 4 of the bill. This revised Section links the effective date to the Court’s approval of the revised SPD policies instead of its review of the bill, consistent with requirements of the Consent Decree.

Attachment 1 to this memo provides a table summarizing how CB 120105 would regulate the City’s use of Less Lethal Weapons.

Attachments:

1. CB 120105 Regulation of Less Lethal Weapons

cc: Dan Eder, Central Staff Interim Director
Aly Pennucci, Policy and Budget Manager

Attachment 1: CB 120105 Regulation of Less Lethal Weapons

| Less Lethal Weapon | Used outside a demonstration or rally | Used at demonstration or rally for purposes other than crowd control, such as to target specific individuals or small groups | Used for crowd control at a demonstration or rally (i.e., to move or disperse an entire crowd) |
|---|---|---|---|
| Blast balls and other disorientation devices, acoustic weapons, directed energy weapons, water cannons, ultrasonic canons (Section 1A) | Banned | Banned | Banned |
| Noise flash diversionary devices (Section 1D) | Use must be by SWAT ONLY and the risk of serious bodily injury from violent actions must outweigh risk of harm to bystanders | Banned | Banned |
| Launcher w/ chemical irritant, e.g., “pepperball” (Section 1E) | Use must be by SWAT ONLY and the risk of serious bodily injury from violent actions must outweigh risk of harm to bystanders | Use must be by SWAT ONLY and the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders. | Banned |
| OC (pepper) spray (Section 1F) | Risk of serious bodily injury from violent actions must outweigh risk of harm to bystanders | Risk of serious bodily injury from violent actions must outweigh risk of harm to bystanders | Risk of serious bodily injury from violent actions must outweigh risk of harm to bystanders, and there must be a violent public disturbance |
| Tear gas (Section 1G) | Use must be by SWAT ONLY and only if two conditions are met: (1) the use must be reasonably necessary to prevent threat of imminent loss of life or serious bodily injury, and (2) the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders. | Can be used at a demonstration or rally only if five conditions are met: (1) during a violent public disturbance, (2) at direction of and by recently trained officers, (3) with a detailed tactical plan, (4) use is reasonably necessary to prevent threat of imminent loss of life or serious bodily injury, and (5) the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders. | Can be used at a demonstration or rally only if five conditions are met: (1) during a violent public disturbance, (2) at direction of and by recently trained officers, (3) with a detailed tactical plan, (4) use is reasonably necessary to prevent threat of imminent loss of life or serious bodily injury, and (5) the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders. |