



Legislation Details (With Text)

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On agenda: 8/16/2021

Final Action: 8/27/2021 **Ord. No.** Ord 126422

Title: AN ORDINANCE relating to the Seattle Police Department; banning the ownership, purchase, rent, storage, or use of less lethal weapons; and amending Section 3.28.146 of the Seattle Municipal Code.

Sponsors: Lisa Herbold

Indexes:

Attachments: 1. Summary and Fiscal Note, 2. Central Staff Memo, 3. Presentation, 4. Amendment 1 (right of action), 5. Amendment 2 (right of action), 6. Amendment 3 (pepperball launchers), 7. Mayor's Letter on Returning Bill Unsigned, 8. Signed Ordinance 126422, 9. Affidavit of Publication

| Date | Ver. | Action By | Action | Result |
|-----------|------|--|---------------------------------|--------|
| 8/27/2021 | 2 | City Clerk | attested by City Clerk | |
| 8/27/2021 | 2 | Mayor | returned | |
| 8/27/2021 | 2 | Mayor | returned unsigned | |
| 8/20/2021 | 2 | City Clerk | submitted for Mayor's signature | |
| 8/16/2021 | 2 | City Council | passed | Pass |
| 7/13/2021 | 1 | Public Safety and Human Services Committee | pass as amended | Pass |
| 6/22/2021 | 1 | Public Safety and Human Services Committee | discussed | |
| 6/21/2021 | 1 | City Council | referred | |
| 6/16/2021 | 1 | Council President's Office | sent for review | |
| 6/16/2021 | 1 | City Clerk | sent for review | |

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the Seattle Police Department; banning the ownership, purchase, rent, storage, or use of less lethal weapons; and amending Section 3.28.146 of the Seattle Municipal Code.

WHEREAS, in 2020, tens of thousands of community members joined mass demonstrations in Seattle in support of black lives and against police violence; and

WHEREAS, the Seattle Police Department (SPD) responded to these protests against police violence with

devices designed to cause severe discomfort and/or pain, including tear gas, pepper spray and explosive devices such as blast balls and stun grenades; and

WHEREAS, Seattle’s Office of Professional Accountability reported on June 3, 2020 that it had received 15,000 complaints of police misconduct related to SPD’s response to these protests; and

WHEREAS, studies into the impacts of policing at protests have determined that escalating force by police at protests leads to increasing violence; and

WHEREAS, on June 15, 2020, the City Council adopted Ordinance 126102 banning the ownership, purchase, rent, storage, or use of crowd control weapons, defined as kinetic impact projectiles, chemical irritants, acoustic weapons, directed energy weapons, water cannons, disorientation devices, ultrasonic cannons, or any other device that is designed to be used on multiple individuals for crowd control and is designed to cause pain or discomfort; and

WHEREAS, on July 24, 2020, the Honorable Judge James L. Robart of the U.S. District Court for the Western District of Washington imposed a temporary restraining order against enactment of Ordinance 126102, expressing concern that “by removing all forms of less lethal crowd control weapons from virtually all police encounters, the Directive and the CCW Ordinance will not increase public safety,” and asked the Office of Police Accountability, the Community Police Commission, and the Office of the Inspector General to review its possible impact on court-mandated police reforms. Judge Robart also expressed concern in the temporary restraining order that the CCW Ordinance did not “provide time for police training in alternative mechanisms to de-escalate and resolve dangerous situations if the crowd control implements with which the officers have been trained are abruptly removed”; and

WHEREAS, on August 10, 2021, the Honorable Judge Richard Jones of the U.S. District Court for the Western District of Washington issued a preliminary injunction extending a ban on SPD’s use of less lethal chemical and projectile weapons against peaceful protesters; and

WHEREAS, on September 11, 2020, as requested in Ordinance 126102 and consistent with the advisory roles

established in the Accountability Ordinance (Ordinance 125315), subsection 3.29.030.B, the Office of Police Accountability, the Community Police Commission, and the Office of the Inspector General reported their findings with respect to the impact of banning less lethal weapons to the Council’s Public Safety and Human Services Committee. The findings showed consensus among the three reports to allow specific non-crowd control uses of pepper spray, 40-millimeter launchers and noise flash diversionary devices, and to ban patrol officers’ use of tear gas; and

WHEREAS, on October 1, 2020, the Honorable Judge James L. Robart converted the Court’s temporary restraining order regarding Ordinance 126102 into a preliminary injunction in order to facilitate review under the process set forth in paragraphs 177 to 181 of the Consent Decree (“Policy Review Process”); and

WHEREAS, on December 7, 2020, the Honorable Judge Richard Jones found the Seattle Police Department in contempt of court for the indiscriminate use of blast balls and noted that “Of the less lethal weapons, the Court is most concerned about SPD’s use of blast balls”; and

WHEREAS, the City Council recognizes the role of the Chief of Police to prescribe rules and regulations for the government and control of the police department; and

WHEREAS, at the time of passing this ordinance, pursuant to a federal consent decree, the United States Department of Justice, the Honorable James L. Robart of the U.S. District Court for the Western District of Washington, and the court-appointed Seattle Police Monitor exercise oversight of SPD’s policies related to the use of force; and

WHEREAS, on February 26, 2021, the U.S. District Court for the Western District of Washington issued an order in *United States v. City of Seattle*, Civil Case Number 12-1282, approving SPD’s revised use of force and crowd management policies, which included authorization of the deployment of officers trained in the use of use of 40-millimeter launchers in crowd management events, upon approval of the Chief of Police, and authorization of the use of a pepperball launcher “only when such force is

objectively reasonable, necessary, and proportional to protect against a specific imminent threat of harm to officers or identifiable others or to respond to specific acts of violence or destruction of property”; and

WHEREAS, on May 18, 2021, Governor Inslee signed ESHB 1054, establishing requirements for tactics and equipment used by peace officers, which include 1) restricting law enforcement agencies from using tear gas unless necessary to alleviate a present risk of serious harm posed by a: (a) riot; (b) barricaded subject; or (c) hostage situation; 2) requiring that, prior to using tear gas the law enforcement officer or employee must exhaust alternatives to the use of tear gas, obtain authorization to use tear gas from a supervising officer, announce to the subject or subjects the intent to use tear gas, and allow sufficient time and space for compliance with the officer's or employee's directives; and 3) directing that, in the case of a riot outside of a correctional, jail, or detention facility, the law enforcement officer or employee may use tear gas only after receiving authorization from the highest elected official of the jurisdiction in which the tear gas is to be used; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 3.28.146 of the Seattle Municipal Code, enacted by Ordinance 126102, is amended as follows:

3.28.146 Prohibition of the use of ~~((crowd control))~~ less lethal weapons

A. Unless exempted or excepted, no City department shall own, purchase, rent, store or use ~~((crowd control))~~ less lethal weapons.

B. Law enforcement agencies operating under mutual aid agreements are prohibited from using ~~((crowd control))~~ less lethal weapons in a manner inconsistent with this Section 3.28.146 while rendering aid to the Seattle Police Department. Seattle Police Department mutual aid agreements for crowd control must prohibit other law enforcement agencies from using ~~((crowd control))~~ less lethal weapons ~~((for the purpose of crowd dispersal))~~ in a manner inconsistent with this Section 3.28.146.

C. As used in this Section 3.28.146((7)) :

“For the purpose of crowd control” means with the intent to move or disperse a crowd.

“~~((crowd control))~~ Less lethal weapons” means kinetic impact ~~((projectiles))~~ launchers used to deploy chemical irritants; ~~((7))~~ chemical irritants, including but not limited to pepper spray and tear gas; ~~((7))~~ acoustic weapons~~((7))~~ ; directed energy weapons~~((7))~~ ; water cannons~~((7))~~ ; disorientation devices, including but not limited to blast balls and noise flash diversionary devices; ultrasonic cannons~~((7))~~ ; or any other device that is primarily designed to be used on multiple individuals for crowd control and is designed to cause pain or discomfort.

“Violent public disturbance” means any gathering where 12 or more persons who are present together use or threaten to use unlawful violence towards another person or group of people and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

D. ~~((Oleoresin capsiem (OC) spray is not a crowd control weapon for purposes of owning, purchasing, renting, or storing under subsection 3.28.146.A. Use of OC spray is prohibited under subsection 3.28.146.A if~~

- ~~1. It is used in a demonstration, rally, or other First Amendment-protected event; or~~
- ~~2. 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.)~~

Noise flash diversionary devices are not banned as less lethal weapons for purposes of subsection 3.28.146.A if used by Special Weapons and Tactics (SWAT) officers outside the setting of a demonstration or rally in circumstances in which the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders.

E. Forty-millimeter launchers used to deploy chemical irritants and launchers used to deploy pepperballs are not banned as less lethal weapons for purposes of subsection 3.28.146.A if:

1. Used by SWAT officers outside the setting of a demonstration or rally in circumstances in

which the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders; or

2. Used by SWAT officers in a demonstration or rally for purposes other than crowd control in circumstances in which the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders.

F. Oleoresin capsicum (OC) spray is not banned as a less lethal weapon for purposes of subsection 3.28.146.A if:

1. It is being used outside the setting of a demonstration or rally and the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders; or

2. It is being used at a demonstration or rally, but not for the purpose of crowd control, and the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders; or

3. It is being used at a demonstration or rally for the purpose of crowd control, during a violent public disturbance, and the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders.

G. Tear gas is not banned as a less lethal weapon for purposes of subsection 3.28.146.A if:

1. It is being used by SWAT officers outside the setting of a demonstration or rally, the use is reasonably necessary to prevent threat of imminent loss of life or serious bodily injury, and the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders; or

2. It is being used in a violent public disturbance, under direction of or by officers who have received training for its use within the previous 12 months, with a detailed tactical plan developed prior to deployment, the use is reasonably necessary to prevent threat of imminent loss of life or serious bodily injury, and the risk of serious bodily injury from violent actions outweighs the risk of harm to bystanders.

~~((E))~~H. A person shall have a right of action against the City for physical or emotional injuries proximately caused by the use of ~~((crowd control))~~ less lethal weapons in violation of this Section 3.28.146~~((for crowd dispersal))~~ after this ordinance takes effect. 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 may not recover under this Section 3.28.146.

((F))I. 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. This does not preclude any other legal recovery or process available to a person under federal and state law.

Section 2. In accordance with United States of America v. City of Seattle, 12 Civ. 1282 (JLR), during the pendency of the consent decree Council requests that notice of this action be submitted by the City Attorney to the Department of Justice and the Monitor.

Section 3. Council will engage with the Labor Relations Director and staff as they work with the City's labor partners in the implementation of this ordinance.

Section 4. Within 60 days after this ordinance takes effect, the Seattle Police Department shall draft revisions to the Seattle Police Manual to bring it into compliance with this ordinance and publish the proposed revisions on its website.

Section 5. Section 1 of this ordinance shall take effect and be in force 30 days after the Court in United States v. City of Seattle, Western District of Washington Civil Case Number 12-cv-1282, has approved the revised policies required by Section 4 of this ordinance.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2021, and signed by me in open session in authentication of its passage this _____ day of _____, 2021.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2021.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2021.

Monica Martinez Simmons, City Clerk

(Seal)