



CITY OF SEATTLE

City Council

Agenda

Monday, June 15, 2020

2:00 PM

Remote Meeting. Call listen line at 206-684-8566 or access Seattle Channel online.

M. Lorena González, President

Lisa Herbold, Member

Debora Juarez, Member

Andrew J. Lewis, Member

Tammy J. Morales, Member

Teresa Mosqueda, Member

Alex Pedersen, Member

Kshama Sawant, Member

Dan Strauss, Member

Chair Info:206-684-8809; Lorena.González@seattle.gov

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Council Chamber Listen Line: 206-684-8566

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CITY OF SEATTLE

City Council Agenda

June 15, 2020 - 2:00 PM

Meeting Location:

Remote Meeting. Call listen line at 206-684-8566 or access Seattle Channel online.

Committee Website:

<http://www.seattle.gov/council>

In-person attendance is currently prohibited per Washington State Governor's Proclamation No. 20-28.4 until June 17, 2020. Meeting participation is limited to access by telephone conference line and Seattle Channel online.

Register online to speak during the Public Comment period at the 2:00 p.m. City Council meeting at

<http://www.seattle.gov/council/committees/public-comment>.

Online registration to speak at the City Council meeting will begin two hours before the 2:00 p.m. meeting start time, and registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

Submit written comments to all Councilmembers at

Council@seattle.gov

Sign-up to provide Public Comment at the meeting at

<http://www.seattle.gov/council/committees/public-comment>

Watch live streaming video of the meeting at

<http://www.seattle.gov/council/watch-council-live>

Listen to the meeting by calling the Council Chamber Listen Line at 206-684-8566

A. CALL TO ORDER

B. ROLL CALL

C. PRESENTATIONS**D. APPROVAL OF THE JOURNAL**

[Min 285](#) June 8, 2020

Attachments: [Minutes](#)

E. ADOPTION OF INTRODUCTION AND REFERRAL CALENDAR

Introduction and referral to Council committees of Council Bills (CB), Resolutions (Res), Appointments (Appt), and Clerk Files (CF) for committee recommendation.

[IRC 259](#) June 15, 2020

Attachments: [Introduction and Referral Calendar](#)

F. APPROVAL OF THE AGENDA**G. PUBLIC COMMENT**

Members of the public may sign up to address the Council for up to 2 minutes on matters on this agenda; total time allotted to public comment at this meeting is 20 minutes.

Register online to speak during the Public Comment period at the 2:00 p.m. City Council meeting at <http://www.seattle.gov/council/committees/public-comment>.

Online registration to speak at the City Council meeting will begin two hours before the 2:00 p.m. meeting start time, and registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

H. PAYMENT OF BILLS

These are the only Bills which the City Charter allows to be introduced and passed at the same meeting.

- [CB 119806](#) AN ORDINANCE appropriating money to pay certain audited claims for the week of June 1, 2020 through June 5, 2020 and ordering the payment thereof.

I. COMMITTEE REPORTS

Discussion and vote on Council Bills (CB), Resolutions (Res), Appointments (Appt), and Clerk Files (CF).

CITY COUNCIL:

1. [CB 119799](#) AN ORDINANCE relating to gig workers in Seattle; establishing labor standards requirements for premium pay for gig workers working in Seattle; amending Sections 3.02.125 and 6.208.020 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

Supporting Documents:

[Summary and Fiscal Note](#)
[Central Staff Memo \(6/15/20\)](#)
[Proposed Substitute](#)
[Proposed Amendment 1](#)

2. [CB 119804](#) AN ORDINANCE relating to the Seattle Police Department; prohibiting the use of chokeholds by officers; amending Section 12A.04.200 of, and adding a new Section 3.28.145 to, the Seattle Municipal Code.

Supporting Documents:

[Summary and Fiscal Note](#)
[Central Staff Memo](#)
[Proposed Amendment 1](#)
[Proposed Amendment 2](#)

3. [CB 119805](#) AN ORDINANCE relating to the Seattle Police Department; banning the ownership, purchase, rent, storage, or use of crowd control weapons; and adding a new Section 3.28.146 to the Seattle Municipal Code.

Supporting Documents:

[Summary and Fiscal Note](#)

[Central Staff Memo](#)

[Proposed Amendment 1](#)

[Proposed Amendment 2](#)

4. [CB 119803](#) AN ORDINANCE requiring that certain uniformed peace officers do not cover with a mourning band the serial number that is engraved on their badge; amending Section 3.28.130 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

Supporting Documents:

[Summary and Fiscal Note](#)

J. ADOPTION OF OTHER RESOLUTIONS

K. OTHER BUSINESS

L. ADJOURNMENT



Legislation Text

File #: Min 285, **Version:** 1

June 8, 2020

SEATTLE CITY COUNCIL

600 Fourth Ave. 2nd Floor
Seattle, WA 98104



Journal of the Proceedings of the Seattle City Council

Monday, June 8, 2020

2:00 PM

Remote Meeting. Call listen line at 206-684-8566 or access Seattle Channel online.

City Council

M. Lorena González, President

Lisa Herbold, Member

Debora Juarez, Member

Andrew J. Lewis, Member

Tammy J. Morales, Member

Teresa Mosqueda, Member

Alex Pedersen, Member

Kshama Sawant, Member

Dan Strauss, Member

Chair Info: 206-684-8809; Lorena.González@seattle.gov

In-person attendance is currently prohibited per Washington State Governor's Proclamation No. 20-28.4 until June 17, 2020. Meeting participation is limited to access by telephone conference line and Seattle Channel online.

A. CALL TO ORDER

The City Council of The City of Seattle met remotely pursuant to Washington State Governor's Proclamation 20-28.4 and guidance provided by the Attorney General's Office, on June 8, 2020, pursuant to the provisions of the City Charter. The meeting was called to order at 2:01 p.m., with Council President González presiding.

B. ROLL CALL

The following Councilmembers were present and participating electronically:

Present: 7 - González , Juarez, Lewis, Mosqueda, Pedersen, Sawant, Strauss

Late Arrival: 2 - Herbold, Morales

C. PRESENTATIONS

There were none.

D. APPROVAL OF THE JOURNAL

[Min 284](#)

June 1, 2020

Motion was made, duly seconded and carried, to adopt the proposed Minutes by the following vote, and the President signed the Minutes:

In Favor: 7 - González , Juarez, Lewis, Mosqueda, Pedersen, Sawant, Strauss

Opposed: None

E. ADOPTION OF INTRODUCTION AND REFERRAL CALENDAR

[IRC 258](#)**June 8, 2020**

Councilmember Herbold joined the meeting at 2:02 p.m.

ACTION 1:

Motion was made and duly seconded to adopt the proposed Introduction and Referral Calendar.

Councilmember Morales joined the meeting at 2:05 p.m.

ACTION 2:

Motion was made by Councilmember Herbold, duly seconded and carried, to amend the proposed Introduction and Referral Calendar by introducing Council Bill 119803, and by referring it to the City Council.

Council Bill 119803, AN ORDINANCE requiring that certain uniformed peace officers do not cover with a mourning band the serial number that is engraved on their badge; amending Section 3.28.130 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

ACTION 3:

By unanimous consent, Council Rule III.A.5., relating to circulation of a Council Bill for introduction by 5:00 p.m. on the preceding business day, was suspended to allow consideration of an amendment to the proposed Introduction and Referral Calendar.

ACTION 4:

Motion was made by Councilmember Sawant, duly seconded and carried, to amend the proposed Introduction and Referral Calendar by introducing Council Bills 119804 and 119805, and by referring them to the City Council.

Council Bill 119804, AN ORDINANCE relating to the Seattle Police Department; prohibiting the use of chokeholds by officers; amending Section 12A.04.200 of, and adding a new Section 3.28.145 to, the Seattle

Municipal Code.

Council Bill 119805, AN ORDINANCE relating to the Seattle Police Department; banning the ownership, purchase, rent, storage, or use of crowd control weapons; and adding a new Section 3.28.146 to the Seattle Municipal Code.

ACTION 5:

Motion was made and duly seconded to adopt the proposed Introduction and Referral Calendar as amended.

The Motion carried, and the Introduction & Referral Calendar (IRC) was adopted as amended by the following vote:

In Favor: 9 - González , Herbold, Juarez, Lewis, Morales, Mosqueda, Pedersen, Sawant, Strauss

Opposed: None

F. APPROVAL OF THE AGENDA

ACTION 1:

Motion was made and duly seconded to adopt the proposed Agenda.

ACTION 2:

Motion was made by Councilmember Lewis, duly seconded and carried, to amend the proposed Agenda, by adding Resolution 31948 for consideration under item J., Adoption of Other Resolutions.

Resolution 31948, A RESOLUTION condemning the use of military force in jurisdictions such as The City of Seattle that have not requested and do not intend to request federal interventions.

ACTION 3:

Motion was made by Councilmember Lewis and duly seconded, to amend the proposed Agenda by holding Agenda item 1, Council Bill 119799, until June 15, 2020.

1. [CB 119799](#) **AN ORDINANCE relating to gig workers in Seattle; establishing labor standards requirements for premium pay for gig workers working in Seattle; amending Sections 3.02.125 and 6.208.020 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.**

The Motion carried, and Council Bill (CB) 119799 was held until June 15, 2020 by the following vote:

In Favor: 8 - González , Herbold, Juarez, Lewis, Morales, Pedersen, Sawant, Strauss

Opposed: None

Absent(NV): 1 - Mosqueda

ACTION 4:

Motion was made, duly seconded and carried, to adopt the proposed Agenda as amended.

G. PUBLIC COMMENT

By unanimous consent, the Council Rules were suspended to provide a 60 minute Public Comment period.

Sujatha Ramni addressed the Council regarding a non-Agenda item.

Pauly G addressed the Council regarding a non-Agenda item.

Mairi Dulaney addressed the Council regarding a non-Agenda item.

Steven Ramos addressed the Council regarding a non-Agenda item.

William Crocker addressed the Council regarding Agenda item 2, Council Bill 119779.

Mark Taylor-Canfield addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Sriram Rajagopalan addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Rick Jones addressed the Council regarding Agenda item 2, Council Bill 119779.

Howard Gale addressed the Council regarding a non-Agenda item.

Maureen Ewing addressed the Council regarding Agenda item 2, Council Bill 119779.

Jacob Bertram addressed the Council regarding a non-Agenda item.

Christopher Grgich addressed the Council regarding addressed the Council regarding Order of Business item J., Resolution 31948.

Anne Gillies addressed the Council regarding a non-Agenda item.

Michael Sampson addressed the Council regarding a non-Agenda item.

Sonnet Stockmar addressed the Council regarding a non-Agenda item.

Chad Reid addressed the Council regarding a non-Agenda item.

Guy Oran addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Jordan Walsh addressed the Council regarding a non-Agenda item.

Ashleen O'Brien addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Benjamin Skinner addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Ivana Orlovic addressed the Council regarding Agenda item 2, Council Bill 119779.

Alton McDonald addressed the Council regarding a non-Agenda item.

Abram Thau addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Susan Samuelson addressed the Council regarding Agenda item 2, Council Bill 119779.

Jessa Timmer addressed the Council regarding Agenda item 2, Council Bill 119779.

Karl Pauls addressed the Council regarding a non-Agenda item.

Sally Clark addressed the Council regarding Agenda item 2, Council Bill 119779.

Deepa Sivarajan addressed the Council regarding a non-Agenda item.

Tom Malone addressed the Council regarding Agenda item 2, Council Bill 119779.

Lauren Rae Witt addressed the Council regarding a non-Agenda item.

Zachary Jaffee addressed the Council regarding a non-Agenda item.

Charles Paul addressed the Council regarding a non-Agenda item.

Sean Riccio addressed the Council regarding a non-Agenda item.

Jennifer Russell addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Natalie Schmidt addressed the Council regarding Introduction and Referral

Calendar item, Council Bill 119805.

Matthew Saunders addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Alycia Lewis addressed the Council regarding a non-Agenda item.

Bipasha Mukherjee addressed the Council regarding a non-Agenda item.

Matt Thompson addressed the Council regarding a non-Agenda item.

Dom Rolando addressed the Council regarding a non-Agenda item.

Michael Wolfe addressed the Council regarding Agenda item 1, Council Bill 119799.

Mihir Patel addressed the Council regarding a non-Agenda item.

Louise Little addressed the Council regarding Agenda item 2, Council Bill 119779.

Shetha Alaskar addressed the Council regarding a non-Agenda item.

Alex Epstein addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Aisling Cooney addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Connor Colbert addressed the Council regarding a non-Agenda item.

Kevin Bryan addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Keely Hicks addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Nicholas Maragos addressed the Council regarding Introduction and Referral Calendar item, Council Bill 119805.

Devon O'Donnell addressed the Council regarding a non-Agenda item.

Doug Campbell addressed the Council regarding Agenda item 2, Council Bill 119779.

H. PAYMENT OF BILLS

[CB 119801](#) **AN ORDINANCE appropriating money to pay certain audited claims for the week of May 25, 2020 through May 29, 2020 and ordering the payment thereof.**

Motion was made and duly seconded to pass Council Bill 119801.

The Motion carried, the Council Bill (CB) was passed by the following vote, and the President signed the Bill:

In Favor: 9 - González , Herbold, Juarez, Lewis, Morales, Mosqueda, Pedersen, Sawant, Strauss

Opposed: None

I. COMMITTEE REPORTS

From the amended Agenda

CITY COUNCIL:

2. [CB 119779](#) **AN ORDINANCE establishing a new University District Parking and Business Improvement Area (BIA); levying special assessments upon owners of commercial, multifamily residential property, and mixed-use property within the BIA; providing for the deposit of revenues in a special account and expenditures therefrom; providing for collection of and penalties for delinquencies; providing for the establishment of a BIA Advisory Board; providing for an implementation agreement with a Program Manager; providing for the continuity of services and the transfer of any remaining funds from the current U. District BIA account that was established in 2015 by Ordinance 124761; and ratifying and confirming certain acts related thereto.**

ACTION 1:

Motion was made and duly second to pass Council Bill 119779.

ACTION 2:

Motion was made by Councilmember Pedersen, duly seconded and carried, to amend Council Bill 119779, by substituting version 2b for version 1f.

ACTION 3:

Motion was made by Councilmember Pedersen and duly seconded, to amend Council Bill 119779, as shown in Attachment 1 to the Minutes.

The Motion failed by the following vote:

In favor: 3 - Lewis, Pedersen, Sawant

Opposed: 6 - González, Herbold, Juarez, Morales, Mosqueda, Strauss

ACTION 4:

Motion was made and duly seconded to pass Council Bill 119779 as amended.

The Motion carried, the Council Bill (CB) was passed as amended by the following vote, and the President signed the Bill:

In Favor: 9 - González , Herbold, Juarez, Lewis, Morales, Mosqueda, Pedersen, Sawant, Strauss

Opposed: None

J. ADOPTION OF OTHER RESOLUTIONS

3. [Res 31947](#) **A RESOLUTION relating to committee structure, membership, meeting times, and duties of the standing committees of the Seattle City Council for 2020 and 2021; allowing for suspension of standing committee meetings for consideration of a Revised 2020 Budget due to the COVID-19 Emergency declared March 3, 2020; and superseding Resolution 31922.**

Motion was made and duly seconded to adopt Resolution 31947.

The Motion carried, the Resolution (Res) was adopted by the following vote, and the President signed the Resolution:

In Favor: 9 - González , Herbold, Juarez, Lewis, Morales, Mosqueda, Pedersen, Sawant, Strauss

Opposed: None

4. [Res 31948](#) **A RESOLUTION condemning the use of military force in jurisdictions such as The City of Seattle that have not requested and do not intend to request federal interventions.**

Motion was made and duly seconded to adopt Resolution 31948.

The Motion carried, the Resolution (Res) was adopted by the following vote, and the President signed the Resolution:

In Favor: 9 - González , Herbold, Juarez, Lewis, Morales, Mosqueda, Pedersen, Sawant, Strauss

Opposed: None

K. OTHER BUSINESS

There was none.

L. ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned at 4:33 p.m.

Jodee Schwinn, Deputy City Clerk

Signed by me in Open Session, upon approval of the Council, on June 15, 2020.

M. Lorena González, Council President of the City Council

Monica Martinez Simmons, City Clerk

Att 1 - Action 3 of CB 119779

Att 1 – Action 3 of CB 119779

Notes

Double underlines indicate new language to be added.

~~Double strikethroughs~~ indicate language proposed to be removed.

Amendment

1. Amend Section 4 of Council Bill 119779, as follows:

Section 4. To finance the programs authorized in Section 3 of this ordinance, there is proposed a ~~12~~ 10-year special assessment to be levied and collected from the owners of business property, multifamily residential property (buildings containing four or more residential units), and mixed-use property (multifamily residential and commercial) located within the boundaries of the U. District BIA described in Section 2 of this ordinance. The U. District BIA will annually update records based on data and information from King County and the City. The “First Year Base Assessments” in 2020-2021 will be based upon the base year used to calculate the 2019-2020 U. District BIA Assessments from the Department of Finance and Administrative Services (FAS) (“Established Base Year”), plus an inflation factor of 2.375 percent and a one-time 10 percent increase for program expansion. The “Total Taxable Value” is the value of the land plus the value of improvements.

A. U. District Fund Area Base Formula = $(\$0.25 \times (\text{Established Base Year Total Taxable Value}/\$1000 + 2016\text{-}2020 \text{ CPI Factors}) + 2.375 \text{ percent inflation factor} + 10 \text{ percent})$.

* * *

I. Ratepayers will be assessed by the City for ~~24~~ 20 semi-annual installments beginning with the year of the authorization (2020).

* * *

2. Amend Section 15 of CB 119779, as follows:

Section 15. The U. District BIA shall have a term of ~~12~~ 10 years and will expire ~~12~~ 10 years after the date that the area is established. Upon a petition signed by ratepayers that would pay 60 percent of the proposed special assessments, the BIA Advisory Board shall request that the City Council disestablish the U. District BIA in accordance with Chapter 35.87A RCW.

3. Amend Section 6 of Council Bill 119779, as follows:

Section 6. The Director of the Office of Economic Development (“OED Director”) is authorized to contract with any local non-profit entity to act as the Program Manager. The Program Manager’s duties, subject to the approval of the ratepayers at each annual meeting, will be to manage the day-to-day operations of the U. District BIA and to administer the projects and activities.

The OED Director shall contract with the U District Partnership or other local non-profit entity to serve as the initial Program Manager for one year.

The OED Director shall establish and follow a competitive process to select a Program Manager ~~every five years~~ first to serve a five-year term commencing after the one-year term of the initial Program Manager, and then for a four-year term to the expiration of the U. District BIA. The selection process shall include outreach to viable candidates; publication of requests for qualifications (first five-year term) and proposals (following four-year term); and a selection process that takes into consideration criteria designed to find a qualified and effective Program Manager. If the U. District BIA is reauthorized, the OED Director may contract with the then-current Program Manager to serve as the interim Program Manager for the reauthorized U. District BIA for one year.

Meetings of the Program Manager's board or committee at which U. District BIA-funded activities are anticipated to be discussed shall be open to the public, with at least five days' advance notice posted by the Program Manager(s) on its website and also disseminated by any other means that the Program Manager(s) generally uses to communicate.



Legislation Text

File #: IRC 259, **Version:** 1

June 15, 2020



Introduction and Referral Calendar

List of proposed Council Bills (CB), Resolutions (Res), Appointments (Appt) and Clerk Files (CF) to be introduced and referred to a City Council committee

Record No.	Title	Committee Referral
<u>By: Mosqueda</u>		
1. CB 119806	AN ORDINANCE appropriating money to pay certain audited claims for the week of June 1, 2020 through June 5, 2020 and ordering the payment thereof.	City Council
<u>By: Lewis</u>		
2. CB 119807	AN ORDINANCE relating to the City's criminal code; removing the crime of drug traffic loitering and associated references in the Seattle Municipal Code; amending Section 10.09.010 of the Seattle Municipal Code and repealing Section 12A.20.050 of the Seattle Municipal Code.	City Council
<u>By: Lewis, Pedersen</u>		
3. CB 119808	AN ORDINANCE relating to the City's criminal code; removing the crime of prostitution loitering and associated references in the Seattle Municipal Code; amending Sections 12A.10.070 and 12A.10.100 and repealing Section 12A.10.010 of the Seattle Municipal Code.	City Council



Legislation Text

File #: CB 119806, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE appropriating money to pay certain audited claims for the week of June 1, 2020 through June 5, 2020 and ordering the payment thereof.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Payment of the sum of \$14,424,112.29 on PeopleSoft 9.2 mechanical warrants numbered 4100344980- 4100346634 plus manual or cancellation issues for claims, E-Payables of \$98,002.61 on PeopleSoft 9.2 9100006421- 9100006489 and Electronic Financial Transactions (EFT) in the amount of \$58,651,148.89 are presented for ratification by the City Council per RCW 42.24.180.

Section 2. Any act consistent with the authority of this ordinance taken prior to its effective date is hereby ratified and confirmed.

Section 3. 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 15th day of June 2020 and signed by me in open session in authentication of its passage this 15th day of June 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)



Legislation Text

File #: CB 119799, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to gig workers in Seattle; establishing labor standards requirements for premium pay for gig workers working in Seattle; amending Sections 3.02.125 and 6.208.020 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

WHEREAS, the new coronavirus 19 (COVID-19) disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization as a worldwide pandemic; and

WHEREAS, COVID-19 has broadly spread throughout Washington State and remains a significant health risk to the community, especially members of our most vulnerable populations; and

WHEREAS, the definitions of “employee” and “employer” in local, state, and federal laws are broad, but delivery network companies and transportation network companies rely on business models that treat gig workers as “independent contractors,” thereby creating barriers for gig workers to access employee protections; and

WHEREAS, gig workers working for food delivery network companies and transportation network companies during the COVID-19 emergency face magnified risks of catching or spreading disease because the nature of their work can involve close contact with the public, including members of the public who are not showing symptoms of COVID-19 but who can spread the disease; and

WHEREAS, The City of Seattle (City) intends to make it clear that gig workers working for food delivery network companies and transportation network companies have a right to receive premium pay for work

performed during the COVID-19 emergency; and

WHEREAS, the City intends to make it clear that provision of premium pay should not result in reductions to a gig worker's baseline compensation or garnishments of tips or additional charges to customers of food delivery network companies and transportation network companies; and WHEREAS, establishing premium pay standards for gig workers working during the COVID-19 emergency will increase retention of these gig workers and compensate them for the hazards of working on the frontlines of a global pandemic; and

WHEREAS, the City is a leader on wage, labor, and workforce practices that improve workers' lives, support economic security, and contribute to a fair, healthy, and vibrant economy; and

WHEREAS, establishing a labor standard that requires premium pay for gig workers is a subject of vital and imminent concern to the people of this City and requires appropriate action by the City Council to establish this labor standard for gig workers; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council (Council) finds and declares that:

A. In the exercise of The City of Seattle's police powers, the City is granted authority to pass regulations designed to protect and promote public, health, safety, and welfare.

B. This ordinance protects and promotes public health, safety, and welfare during the new coronavirus 19 (COVID-19) emergency by requiring food delivery network companies and transportation network companies to provide premium pay for gig workers performing work in Seattle, thereby increasing retention of these gig workers who provide essential services on the frontlines of a global pandemic and who should be paid additional compensation for the hazards of working with significant exposure to an infectious disease.

C. The World Health Organization (WHO) has declared that COVID-19 is a global pandemic, which is particularly severe in high risk populations such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt

the spread of this disease.

D. On February 29, 2020, Washington Governor Jay Inslee proclaimed a state of emergency in response to new cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak.

E. On March 3, Mayor Jenny Durkan proclaimed a civil emergency in response to new cases of COVID-19, authorizing the Mayor to exercise the emergency powers necessary to take extraordinary measures to prevent death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering.

F. On March 16, 2020, Washington Governor Jay Inslee and the Public Health - Seattle & King County Local Health Officer issued parallel orders temporarily shutting down restaurants, bars, and other entertainment and food establishments, except for take-out food.

G. On March 23, 2020, Washington Governor Jay Inslee issued a “Stay Home - Stay Healthy” proclamation closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes through April 6, 2020. In addition to healthcare, public health and emergency services, the “Stay Home - Stay Healthy” proclamation identified transportation network companies, delivery network companies, and establishments selling groceries and prepared food and beverages as essential business sectors critical to protecting the health and well-being of all Washingtonians and designated their workers as essential critical infrastructure workers.

H. On April 2, 2020, Washington Governor Jay Inslee extended the “Stay Home - Stay Healthy” proclamation through May 4, 2020.

I. On May 1, 2020, Washington Governor Jay Inslee extended the “Stay Home - Stay Healthy” proclamation through May 31, 2020 in recognition that the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington

State, and remain a public disaster affecting life, health, property or the public peace.

J. On May 4, 2020, Washington Governor Jay Inslee announced a “Safe Start” plan that reopens Washington’s economy in phases and has restrictions on the seating capacity of restaurants during three of the four phases and physical distancing for high-risk populations and worksites during all four phases.

K. As of May 20, 2020, the World Health Organization Situation Report reported a global total of 4,801,202 cases of COVID-19, including 318,935 deaths; the Washington State Department of Health and Johns Hopkins University reported 18,811 cases of COVID-19, including 1,031 deaths in Washington State; and Public Health - Seattle & King County reported 7,617 cases of COVID-19, including 530 deaths, in King County.

L. Food delivery network companies and transportation network companies are essential businesses operating in Seattle during the COVID-19 emergency and rely on business models that treat gig workers as independent contractors, thereby creating barriers for gig workers to access employee protections established by local, state, and federal law, and making gig workers highly vulnerable to economic insecurity and health or safety risks.

M. Gig workers working for food delivery network companies and transportation network companies are essential workers who perform services that are fundamental to the health of the community during the COVID-19 crisis. These gig workers provide essential services that support the economy and the community during this crisis. They can work in high risk conditions with inconsistent access to protective equipment and other safety measures; work in public situations with limited or no ability to engage in physical distancing; and continually expose themselves and the public to the spread of disease.

N. In the pursuit of economic opportunity, many gig workers are immigrants and people of color who have taken on debt or invested their savings to purchase and/or lease vehicles or other equipment to work for food delivery network companies and transportation network companies.

O. Gig workers making deliveries for food delivery network companies are supporting community

efforts to engage in physical distancing and mitigate the spread of COVID-19 while simultaneously exposing themselves to a higher risk of infection

P. Gig workers working for transportation network companies are providing the majority of for-hire rides in the City and therefore experience an especially high risk of person to person transmission of infectious disease during the COVID-19 emergency.

Q. Gig workers working for food delivery network companies and transportation network companies bear the brunt of the time and expenses necessary for cleaning and disinfecting equipment and engaging in other efforts to protect themselves, customers, and the public from illness.

R. Premium pay, paid in addition to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress.

S. Gig workers working during the COVID-19 emergency merit additional compensation because they are performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress due to the significant risk of exposure to the COVID-19 virus. Gig workers have been working under these hazardous conditions for months. They are working in these hazardous conditions now and will continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection.

T. The availability of food delivery and transportation services is fundamental to the health of the community and is made possible during the COVID-19 emergency because gig workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by making deliveries and transporting passengers while working in hazardous situations.

U. Establishing an immediate requirement for food delivery network companies and transportation network companies to provide premium pay to gig workers protects public health, supports stable incomes, and

promotes job retention by ensuring that gig workers are compensated now and for the duration of the public health emergency for the substantial risks they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency.

V. Washington Governor Jay Inslee’s Proclamation 20-28 prohibits all agency actions unless the action is: 1) necessary and routine; or 2) necessary in response to the COVID-19 public health emergency. This ordinance is necessary in response to the COVID-19 public health emergency because requiring food delivery network companies and transportation network companies to provide premium pay to gig workers compensates gig workers for the risks they are undertaking and better ensures the retention of these essential workers who are on the frontlines of this pandemic to provide essential services, who are needed throughout the duration of the COVID-19 emergency, and who deserve fair and equitable compensation for their work.

Section 2. As the substantive effects of this ordinance are not permanent, this ordinance is not intended to be codified. Section numbers are for ease of reference within this ordinance, and section and subsection references refer to numbers in this ordinance unless stated otherwise.

PREMIUM PAY FOR GIG WORKERS

100.005 Short title

This ordinance shall constitute the “Premium Pay for Gig Workers Ordinance” and may be cited as such.

100.010 Definitions

For purposes of this ordinance:

“Adverse action” means reducing the compensation to a gig worker, garnishing gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses, offering less desirable work, demoting, terminating, deactivating, putting a gig worker on hold status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, or otherwise discriminating against any person for any reason prohibited by Section 100.050. “Adverse action” for a gig worker may involve any aspect of work, including

compensation, work hours, responsibilities, or other material change in the terms and conditions of work.

“Adverse action” also encompasses any action by the hiring entity or a person acting on the hiring entity’s behalf that would dissuade a reasonable person from exercising any right afforded by this ordinance.

“Agency” means the Office of Labor Standards and any division therein.

“Aggrieved party” means a gig worker or other person who suffers tangible or intangible harm due to a hiring entity or other person's violation of this ordinance.

“Application dispatch” means technology that allows customers to directly request dispatch of gig workers for provision of delivery or transportation services and/or allows gig workers or hiring entities to accept requests for services and payments for services via the internet using mobile interfaces such as, but not limited to, smartphone and tablet applications.

“City” means The City of Seattle.

“Compensation” means the total payment owed to a gig worker by reason of working for the hiring entity and includes, but is not limited to, hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

“Deactivation” means the blocking of a gig worker’s access to the hiring entity’s platform, changing a gig worker’s status from eligible to provide delivery service or transportation services to ineligible, or other material restriction in access to the hiring entity’s platform that is effected by a hiring entity.

“Director” means the Director of the Office of Labor Standards or the Director's designee.

“Director rules” means: (1) rules the Director or Agency may promulgate pursuant to subsection 100.060.B or 100.060.C; or (2) other rules that the Director identifies, by means of an Agency Q&A, previously promulgated pursuant to authority in Seattle Municipal Code Title 14. Rules the Director identifies by means of an Agency Q&A shall have the force and effect of law and may be relied on by hiring entities, gig workers, and other parties to determine their rights and responsibilities under this ordinance.

“Driver platform” or “worker platform” means the gig worker-facing application dispatch system

software or any online-enabled application service, website, or system, used by a gig worker, that enables the prearrangement of delivery or transportation services for compensation.

“Drop-off point” means the location of the delivery or trip resulting from the online order.

“Eating and drinking establishment” means “eating and drinking establishment” as defined in Seattle Municipal Code Section 23.84A.010.

“Food delivery network company” means an organization whether a corporation, partnership, sole proprietor, or other form, operating in Seattle, that offers prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect customers with workers for delivery from one or more of the following: (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility intended to fulfill customer orders from a business whose business model relies on the delivery of groceries or prepared food and beverages. “Food delivery network company” includes any such entity or person acting directly or indirectly in the interest of a food delivery network company in relation to the food delivery network company worker.

“Food delivery network company worker” means a person affiliated with and accepting an offer of prearranged delivery services for compensation from a food delivery network company. For purposes of this ordinance, at any time that a food delivery network company worker is logged into the worker platform, the worker is considered a food delivery network company worker.

“Food processing” means “food processing” as defined in Seattle Municipal Code Section 23.84A.012.

“Front pay” means the compensation the gig worker would earn or would have earned if reinstated by the hiring entity.

“Gig worker” means a food delivery network company worker or a transportation network company driver.

“Grocery store” means “grocery store” as defined in Seattle Municipal Code Section 23.84A.014.

“Hiring entity” means a food delivery network company or a transportation network company.

“Hiring entity payment” means the amount owed to a gig worker by reason of working for the hiring entity, including but not limited to payment for providing services, bonuses, and commissions.

“Online order” means an order placed through an online-enabled application or platform, such as an application dispatch system, provided by a hiring entity for delivery or transportation services in Seattle.

“Operating in Seattle” means, with respect to a hiring entity, offering prearranged delivery or transportation services for compensation using an online-enabled application or platform, such as an application dispatch system, to any affiliated gig worker, where such services would take place in whole or part in Seattle.

“Premium pay” means additional compensation owed to a gig worker that is separate from hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

“Rate of inflation” means 100 percent of the annual average growth rate of the bi-monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and Clerical Workers, termed CPI-W, for the 12-month period ending in August, provided that the percentage increase shall not be less than zero.

“Respondent” means a hiring entity or any person who is alleged or found to have committed a violation of this ordinance.

“Successor” means any person to whom a hiring entity quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the hiring entity’s business, a major part of the property, whether real or personal, tangible or intangible, of the hiring entity’s business. For purposes of this definition, “person” means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock company, limited liability company, association, joint venture, or any other legal or commercial entity.

“Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the gig worker receiving the tip.

“Transportation network company” or “TNC” means an organization whether a corporation,

partnership, sole proprietor, or other form, licensed or required to be licensed under Seattle Municipal Code Chapter 6.310, operating in Seattle, that offers prearranged transportation services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect passengers with drivers using a “transportation network company (TNC) endorsed vehicle,” as defined in Seattle Municipal Code Chapter 6.310.

“Transportation network company” includes any such entity or person acting directly or indirectly in the interest of a transportation network company in relation to the transportation network company driver.

“Transportation network company driver” or “TNC driver” means a licensed for-hire driver, as defined in Seattle Municipal Code Chapter 6.310, affiliated with and accepting trips from a licensed transportation network company. For purposes of this ordinance, at any time that a driver is logged into the driver platform, the driver is considered a TNC driver.

“Work-related stop in Seattle” means a time spent by a gig worker on a commercial stop in Seattle that is related to the provision of delivery or transportation services associated with an online order, and does not include stopping for refueling, stopping for a personal meal or errands, or time spent in Seattle solely for the purpose of travelling through Seattle from a point of origin outside Seattle to a destination outside Seattle with no commercial stops in Seattle.

“Written” or “writing” means a printed or printable communication in physical or electronic format, including but not limited to a communication that is transmitted through email, text message, or a computer or mobile system, or that is otherwise sent and maintained electronically.

100.015 Gig worker coverage

For the purposes of this ordinance:

A. Covered gig workers are limited to those who perform work for a covered hiring entity, where the work is performed in whole or part in Seattle.

B. Work performed “in Seattle” means work that includes a work-related stop in Seattle.

100.020 Hiring entity coverage

A. For the purposes of this ordinance, covered hiring entities are limited to those who hire 250 or more gig workers worldwide.

B. To determine the number of gig workers hired for the current calendar year:

1. The calculation is based upon the average number per calendar week of gig workers who worked for compensation during the preceding calendar year for any and all weeks during which at least one gig worker worked for compensation. For hiring entities that did not have any gig workers during the preceding calendar year, the number of gig workers hired for the current calendar year is calculated based upon the average number per calendar week of gig workers who worked for compensation during the first 90 calendar days of the current year in which the hiring entity engaged in business.

2. All gig workers who worked for compensation shall be counted, including but not limited to:

- a. Gig workers who are not covered by this ordinance;
- b. Gig workers who worked in Seattle; and
- c. Gig workers who worked outside Seattle.

C. Separate entities that form an integrated enterprise shall be considered a single hiring entity under this ordinance. Separate entities will be considered an integrated enterprise and a single hiring entity under this ordinance where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

- 1. Degree of interrelation between the operations of multiple entities;
- 2. Degree to which the entities share common management;
- 3. Centralized control of labor relations; and
- 4. Degree of common ownership or financial control over the entities.

100.025 Premium pay requirement

A. Hiring entities shall provide each gig worker with premium pay of no less than \$5 for each online

order with a work-related stop in Seattle. When an online order for delivery or transportation services has more than one drop-off point, hiring entities shall provide each gig worker with premium pay of no less than \$5 for any work-related stop in Seattle for a first drop-off point and no less than \$5 for each additional drop-off point in Seattle.

B. Hiring entities shall provide premium pay at the same time compensation is provided for the associated online order(s).

C. When providing premium pay, hiring entities shall include notification of online orders that qualified for premium pay and itemize the premium pay separately from other compensation.

D. Hiring entities shall provide the premium pay required by subsection 100.025.A for the duration of the civil emergency proclaimed by the Mayor on March 3, 2020.

E. If the City establishes a minimum compensation standard for TNC drivers, the Council intends to consider eliminating the premium pay requirement for TNC drivers before the termination of the civil emergency proclaimed by the Mayor on March 3, 2020.

100.030 Notice of rights

A. Hiring entities shall provide each gig worker with a written notice of rights established by this ordinance and shall make the notice readily accessible to the gig worker. The Agency may create and distribute a model notice in English and other languages. The notice shall provide information on:

1. The right to premium pay guaranteed by this ordinance;
2. The right to be protected from retaliation for exercising in good faith the rights protected by this ordinance; and
3. The right to file a complaint with the Agency or bring a civil action for a violation of the requirements of this ordinance, including a hiring entity's denial of premium pay as required by this ordinance and a hiring entity or other person's retaliation against a gig worker or other person for asserting the right to premium pay or otherwise engaging in an activity protected by this ordinance.

B. Hiring entities are responsible for providing notice to gig workers as required by subsection 100.030.A, in a form and manner sufficient to inform gig workers of their rights under this ordinance, regardless of whether the Agency has created and distributed this model notice.

100.040 Hiring entity records

A. Hiring entities shall retain records that document compliance with this ordinance for each gig worker.

B. Hiring entities shall retain the records required by subsection 100.040.A for a period of three years.

C. If a hiring entity fails to retain adequate records required under subsection 100.040.A, there shall be a presumption, rebuttable by clear and convincing evidence, that the hiring entity violated this ordinance for the periods and for each gig worker for whom records were not retained.

100.050 Retaliation prohibited

A. No hiring entity or any other person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this ordinance.

B. No hiring entity or any other person shall take any adverse action against any person because the person has exercised in good faith the rights protected under this ordinance. Such rights include, but are not limited to, the right to make inquiries about the rights protected under this ordinance; the right to inform others about their rights under this ordinance; the right to inform the person's hiring entity, the person's legal counsel, a union or similar organization, or any other person about an alleged violation of this ordinance; the right to file an oral or written complaint with the Agency or bring a civil action for an alleged violation of this ordinance; the right to cooperate with the Agency in its investigations of this ordinance; the right to testify in a proceeding under or related to this ordinance; the right to refuse to participate in an activity that would result in a violation of city, state or federal law; and the right to oppose any policy, practice, or act that is unlawful under this ordinance.

C. No hiring entity shall, as a result of this ordinance going into effect, reduce or otherwise modify the

areas of the City that are served by the hiring entity. It shall be a violation of this subsection 100.050.C if this ordinance going into effect is a motivating factor in a hiring entity's decision to reduce or otherwise modify the areas of the City that are served by the hiring entity, unless the hiring entity can prove that its decision to reduce or modify its services would have been taken in the absence of this ordinance.

D. No hiring entity or any other person shall communicate to a person exercising rights protected in this Section 100.050, directly or indirectly, the willingness to inform a government worker that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of a gig worker or family member of the gig worker to a federal, state, or local agency because the gig worker has exercised a right under this ordinance.

E. It shall be a rebuttable presumption of retaliation if a hiring entity or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this Section 100.050. However, in the case of seasonal work that ended before the close of the 90-day period, the presumption also applies if the hiring entity fails to rehire a former gig worker at the next opportunity for work in the same position. The hiring entity may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

F. Proof of retaliation under this Section 100.050 shall be sufficient upon a showing that a hiring entity or any other person has taken an adverse action against a person and the person's exercise of rights protected in this Section 100.050 was a motivating factor in the adverse action, unless the hiring entity can prove that the action would have been taken in the absence of such protected activity.

G. The protections afforded under this Section 100.050 shall apply to any person who mistakenly but in good faith alleges violations of this ordinance.

H. A complaint or other communication by any person triggers the protections of this Section 100.050 regardless of whether the complaint or communication is in writing or makes explicit reference to this ordinance.

100.060 Enforcement power and duties

A. The Agency shall have the power to investigate violations of this ordinance and shall have such powers and duties in the performance of these functions as are defined in this ordinance and otherwise necessary and proper in the performance of the same and provided for by law.

B. The Agency is authorized to coordinate implementation and enforcement of this ordinance and may promulgate appropriate guidelines or rules for such purposes.

C. The Director is authorized to promulgate rules consistent with this ordinance and Chapter 3.02 of the Seattle Municipal Code. Any guidelines or rules promulgated by the Director shall have the force and effect of law and may be relied on by hiring entities, gig workers, and other parties to determine their rights and responsibilities under this ordinance.

100.070 Violation

The failure of any respondent to comply with any requirement imposed on the respondent under this ordinance is a violation.

100.080 Investigation

A. The Agency shall have the power to investigate any violations of this ordinance by any respondent. The Agency may initiate an investigation pursuant to Director rules, including but not limited to situations when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of hiring entities or businesses because the workforce contains significant numbers of gig workers who are vulnerable to violations of this ordinance or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Agency of a report or complaint filed by a gig worker or other person.

B. A gig worker or other person may report to the Agency any suspected violation of this ordinance. The Agency shall encourage reporting pursuant to this Section 100.080 by taking the following measures:

1. The Agency shall keep confidential, to the maximum extent permitted by applicable laws, the

name and other identifying information of the gig worker or person reporting the violation. However, with the authorization of such person, the Agency may disclose the gig worker's or person's name and identifying information as necessary to enforce this ordinance or for other appropriate purposes.

2. Hiring entities shall provide gig workers with written notice of an investigation. Hiring entities shall provide the notice in a format that is readily accessible to gig workers. The Agency shall create the notice in English and other languages.

3. The Agency may certify the eligibility of eligible persons for "U" Visas under the provisions of 8 U.S.C. § 1184.p and 8 U.S.C. § 1101.a.15.U. This certification is subject to applicable federal law and regulations, and Director rules.

C. The Agency's investigation must commence within three years of the alleged violation. To the extent permitted by law, the applicable statute of limitations for civil actions is tolled during any investigation under this ordinance and any administrative enforcement proceeding under this ordinance based upon the same facts. For purposes of this ordinance:

1. The Agency's investigation begins on the earlier date of when the Agency receives a complaint from a person under this ordinance, or when the Agency provides notice to the respondent that an investigation has commenced under this ordinance.

2. The Agency's investigation ends when the Agency issues a final order concluding the matter and any appeals have been exhausted; the time to file any appeal has expired; or the Agency notifies the respondent in writing that the investigation has been otherwise resolved.

D. The Agency's investigation shall be conducted in an objective and impartial manner.

E. The Director may apply by affidavit or declaration in the form allowed under RCW 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring a hiring entity to produce the records required by Section 100.040, or for the attendance and testimony of witnesses, or for the production of documents required to be retained under Section 100.040, or any other document relevant to the issue of whether any gig worker or

group of gig workers has been or is afforded the proper amount of premium pay required by this ordinance and/or to whether a hiring entity has violated any provision of this ordinance. The Hearing Examiner shall conduct the review without hearing as soon as practicable and shall issue subpoenas upon a showing that there is reason to believe that: a violation has occurred, a complaint has been filed with the Agency, or that circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of gig workers who are vulnerable to violations of this ordinance or the workforce is unlikely to volunteer information regarding such violations.

F. A hiring entity that fails to comply with the terms of any subpoena issued under subsection 100.080.E in an investigation by the Agency under this ordinance before the issuance of a Director's Order issued pursuant to subsection 100.090.C may not use such records in any appeal to challenge the correctness of any determination by the Agency of damages owed or penalties assessed.

G. In addition to other remedies, the Director may refer any subpoena issued under subsection 100.080.E to the City Attorney to seek a court order to enforce any subpoena.

H. Where the Director has reason to believe that a violation has occurred, the Director may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing, including but not limited to a deposit of funds or bond sufficient to satisfy a good-faith estimate of compensation, interest, damages, and penalties due. A respondent may appeal any such order in accordance with Section 100.210.

100.090 Findings of fact and determination

A. Except when there is an agreed upon settlement, the Director shall issue a written determination with findings of fact resulting from the investigation and statement of whether a violation of this ordinance has or has not occurred based on a preponderance of the evidence before the Director.

B. If the Director determines that there is no violation of this ordinance, the Director shall issue a “Determination of No Violation” with notice of a gig worker or other person's right to appeal the decision,

pursuant to Director rules.

C. If the Director determines that a violation of this ordinance has occurred, the Director shall issue a “Director's Order” that shall include a notice of violation identifying the violation or violations.

1. The Director's Order shall state with specificity the amounts due under this ordinance for each violation, including payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section 100.200.

2. The Director's Order may specify that civil penalties and fines due to the Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party under subsection 100.200.A.4.

3. The Director’s Order may specify that civil penalties and fines are due to the aggrieved party rather than due to the Agency.

4. The Director's Order may direct the respondent to take such corrective action as is necessary to comply with the requirements of this ordinance, including but not limited to monitored compliance for a reasonable time period.

5. The Director's Order shall include notice of the respondent's right to appeal the decision pursuant to Section 100.210.

100.200 Remedies

A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties payable to aggrieved parties, fines, and interest provided under this ordinance is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

1. The amounts of all civil penalties, penalties payable to aggrieved parties, and fines contained in this Section 100.200 shall be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall determine the amounts and file a schedule of such amounts with the City Clerk.

2. If a violation is ongoing when the Agency receives a complaint or opens an investigation, the

Director may order payment of unpaid compensation plus interest that accrues after receipt of the complaint or after the investigation opens and before the date of the Director's Order.

3. Interest shall accrue from the date the unpaid compensation was first due at 12 percent annum, or the maximum rate permitted under RCW 19.52.020.

4. If there is a remedy due to an aggrieved party, the Director may waive part or all of the amount of civil penalties and fines due to the Agency based on timely payment of the full remedy due to the aggrieved party.

a. The Director may waive the total amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within ten days of service of the Director's Order.

b. The Director may waive half the amount of civil penalties and fines due to the Agency if the Director determines that the respondent paid the full remedy due to the aggrieved party within 15 days of service of the Director's Order.

c. The Director shall not waive any amount of civil penalties and fines due to the Agency if the Director determines that the respondent has not paid the full remedy due to the aggrieved party after 15 days of service of the Director's Order.

5. When determining the amount of liquidated damages, civil penalties, penalties payable to aggrieved parties, and fines due under this Section 100.200 for a settlement agreement or Director's Order, including but not limited to the mitigation of civil penalties and fines due to the Agency for timely payment of remedy due to an aggrieved party under subsection 100.200.A.4, the Director shall consider:

a. The total amount of unpaid compensation, liquidated damages, penalties, fines, and interest due;

b. The nature and persistence of the violations;

c. The extent of the respondent's culpability;

- d. The substantive or technical nature of the violations;
- e. The size, revenue, and human resources capacity of the respondent;
- f. The circumstances of each situation;
- g. The amount of penalties in similar situations; and
- h. Other factors pursuant to Director rules.

B. A respondent found to be in violation of this ordinance shall be liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party under the terms of this ordinance and other equitable relief. If the precise amount of unpaid compensation cannot be determined due to a respondent's failure to produce records or if a respondent produces records in a manner or form which makes timely determination of the amount of unpaid compensation impracticable, the Director may designate a daily amount for unpaid compensation due to aggrieved party. For any violation of this ordinance, the Director may assess liquidated damages in an additional amount of up to twice the unpaid compensation.

C. A respondent found to be in violation of this ordinance for retaliation under Section 100.050 shall be subject to any appropriate relief at law or equity including, but not limited to reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of unpaid compensation plus interest in favor of the aggrieved party under the terms of this ordinance, and liquidated damages in an additional amount of up to twice the unpaid compensation. The Director also shall order the imposition of a penalty payable to the aggrieved party of up to \$5,462.70.

D. The Director is authorized to assess penalties and shall specify that at least 50% of any penalty in this subsection 100.200.D is payable to the aggrieved party and the remaining penalty is payable to the Agency as a civil penalty. The Director may also specify that the entire penalty is payable to the aggrieved party.

1. For a first violation of this ordinance, the Director may assess a penalty of up to \$546.07 per aggrieved party.

2. For a second violation of this ordinance, the Director shall assess a penalty of up to \$1,092.13

per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

3. For a third or any subsequent violation of this ordinance, the Director shall assess a penalty of up to \$5,462.70 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

4. The maximum penalty for a violation of this ordinance shall be \$21,849.79 per aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation, whichever is greater.

5. For purposes of this Section 100.200, a violation is a second, third, or subsequent violation if the respondent has been a party to one, two, or more than two settlement agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than two Director's Orders, respectively, have issued against the respondent in the ten years preceding the date of the violation; otherwise, it is a first violation.

E. The Director is authorized to assess fines as follows:

Violation	Fine
Failure to provide a gig worker with written notice of rights under subsection 100.030.A	\$546.07 per aggrieved party
Failure to retain hiring entity records for three years under subsections 100.040.A and 100.040.B	\$546.07 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 100.050	\$1,092.13 per aggrieved party
Failure to provide notice of investigation to gig workers under subsection 100.080.B.2	\$546.07
Failure to post or distribute public notice of failure to comply with final order under subsection 100.240.A.1	\$546.07

The maximum amount that may be imposed in fines in a one-year period for each type of violation listed above is \$5,462.70 unless a fine for retaliation is issued, in which case the maximum amount is \$21,849.79.

F. A respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this ordinance shall be subject to a civil penalty of not less

than \$1,092.13 and not more than \$5,462.70.

G. In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this ordinance, including but not limited to reasonable attorneys' fees.

H. A hiring entity that is the subject of a settlement agreement stipulating that a violation has occurred shall count for debarment, or a final order for which all appeal rights have been exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the hiring entity is the subject of a final order two times or more within a five-year period, the hiring entity shall not be allowed to bid on any City contract for two years. This subsection 100.200.H shall be construed to provide grounds for debarment separate from, and in addition to, those contained in Seattle Municipal Code Chapter 20.70 and shall not be governed by that chapter provided that nothing in this subsection 100.200.H shall be construed to limit the application of Seattle Municipal Code Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of all hiring entities subject to debarment under this subsection 100.080.H.

100.210 Appeal period and failure to respond

A. A gig worker or other person who claims an injury as a result of an alleged violation of this ordinance may appeal the Determination of No Violation Shown, pursuant to Director rules.

B. A respondent may appeal the Director's Order, including all remedies issued pursuant to Section 100.200, by requesting a contested hearing before the Hearing Examiner in writing within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run until 5 p.m. on the next business day.

100.220 Appeal procedure and failure to appear

A. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases

contained in Section 3.02.090 of the Seattle Municipal Code and the rules adopted by the Hearing Examiner for hearing contested cases. The hearing shall be conducted de novo and the Director shall have the burden of proving by a preponderance of the evidence that the violation or violations occurred. Upon establishing such proof, the remedies and penalties imposed by the Director shall be upheld unless it is shown that the Director abused discretion. Failure to appear for a contested hearing shall result in an order being entered finding that the respondent committed the violation stated in the Director's Order. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying or reversing the Director's Order, consistent with Ordinance 126068.

100.230 Appeal from Hearing Examiner order

A. The respondent may obtain judicial review of the decision of the Hearing Examiner by applying for a Writ of Review in the King County Superior Court within 30 days from the date of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable law, and court rules.

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 100.230.

100.240 Failure to comply with final order

A. If a respondent fails to comply within 30 days of service of any settlement agreement with the Agency, or with any final order issued by the Director or the Hearing Examiner for which all appeal rights have been exhausted, the Agency may pursue, but is not limited to, the following measures to secure compliance:

1. The Director may require the respondent to post or distribute public notice of the respondent's failure to comply in a form and manner determined by the Agency.

2. The Director may refer the matter to a collection agency. The cost to the City for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the amounts due.

3. The Director may refer the matter to the City Attorney for the filing of a civil action in King County Superior Court, the Seattle Municipal Court, or any other court of competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the Director may seek to enforce a Director's Order or a final order of the Hearing Examiner under Section 100.250.

4. The Director may request that the City's Department of Finance and Administrative Services deny, suspend, refuse to renew, or revoke any business license held or requested by the employer or person until such time as the employer complies with the remedy as defined in the settlement agreement or final order. The City's Department of Finance and Administrative Services shall have the authority to deny, refuse to renew, or revoke any business license in accordance with this subsection 100.240.A.4.

B. No respondent that is the subject of a final order issued under this ordinance shall quit business, sell out, exchange, convey, or otherwise dispose of the respondent's business or stock of goods without first notifying the Agency and without first notifying the respondent's successor of the amounts owed under the final order at least three business days before such transaction. At the time the respondent quits business, or sells out, exchanges, or otherwise disposes of the respondent's business or stock of goods, the full amount of the remedy, as defined in a final order issued by the Director or the Hearing Examiner, shall become immediately due and payable. If the amount due under the final order is not paid by respondent within ten days from the date of such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment of the amount due, provided that the successor has actual knowledge of the order and the amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact and amount of the order and the amounts due. The successor shall withhold from the purchase price a sum sufficient to pay the amount of the full remedy. When the successor makes such payment, that payment shall be deemed a payment upon the purchase price in the amount paid, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the hiring entity.

100.250 Debt owed The City of Seattle

A. All monetary amounts due under the Director's Order shall be a debt owed to the City and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies, provided that amounts collected by the City for unpaid compensation, liquidated damages, penalties payable to aggrieved parties, or front pay shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be paid by the City to the aggrieved party.

B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the time period set forth in subsection 100.210.B, the Director's Order shall be final, and the Director may petition the Seattle Municipal Court, or any court of competent jurisdiction, to enforce the Director's Order by entering judgment in favor of the City finding that the respondent has failed to exhaust its administrative remedies and that all amounts and relief contained in the order are due. The Director's Order shall constitute prima facie evidence that a violation occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is therefore in default, or that the respondent has failed to appeal the Director's Order to the Hearing Examiner within the time period set forth in subsection 100.210.B, and therefore has failed to exhaust the respondent's administrative remedies, shall also be admissible without further evidentiary foundation.

C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner within the time period set forth in subsection 100.230.A, the order of the Hearing Examiner shall be final, and the Director may petition the Seattle Municipal Court to enforce the Director's Order by entering judgment in favor of the City for all amounts and relief due under the order of the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence that the violations contained therein occurred and shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply with the order or any parts thereof, and is

therefore in default, or that the respondent has failed to avail itself of judicial review in accordance with subsection 100.230.A, shall also be admissible without further evidentiary foundation.

D. In considering matters brought under subsections 100.250.B and 100.250.C, the Municipal Court may include within its judgment all terms, conditions, and remedies contained in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are consistent with the provisions of this ordinance.

100.260 Private right of action

A. Any person or class of persons that suffers financial injury as a result of a violation of this ordinance, or is the subject of prohibited retaliation under Section 100.050, may bring a civil action in a court of competent jurisdiction against the hiring entity or other person violating this ordinance and, upon prevailing, may be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation: the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation; and a penalty payable to any aggrieved party of up to \$55,462.70 if the aggrieved party was subject to prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

B. For purposes of this Section 100.260, "person" includes any entity a member of which has suffered financial injury or retaliation, or any other individual or entity acting on behalf of an aggrieved party that has suffered financial injury or retaliation.

C. For purposes of determining membership within a class of persons entitled to bring an action under this Section 100.260, two or more gig workers are similarly situated if they:

1. Are or were hired for the same hiring entity or hiring entities, whether concurrently or otherwise, at some point during the applicable statute of limitations period,
2. Allege one or more violations that raise similar questions as to liability, and

3. Seek similar forms of relief.

D. For purposes of subsection 100.260.C, gig workers shall not be considered dissimilar solely because the gig workers’

1. Claims seek damages that differ in amount, or

2. Job titles or other means of classifying gig workers differ in ways that are unrelated to their claims.

100.270 Encouragement of more generous policies

A. Nothing in this ordinance shall be construed to discourage or prohibit a hiring entity from the adoption or retention of premium pay policies more generous than the one required herein.

B. Nothing in this ordinance shall be construed as diminishing the obligation of a hiring entity to comply with any contract or other agreement providing more generous protections to a gig worker than required by this ordinance.

100.280 Other legal requirements

This ordinance provides minimum requirements for premium pay while working for a hiring entity during the COVID-19 emergency and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for higher premium pay, or that extends other protections to gig workers; and nothing in this ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. Nor shall this ordinance be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this ordinance affecting such person. Nothing in this Section 100.280 shall be construed as restricting a gig worker’s right to pursue any other remedies at law or equity for violation of their rights.

100.290 Severability

The provisions of this ordinance are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or the application thereof to any hiring entity, gig

worker, person, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 3. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance 125948, is amended as follows:

3.02.125 Hearing Examiner filing fees

A. The filing fee for a case before the City Hearing Examiner is \$85, with the following exceptions:

Basis for Case	Fee in dollars
* * *	
Paid Sick/Safe Leave Ordinance (Chapter 14.16)	No fee
Premium Pay for Gig Workers Ordinance (Introduced as Council Bill XXXXXX)	No fee
Public Accommodations Ordinance (Chapter 14.06)	No fee
* * *	

* * *

Section 4. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 125930, is amended as follows:

6.208.020 Denial, revocation of, or refusal to renew business license

A. In addition to any other powers and authority provided under this Title 6, the Director, or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any business license issued under the provisions of this Chapter 6.208. The Director, or the Director's designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or refusal to renew the license and on what grounds such a decision was based. The Director may deny, revoke, or refuse to renew any license issued under this Chapter 6.208 on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact.
2. The licensee has failed to comply with any provisions of this Chapter 6.208.
3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35, 5.40, 5.45, 5.46,

5.48, 5.50, or 5.52.

4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.

5. The property at which the business is located has been determined by a court to be a chronic nuisance property as provided in Chapter 10.09.

6. The applicant or licensee has been convicted of theft under subsection 12A.08.060.A.4 within the last ten years.

7. The applicant or licensee is a person subject within the last ten years to a court order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of either:

a. The expiration of the time for filing an appeal from the final judgment order under the court rules in effect at the time of the final judgment order; or

b. If a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial affirmation of the findings of violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.

8. The applicant or licensee is a person subject within the last ten years to a final and binding citation and notice of assessment from the Washington Department of Labor and Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and penalties assessed therewith were not satisfied within 30 days of the date the citation became final and binding.

9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4, 14.20.080.A.4, 14.22.115.A.4, 14.23.115.A.4, 14.26.210.A.4, 14.27.210.A.4, 14.28.210.A.4, and 14.30.180.A.4, and subsection 100.240.A.4 of this ordinance, the applicant or licensee has failed to comply, within 30 days of service of any settlement agreement, with any final order issued by the Director of the Office of Labor Standards, or any final order issued by the Hearing Examiner under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, and 14.30, and this ordinance, for which all appeal rights have been

exhausted, and the Director of the Office of Labor Standards has requested that the Director deny, refuse to renew, or revoke any business license held or requested by the applicant or licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the violation(s) under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, and 14.30, and this ordinance are remedied.

10. The business is one that requires an additional license under this Title 6 and the business does not hold that license.

11. The business has been determined under a separate enforcement process to be operating in violation of law.

* * *

Section 5. This ordinance shall be automatically repealed without subsequent Council action three years after the termination of the civil emergency proclaimed by the Mayor on March 3, 2020.

Section 6. Based on the findings of fact set forth in Section 1 of this ordinance, the Council finds and declares that this ordinance is a public emergency ordinance, which shall take effect immediately and is necessary for the protection of the public health, safety, and welfare.

Section 7. By reason of the findings set forth in Section 1, and the emergency that is hereby declared to exist, this ordinance shall become effective immediately upon its passage by a 3/4 vote of the Council and its approval by the Mayor, as provided by Article 4, subsection 1.1 of the Charter of the City.

Passed by a 3/4 vote of all the members of the City Council the _____ day of _____, 2020, and signed by me in open session in authentication of its passage this _____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
LEG	Karina Bull / x6-0078	n/a

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to gig workers in Seattle; establishing labor standards requirements for premium pay for gig workers working in Seattle; amending Sections 3.02.125 and 6.208.020 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

Summary and background of the Legislation: To protect public health, safety, and welfare, this legislation would declare an emergency in response to the high number of confirmed cases and deaths in King County and around the world from the new coronavirus 19 (COVID-19) and would require food delivery network companies and transportation network companies to provide gig workers with premium pay for work performed in Seattle during the COVID-19 emergency. The premium pay would compensate gig workers for the substantial risks they are undertaking to provide essential services during the COVID-19 emergency in the interest of providing fair and equitable compensation and better ensuring the retention of gig workers throughout the duration of the COVID-19 emergency.

The legislation would apply to gig workers working in whole or part in Seattle for covered hiring entities with 250 or more gig workers worldwide. Covered hiring entities would include a (1) food delivery network company offering prearranged delivery services for compensation using an online-enabled application or platform to connect customers with workers for delivery from eating and drinking establishments, food processing establishments, grocery stores, or any facility intended to fulfill customer orders from a business whose business model relies on the delivery of groceries or prepared food and beverages; or a (2) transportation network company (TNC) offering prearranged transportation services for compensation using an online enabled application or platform to connect passengers with drivers using a TNC endorsed vehicle.

Premium pay would be defined as compensation owed to a gig worker that is separate from hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

Hiring entities would owe premium pay of no less than \$5 for each online order for delivery or transportation services with a work-related stop in Seattle. For online orders with more than one drop-off point, hiring entities would owe premium pay of no less than \$5 for any work-related stop in Seattle for a first drop-off point and no less than \$5 for each additional drop-off point in Seattle.

When providing the premium pay, hiring entities would include notification of online orders that qualified for the premium pay and itemize premium pay separately from other compensation.

Hiring entities also would be responsible for providing each gig worker with a notice of rights, retaining records showing compliance for three years, and complying with anti-retaliation prohibitions.

The Office of Labor Standards (OLS) would coordinate implementation and enforcement of premium pay requirements. As with the City's other labor standards, OLS would be required to commence any investigation within three years of the alleged violation. Aggrieved parties also would have a private right of action.

The premium pay requirement would be in effect until the termination of the civil emergency proclaimed by the Mayor on March 3, 2020. However, if the City passes a minimum compensation standard for TNC drivers, the legislation states the Council's intention to consider eliminating the premium pay requirement for TNC drivers before the termination of the civil emergency.

The rest of the legislation would be in effect three years after the termination of the civil emergency proclaimed by the Mayor on March 3, 2020 and then would be automatically repealed without subsequent action by the Council.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes x No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes x No

Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

Yes. This legislation would establish an implementation and enforcement role for OLS and an appeal role for the Hearing Examiner. The City could either (1) require these entities to reprioritize their existing portfolios of work or (2) add resources to support the newly created roles during the 2020 budget rebalancing process or the 2021 budget adoption process.

Is there financial cost or other impacts of *not* implementing the legislation?

There are no financial costs to the City of not implementing the legislation. However, not implementing would not compensate gig workers for the risks they are undertaking to provide essential services during the COVID-19 emergency.

4. OTHER IMPLICATIONS

- a. Does this legislation affect any departments besides the originating department?**
Yes. OLS would implement and enforce this legislation. The Hearing Examiner would conduct hearings on appeals from respondents and aggrieved parties. There also could be an undetermined number of legal referrals to the City Attorney.
- b. Is a public hearing required for this legislation?**
No.
- c. Does this legislation require landlords or sellers of real property to provide information regarding the property to a buyer or tenant?**
No.
- d. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No
- e. Does this legislation affect a piece of property?**
No
- f. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?**
The City’s Race and Social Justice Initiative seeks to achieve racial equity in key areas: jobs, health, community development, education, criminal justice, housing, and the environment. This legislation would support jobs by requiring hiring entities to provide premium pay to gig workers who are performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress during the COVID-19 emergency. This legislation would also support the financial well-being of gig workers working in Seattle, including women and people of color who are more likely to earn lower incomes.
- Regarding language access, this legislation would authorize OLS to create and distribute a model “notice of rights” in English and other languages.
- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program’s desired goal(s).**
OLS could publicly share information on outreach and enforcement efforts on their [on-line, quarterly dashboard](#). The same metrics publicized for other local labor standards could apply for this legislation (e.g., number of inquiries, number of investigations, amount of remedies). OLS also could contract with community and business organizations to conduct measurable outreach and education efforts on worker rights and hiring entity responsibilities.

List attachments/exhibits below:

June 11, 2020

MEMORANDUM

To: Seattle City Council
From: Karina Bull, Analyst
Subject: CB 119799: Premium Pay for Gig Workers Ordinance

On June 15, 2020, the City Council (Council) will discuss and may act on [CB 119799](#), legislation sponsored by Councilmembers Herbold and Lewis and introduced on May 26, 2020. The legislation includes findings to establish the need for emergency legislation that would have an immediately effective date if authorized by a supermajority of the Council and signed by the Mayor.

This memo (1) summarizes the legislation and (2) presents potential amendments in a substitute bill (“D4”) sponsored by Councilmembers Herbold and Lewis for Council’s consideration on June 15. See “Amendments” section (pg. 3) for more details.

Background

During the COVID-19 emergency, gig workers have been providing essential services to Seattle consumers. Using an online-enabled application or platform, gig workers accept offers for prearranged services from hiring entities to perform tasks for consumers, such as delivery of groceries or prepared food and beverages. Since the nature of this work can involve close contact with the public, gig workers risk catching and/or spreading illness and bear the brunt of costs for disinfecting their equipment and buying protective gear. Gig workers working in these hazardous conditions do not have access to employee protections, such as minimum compensation or safety standards, because they are hired as “independent contractors.”

Summary

This legislation would declare an emergency in response to COVID-19 and would require hiring entities to provide premium pay to gig workers working in Seattle for the duration of the civil emergency proclaimed by the Mayor on March 3, 2020. The premium pay would compensate gig workers for the risks of working during a pandemic and for the costs of taking preventive safety measures to protect themselves and others from spreading the virus.

The legislation would apply to gig workers working for hiring entities with 250 or more gig workers worldwide.

- In the introduced legislation, covered hiring entities would include “food delivery network companies” and “transportation network companies.”
- In the substitute bill, covered hiring entities would be limited to “food delivery network companies” offering prearranged delivery services for compensation using an online-

enabled application or platform to connect customers with workers for delivery from (a) eating and drinking establishments, (b) food processing establishments, (c) grocery stores, or (d) any facility intended to fulfill customer orders from a business whose business model relies on the delivery of groceries or prepared food and beverages.

The legislation would define “premium pay” as compensation owed to a gig worker that is separate from hiring entity payments for providing services, bonuses, and commissions, as well as tips earned from customers.

In the introduced legislation, hiring entities would owe premium pay of \$5 for each online order with a work-related stop in Seattle. For online orders with more than one drop-off point, hiring entities would owe premium pay of \$5 for each additional drop-off point in Seattle. Hiring entities would notify gig workers of online orders that qualified for the premium pay and itemize premium pay separately from other compensation. In the substitute bill, a revised premium pay requirement would require premium pay of \$2.50 for each online order with a pick-up point or drop-off point in Seattle and \$1.25 for each additional pick-up point and drop-off point. See Table 1, Row D (pg. 4) for more details.

Hiring entities also would be required to provide gig workers with a notice of rights, retain records showing compliance for three years, and comply with anti-retaliation provisions.

In the introduced legislation, the anti-retaliation provisions would be broader than other labor standards. Hiring entities would be prohibited from (a) taking adverse actions against workers who assert their rights to premium pay; and (b) taking actions as a result of the ordinance going into effect. For the latter prohibition, hiring entities would be prohibited from offsetting the costs of complying with the ordinance by reducing or otherwise modifying their areas of service in Seattle. In the substitute bill, the latter prohibition would move to a new section, “Gig Worker and Consumer Protections.” The new section would also prohibit hiring entities from reducing a gig worker’s compensation and limiting a gig worker’s earning capacity. See Table 1, Row E (pg. 5) for more details.

The Office of Labor Standards (OLS) would implement and enforce premium pay requirements. As with the City’s other labor standards, OLS would be required to commence any investigation within three years of the alleged violation. Aggrieved parties would also have a private right of action.

The requirement to provide premium pay would be in effect until the termination of the COVID-19 civil emergency proclaimed by the Mayor on March 3, 2020. However, if the City passes a minimum compensation standard for covered gig workers, the legislation states the Council’s intention to consider eliminating the premium pay requirement before the termination of the civil emergency.

After premium pay requirements sunset, the remaining requirements would stay in effect for a limited period to retain provisions necessary for record-keeping, notice of rights, preventing retaliation, and enforcement. Specifically, the legislation would stay in effect for three years after the termination of the civil emergency proclaimed by the Mayor on March 3, 2020 and then be automatically repealed without subsequent action by the Council.

Financial Impacts

This legislation would establish an implementation and enforcement role for OLS and an appeal role for the Hearing Examiner. The City could either:

1. Require these entities to reprioritize their existing portfolios of work; or
2. Add resources to support the newly created roles during the 2020 budget rebalancing process or the 2021 budget adoption process.

Amendments

As of June 11, there is a substitute bill (“D4”) for the Council’s consideration. The substitute bill contains technical corrections and substantive amendments. See Table 1 for an overview of the amendments. Any additional amendments identified will be distributed as soon as they are available.

Table 1: Substitute Bill

Issue	Description
<p>A. Findings</p>	<p>The substitute bill would (1) emphasize the gig worker’s expenses to protect themselves and the public from catching or spreading the virus, and (2) reflect Washington Governor Jay Inslee’s lifting of restrictions on matters that the Council may consider during the COVID-19 public health emergency.</p> <ul style="list-style-type: none"> • “Establishing an immediate requirement for food delivery network companies and transportation network companies to provide premium pay to gig workers protects public health, supports stable incomes, and promotes job retention by ensuring that gig workers are compensated now and for the duration of the public health emergency for the substantial risks, efforts, and expenses they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency.” • “Washington Governor Jay Inslee’s Proclamation 20-28 prohibits all agency actions unless the action is: 1) necessary and routine; or 2) necessary in response to the COVID-19 public health emergency. This ordinance is necessary in response to the COVID-19 public health emergency because requiring food delivery network companies and transportation network companies to provide premium pay to gig workers compensates gig workers for the risks of working during a pandemic and the safety measures they are undertaking to protect themselves, customers, and the public from catching or spreading illness. The provision of premium pay also better ensures the retention of these essential workers who are

Issue	Description
	<p>on the frontlines of this pandemic to provide essential services, who are needed throughout the duration of the COVID-19 emergency, and who deserve fair and equitable compensation for their work.”</p>
<p>B. Definitions</p>	<p>The substitute bill would add or revise the following definitions:</p> <ul style="list-style-type: none"> • (Revised) “Food delivery network company” means an organization whether a corporation, partnership, sole proprietor, or other form, operating in Seattle, that offers prearranged delivery services for compensation using an online-enabled application or platform, such as an application dispatch system, to connect customers with workers for delivery from one or more of the following: (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility intended to fulfill customer orders from a business whose business model relies on the delivery of <u>supplying</u> groceries or prepared food and beverages <u>for an online order.</u> • (New) “Pick-up point” means the location of any establishment accessed by the gig worker to fulfill an online order, including but not limited to (1) eating and drinking establishments, (2) food processing establishments, (3) grocery stores, or (4) any facility supplying groceries or prepared food and beverages for an online order. • (New) “Worker platform” means the worker-facing application dispatch system software or any online-enabled application service, website, or system, used by a food delivery network worker, that enables the prearrangement of delivery services for compensation.
<p>C. Coverage</p>	<p>The substitute bill would remove coverage of “transportation network companies” and “transportation network company drivers.” Since the Executive has expressed an intention to transmit “Fare Share” legislation to Council this summer, the sponsors have removed transportation network companies from CB 119799. The Fare Share legislation would propose a minimum compensation standard for TNC drivers that would include at least the equivalent of the “hourly minimum wage” required for large employers in Seattle’s Minimum Wage Ordinance plus reasonable expenses.</p>
<p>D. Premium Pay Requirement</p>	<p>The substitute bill would change the premium pay requirement. Hiring entities would provide each gig worker with premium pay for each online order that results in the gig worker making a work-related stop in Seattle. For each online order, hiring entities would owe premium pay in the following amounts:</p> <ul style="list-style-type: none"> • \$2.50 for one pick-up point or one drop-off point in Seattle. • \$1.25 for each additional pick-up point in Seattle. • \$1.25 for each additional drop-off point in Seattle. <p>For example, a gig worker who visits one restaurant in Seattle to pick-up items for an online order and delivers the items to two drop-off points in Seattle would be owed premium pay of \$3.75.</p>

Issue	Description
E. Gig Worker and Consumer Protections	<p>The substitute bill would create a new section for “Gig Worker and Consumer Protections.” The section would prohibit hiring entities, as a result of the ordinance going into effect, from taking the following actions:</p> <ul style="list-style-type: none"> • Reducing or otherwise modifying areas of service in Seattle; • Reducing a gig worker’s compensation; or • Limiting a gig worker’s earning capacity, including but not limited to restricting access to online orders.
F. Notice of Rights	<p>The substitute bill would clarify hiring entity requirements for providing notice of rights. Hiring entities would be required to provide the notice of rights in an electronic format via smartphone application or online web portal, in English and any language that the hiring entity knows or has reason to know is the primary language of the gig worker(s).</p>
G. Enforcement	<p>The substitute bill would add remedies for violations of “Gig Worker and Customer Protections.” The OLS Director would have authority to assess the following penalties:</p> <ul style="list-style-type: none"> • For violations of prohibitions on reducing or otherwise modifying areas of service in Seattle, the Director could assess penalties and fines payable to OLS. • For violations of prohibitions on reducing a gig worker’s compensation or limiting a gig worker’s earning capacity, the Director could assess unpaid compensation due to the aggrieved worker, penalties, and fines. At least 50 percent of the penalty would be payable to the aggrieved party and the remaining penalty would be payable to OLS as a civil penalty. The fine(s) would be payable to OLS or to the aggrieved party.

Next Steps: Council action could occur at the Full Council meeting on June 15, 2020.

Please contact me if you have questions.

cc: Kirstan Arestad, Executive Director
Dan Eder, Deputy Director

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to gig workers in Seattle; establishing labor standards requirements for premium pay for gig workers working in Seattle; amending Sections 3.02.125 and 6.208.020 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

..body

WHEREAS, the new coronavirus 19 (COVID-19) disease is caused by a virus that spreads easily from person to person and may result in serious illness or death, and is classified by the World Health Organization as a worldwide pandemic; and

WHEREAS, COVID-19 has broadly spread throughout Washington State and remains a significant health risk to the community, especially members of our most vulnerable populations; and

WHEREAS, the definitions of “employee” and “employer” in local, state, and federal laws are broad, but food delivery network companies ~~and transportation network companies~~ rely on business models that ~~hire/treat~~ gig workers as “independent contractors,” thereby creating barriers for gig workers to access employee protections; and

WHEREAS, gig workers working for food delivery network companies ~~and transportation network companies~~ during the COVID-19 emergency face magnified risks of catching or spreading disease because the nature of their work can involve close contact with the public, including members of the public who are not showing symptoms of COVID-19 but who can spread the disease; and

WHEREAS, The City of Seattle (City) intends to make it clear that gig workers working for food delivery network companies ~~and transportation network companies~~ have a right to receive premium pay for work performed during the COVID-19 emergency; and

1 WHEREAS, the City intends to make it clear that provision of premium pay should not result in
2 ~~food delivery network companies reductions to a gig worker’s baseline compensation or~~
3 ~~garnishments of tips~~ reducing or otherwise modifying the areas in the City served by the
4 ~~companies, reducing a gig worker’s compensation, limiting a gig worker’s earning~~
5 ~~capacity, -or additional-adding~~ charges to customers ~~of food delivery network companies~~
6 ~~and transportation network companies~~; and

7 WHEREAS, establishing premium pay standards for gig workers working during the COVID-19
8 emergency will increase retention of these gig workers and compensate them for the
9 hazards of working on the frontlines of a global pandemic; and

10 WHEREAS, the City is a leader on wage, labor, and workforce practices that improve workers’
11 lives, support economic security, and contribute to a fair, healthy, and vibrant economy;
12 and

13 WHEREAS, establishing a labor standard that requires premium pay for gig workers working for
14 food delivery network companies is a subject of vital and imminent concern to the people
15 of this City and requires appropriate action by the City Council to establish this labor
16 standard for gig workers; NOW, THEREFORE,

17 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

18 Section 1. The City Council (Council) finds and declares that:

19 A. In the exercise of The City of Seattle’s police powers, the City is granted authority to
20 pass regulations designed to protect and promote public, health, safety, and welfare.

21 B. This ordinance protects and promotes public health, safety, and welfare during the new
22 coronavirus 19 (COVID-19) emergency by requiring food delivery network companies ~~and~~
23 ~~transportation network companies~~ to provide premium pay for gig workers performing work in

1 Seattle, thereby increasing retention of ~~these~~ gig workers who provide essential services on the
2 frontlines of a global pandemic and who should be paid additional compensation for the hazards
3 of working with significant exposure to an infectious disease.

4 C. The World Health Organization (WHO) has declared that COVID-19 is a global
5 pandemic, which is particularly severe in high risk populations such as people with underlying
6 medical conditions and the elderly, and the WHO has raised the health emergency to the highest
7 level, requiring dramatic interventions to disrupt the spread of this disease.

8 D. On February 29, 2020, Washington Governor Jay Inslee proclaimed a state of
9 emergency in response to new cases of COVID-19, directing state agencies to use all resources
10 necessary to prepare for and respond to the outbreak.

11 E. On March 3, Mayor Jenny Durkan proclaimed a civil emergency in response to new
12 cases of COVID-19, authorizing the Mayor to exercise the emergency powers necessary to take
13 extraordinary measures to prevent death or injury of persons and to protect the public peace,
14 safety and welfare, and alleviate damage, loss, hardship or suffering.

15 F. On March 16, 2020, Washington Governor Jay Inslee and the Public Health – Seattle
16 & King County Local Health Officer issued parallel orders temporarily shutting down
17 restaurants, bars, and other entertainment and food establishments, except for take-out food.

18 G. On March 23, 2020, Washington Governor Jay Inslee issued a “Stay Home – Stay
19 Healthy” proclamation closing all non-essential workplaces, requiring people to stay home
20 except to participate in essential activities or to provide essential business services, and banning
21 all gatherings for social, spiritual, and recreational purposes through April 6, 2020. In addition to
22 healthcare, public health and emergency services, the “Stay Home – Stay Healthy” proclamation
23 identified ~~transportation network companies,~~ delivery network companies, and establishments

1 selling groceries and prepared food and beverages as essential business sectors critical to
2 protecting the health and well-being of all Washingtonians and designated their workers as
3 essential critical infrastructure workers.

4 H. On April 2, 2020, Washington Governor Jay Inslee extended the “Stay Home – Stay
5 Healthy” proclamation through May 4, 2020.

6 I. On May 1, 2020, Washington Governor Jay Inslee extended the “Stay Home – Stay
7 Healthy” proclamation through May 31, 2020 in recognition that the worldwide COVID-19
8 pandemic and its progression in Washington State continue to threaten the life and health of our
9 people as well as the economy of Washington State, and remain a public disaster affecting life,
10 health, property or the public peace.

11 J. On May 4, 2020, Washington Governor Jay Inslee announced a “Safe Start” plan that
12 reopens Washington’s economy in phases and has restrictions on the seating capacity of
13 restaurants during three of the four phases and physical distancing for high-risk populations and
14 worksites during all four phases.

15 K. As of May 20, 2020, the World Health Organization Situation Report reported a
16 global total of 4,801,202 cases of COVID-19, including 318,935 deaths; the Washington State
17 Department of Health and Johns Hopkins University reported 18,811 cases of COVID-19,
18 including 1,031 deaths in Washington State; and Public Health – Seattle & King County reported
19 7,617 cases of COVID-19, including 530 deaths, in King County.

20 L. Food delivery network companies ~~and transportation network companies~~ are essential
21 businesses operating in Seattle during the COVID-19 emergency and rely on business models
22 that ~~treat-hire~~ gig workers as independent contractors, thereby creating barriers for gig workers to

1 access employee protections established by local, state, and federal law, and making gig workers
2 highly vulnerable to economic insecurity and health or safety risks.

3 M. Gig workers working for food delivery network companies ~~and transportation~~
4 ~~network companies~~ are essential workers who perform services that are fundamental to the
5 ~~economy and~~ health of the community during the COVID-19 crisis. ~~These gig workers provide~~
6 ~~essential services that support the economy and the community during this crisis.~~ They can work
7 in high risk conditions with inconsistent access to protective equipment and other safety
8 measures; work in public situations with limited or no ability to engage in physical distancing;
9 and continually expose themselves and the public to the spread of disease.

10 N. In the pursuit of economic opportunity, many gig workers are immigrants and people
11 of color who have taken on debt or invested their savings to purchase and/or lease vehicles or
12 other equipment to work for food delivery network companies ~~and transportation network~~
13 ~~companies~~.

14 O. Gig workers making deliveries for food delivery network companies are supporting
15 community efforts to engage in physical distancing and mitigate the spread of COVID-19 while
16 simultaneously exposing themselves to a higher risk of infection

17 ~~P. Gig workers working for transportation network companies are providing the majority~~
18 ~~of for hire rides in the City and therefore experience an especially high risk of person to person~~
19 ~~transmission of infectious disease during the COVID-19 emergency.~~

20 PQ. Gig workers working for food delivery network companies ~~and transportation~~
21 ~~network companies~~ bear the brunt of the time and expenses necessary for cleaning and
22 disinfecting equipment and engaging in other efforts to protect themselves, customers, and the
23 public from illness.

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~~RQ.~~ Premium pay, paid in addition to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress.

~~SR.~~ Gig workers working during the COVID-19 emergency merit additional compensation because they are performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress due to the significant risk of exposure to the COVID-19 virus. Gig workers have been working under these hazardous conditions for months. They are working in these hazardous conditions now and will continue to face safety risks as the virus presents an ongoing threat for an uncertain period, potentially resulting in subsequent waves of infection.

~~FS.~~ The availability of food delivery ~~and transportation~~ services is fundamental to the health of the community and is made possible during the COVID-19 emergency because gig workers are on the frontlines of this devastating pandemic supporting public health, safety, and welfare by making deliveries ~~and transporting passengers~~ while working in hazardous situations.

~~UT.~~ Establishing an immediate requirement for food delivery network companies ~~and transportation network companies~~ to provide premium pay to gig workers protects public health, supports stable incomes, and promotes job retention by ensuring that gig workers are compensated now and for the duration of the public health emergency for the substantial risks, ~~efforts, and expenses~~ they are undertaking to provide essential services in a safe and reliable manner during the COVID-19 emergency.

~~VU. Washington Governor Jay Inslee's Proclamation 20-28 prohibits all agency actions unless the action is: 1) necessary and routine; or 2) necessary in response to the COVID-19~~

1 ~~public health emergency.~~ This ordinance is necessary in response to the COVID-19 public health
2 emergency because requiring food delivery network companies ~~and transportation network~~
3 ~~companies~~ to provide premium pay to gig workers compensates gig workers for the risks of
4 working during a pandemic and the safety measures they are undertaking to protect themselves,
5 customers, and the public from catching or spreading illness. ~~and~~ The provision of premium pay
6 also better ensures the retention of these essential workers who are on the frontlines of this
7 pandemic to provide essential services, who are needed throughout the duration of the COVID-
8 19 emergency, and who deserve fair and equitable compensation for their work.

9 Section 2. As the substantive effects of this ordinance are not permanent, this ordinance is
10 not intended to be codified. Section numbers are for ease of reference within this ordinance, and
11 section and subsection references refer to numbers in this ordinance unless stated otherwise.

12 **PREMIUM PAY FOR GIG WORKERS**

13 **100.005 Short title**

14 This ordinance shall constitute the “Premium Pay for Gig Workers Ordinance” and may be cited
15 as such.

16 **100.010 Definitions**

17 For purposes of this ordinance:

18 “Adverse action” means reducing the compensation to a gig worker, garnishing
19 gratuities, temporarily or permanently denying or limiting access to work, incentives, or bonuses,
20 offering less desirable work, demoting, terminating, deactivating, putting a gig worker on hold
21 status, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating,
22 engaging in unfair immigration-related practices, filing a false report with a government agency,
23 or otherwise discriminating against any person for any reason prohibited by Section 100.050.

1 “Adverse action” for a gig worker may involve any aspect of work, including compensation,
2 work hours, responsibilities, or other material change in the terms and conditions of work.

3 “Adverse action” also encompasses any action by the hiring entity or a person acting on the
4 hiring entity’s behalf that would dissuade a reasonable person from exercising any right afforded
5 by this ordinance.

6 “Agency” means the Office of Labor Standards and any division therein.

7 “Aggrieved party” means a gig worker or other person who suffers tangible or intangible
8 harm due to a hiring entity or other person's violation of this ordinance.

9 “Application dispatch” means technology that allows customers to directly request
10 dispatch of gig workers for provision of delivery ~~or transportation~~ services and/or allows gig
11 workers or hiring entities to accept requests for services and payments for services via the
12 internet using mobile interfaces such as, but not limited to, smartphone and tablet applications.

13 “City” means The City of Seattle.

14 “Compensation” means the total payment owed to a gig worker by reason of working
15 for the hiring entity, ~~and includes, but is not limited to,~~ including but not limited to hiring
16 entity payments for providing services, bonuses, and commissions, as well as tips earned from
17 customers.

18 “Deactivation” means the blocking of a gig worker’s access to the hiring entity’s
19 platform, changing a gig worker’s status from eligible to provide delivery services ~~or~~
20 ~~transportation services~~ to ineligible, or other material restriction in access to the hiring entity’s
21 platform that is effected by a hiring entity.

22 “Director” means the Director of the Office of Labor Standards or the Director's
23 designee.

1 “Director rules” means: (1) rules the Director or Agency may promulgate pursuant to
2 subsection 100.060.B or 100.060.C; or (2) other rules that the Director identifies, by means of an
3 Agency Q&A, previously promulgated pursuant to authority in Seattle Municipal Code Title 14.
4 Rules the Director identifies by means of an Agency Q&A shall have the force and effect of law
5 and may be relied on by hiring entities, gig workers, and other parties to determine their rights
6 and responsibilities under this ordinance.

7 ~~“Driver platform” or “worker platform” means the gig worker-facing application~~
8 ~~dispatch system software or any online-enabled application service, website, or system, used by a~~
9 ~~gig worker, that enables the prearrangement of delivery or transportation services for~~
10 ~~compensation.~~

11 “Drop-off point” means the location of ~~the~~any delivery ~~or trip~~ resulting from the online
12 order.

13 “Eating and drinking establishment” means “eating and drinking establishment” as
14 defined in Seattle Municipal Code Section 23.84A.010.

15 “Food delivery network company” means an organization whether a corporation,
16 partnership, sole proprietor, or other form, operating in Seattle, that offers prearranged delivery
17 services for compensation using an online-enabled application or platform, such as an
18 application dispatch system, to connect customers with workers for delivery from one or more of
19 the following: (1) eating and drinking establishments, (2) food processing establishments, ~~-(3)~~
20 grocery stores, or (4) any facility ~~intended to fulfill customer orders from a business whose~~
21 ~~business model relies on the delivery of~~supplying groceries or prepared food and beverages for
22 an online order. “Food delivery network company” includes any such entity or person acting

1 directly or indirectly in the interest of a food delivery network company in relation to the food
2 delivery network company worker.

3 “Food delivery network company worker” means a person affiliated with and accepting
4 an offer of prearranged delivery services for compensation from a food delivery network
5 company. For purposes of this ordinance, at any time that a food delivery network company
6 worker is logged into the worker platform, the worker is considered a food delivery network
7 company worker.

8 “Food processing” means “food processing” as defined in Seattle Municipal Code
9 Section 23.84A.012. “Front pay” means the compensation the gig worker would earn or would
10 have earned if reinstated by the hiring entity.

11 “Gig worker” means a food delivery network company worker ~~or a transportation~~
12 ~~network company driver.~~

13 “Grocery store” means “grocery store” as defined in Seattle Municipal Code Section
14 23.84A.014.

15 “Hiring entity” means a food delivery network company ~~or a transportation network~~
16 ~~company.~~

17 “Hiring entity payment” means the amount owed to a gig worker by reason of working
18 for the hiring entity, including but not limited to payment for providing services, bonuses, and
19 commissions.

20 “Online order” means an order placed through an online-enabled application or
21 platform, such as an application dispatch system, provided by a hiring entity for delivery ~~or~~
22 ~~transportation~~ services in Seattle.
23

1 ~~“Pick-up point” means the location of any establishment accessed by the gig worker to~~
2 ~~fulfill an online order, including but not limited to (1) eating and drinking establishments, (2)~~
3 ~~food processing establishments, (3) grocery stores, or (4) any facility supplying groceries or~~
4 ~~prepared food and beverages for an online order.~~

5 “Operating in Seattle” means, with respect to a hiring entity, offering prearranged
6 delivery ~~or transportation~~ services for compensation using an online-enabled application or
7 platform, such as an application dispatch system, to any affiliated gig worker, where such
8 services ~~would~~ take place in whole or part in Seattle.

9 “Pick-up point” means the location of any establishment accessed by the gig worker to
10 fulfill an online order, including but not limited to (1) eating and drinking establishments, (2)
11 food processing establishments, (3) grocery stores, or (4) any facility supplying groceries or
12 prepared food and beverages for an online order.

13
14 “Premium pay” means additional compensation owed to a gig worker that is separate
15 from hiring entity payments for providing services, bonuses, and commissions, as well as tips
16 earned from customers.

17 “Rate of inflation” means 100 percent of the annual average growth rate of the bi-
18 monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and
19 Clerical Workers, termed CPI-W, for the 12-month period ending in August, provided that the
20 percentage increase shall not be less than zero.

21 “Respondent” means a hiring entity or any person who is alleged or found to have
22 committed a violation of this ordinance.

1 “Successor” means any person to whom a hiring entity quitting, selling out, exchanging,
2 or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the
3 hiring entity’s business, a major part of the property, whether real or personal, tangible or
4 intangible, of the hiring entity’s business. For purposes of this definition, “person” means an
5 individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm,
6 corporation, business trust, partnership, limited liability partnership, company, joint stock
7 company, limited liability company, association, joint venture, or any other legal or commercial
8 entity.

9 “Tips” means a verifiable sum to be presented by a customer as a gift or gratuity in
10 recognition of some service performed for the customer by the gig worker receiving the tip.

11 ~~“Transportation network company” or “TNC” means an organization whether a~~
12 ~~corporation, partnership, sole proprietor, or other form, licensed or required to be licensed under~~
13 ~~Seattle Municipal Code Chapter 6.310, operating in Seattle, that offers prearranged~~
14 ~~transportation services for compensation using an online-enabled application or platform, such as~~
15 ~~an application dispatch system, to connect passengers with drivers using a “transportation~~
16 ~~network company (TNC) endorsed vehicle,” as defined in Seattle Municipal Code Chapter~~
17 ~~6.310. “Transportation network company” includes any such entity or person acting directly or~~
18 ~~indirectly in the interest of a transportation network company in relation to the transportation~~
19 ~~network company driver.~~

20 ~~“Transportation network company driver” or “TNC driver” means a licensed for-hire~~
21 ~~driver, as defined in Seattle Municipal Code Chapter 6.310, affiliated with and accepting trips~~
22 ~~from a licensed transportation network company. For purposes of this ordinance, at any time that~~
23 ~~a driver is logged into the driver platform, the driver is considered a TNC driver.~~

1 “Worker platform” means the worker-facing application dispatch system software or any
2 online-enabled application service, website, or system, used by a food delivery network worker,
3 that enables the prearrangement of delivery services for compensation.

4 “Work-related stop in Seattle” means a time spent by a gig worker on a commercial stop
5 in Seattle that is related to the provision of delivery ~~or transportation~~ services associated with an
6 online order, and does not include stopping for refueling, stopping for a personal meal or
7 errands, or time spent in Seattle solely for the purpose of travelling through Seattle from a
8 point of origin outside Seattle to a destination outside Seattle with no commercial stops in
9 Seattle.

10 “Written” or “writing” means a printed or printable communication in physical or
11 electronic format, including but not limited to a communication that is transmitted through email,
12 text message, or a computer or mobile system, or that is otherwise sent and maintained
13 electronically.

14 **100.015 Gig worker coverage**

15 For the purposes of this ordinance:

16 A. Covered gig workers are limited to those who perform work for a covered hiring
17 entity, where the work is performed in whole or part in Seattle.

18 B. Work performed “in Seattle” means work that includes a work-related stop in Seattle.

19 **100.020 Hiring entity coverage**

20 A. For the purposes of this ordinance, covered hiring entities are limited to those who
21 hire 250 or more gig workers worldwide.

22 B. To determine the number of gig workers hired for the current calendar year:

1 1. The calculation is based upon the average number per calendar week of gig
2 workers who worked for compensation during the preceding calendar year for any and all weeks
3 during which at least one gig worker worked for compensation. For hiring entities that did not
4 have any gig workers during the preceding calendar year, the number of gig workers hired for
5 the current calendar year is calculated based upon the average number per calendar week of gig
6 workers who worked for compensation during the first 90 calendar days of the current year in
7 which the hiring entity engaged in business.

8 2. All gig workers who worked for compensation shall be counted, including but
9 not limited to:

- 10 a. Gig workers who are not covered by this ordinance;
- 11 b. Gig workers who worked in Seattle; and
- 12 c. Gig workers who worked outside Seattle.

13 C. Separate entities that form an integrated enterprise shall be considered a single hiring
14 entity under this ordinance. Separate entities will be considered an integrated enterprise and a
15 single hiring entity under this ordinance where a separate entity controls the operation of another
16 entity. The factors to consider in making this assessment include, but are not limited to:

- 17 1. Degree of interrelation between the operations of multiple entities;
- 18 2. Degree to which the entities share common management;
- 19 3. Centralized control of labor relations; and
- 20 4. Degree of common ownership or financial control over the entities.

21 **100.025 Premium pay requirement**

22 A. Hiring entities shall provide each gig worker with premium pay ~~of no less than \$5~~ for
23 ~~each each~~ online order ~~with that results in the gig worker making~~ a work-related stop in Seattle.

1 ~~When an online order for delivery or transportation services has more than one drop-off point,~~
2 ~~hiring entities shall provide each gig worker with premium pay of no less than \$5 for any work-~~
3 ~~related stop in Seattle for a first drop-off point and no less than \$5 for each additional drop-off~~
4 ~~point in Seattle.~~ For each online order, hiring entities shall provide the gig worker with premium
5 pay in the following amounts:

6 1. \$2.50 for one pick-up point or one drop-off point in Seattle;

7 2. \$1.25 for each additional pick-up point in Seattle; and

8 3. \$1.25 for each additional drop-off point in Seattle.

9 B. Hiring entities shall provide premium pay at the same time compensation is provided
10 for the associated online order(s).

11 C. When providing premium pay, hiring entities shall include notification of online
12 orders that qualified for premium pay and itemize the premium pay separately from other
13 compensation.

14 D. Hiring entities shall provide the premium pay required by subsection 100.025.A for
15 the duration of the civil emergency proclaimed by the Mayor on March 3, 2020.

16 E. If the City establishes a minimum compensation standard for ~~TNC driversgig workers~~,
17 the Council intends to consider eliminating the premium pay requirement for ~~TNC driversgig~~
18 ~~workers~~ before the termination of the civil emergency proclaimed by the Mayor on March 3,
19 2020.

20 **100.027 Gig worker and consumer protections**

21 A. No hiring entity shall, as a result of this ordinance going into effect, take any of the
22 following actions:

1 1. Reduce or otherwise modify the areas of the City that are served by the hiring
2 entity;

3 2. Reduce a gig worker's compensation; or

4 3. Limit a gig worker's earning capacity, including but not limited to restricting
5 access to online orders.

6 B. It shall be a violation of this Section 100.027 if this ordinance going into effect is a
7 motivating factor in a hiring entity's decision to take any of the actions in subsection 100.027.A
8 unless the hiring entity can prove that its decision to take the action(s) would have happened in
9 the absence of this ordinance going into effect.

10 **100.030 Notice of rights**

11 A. Hiring entities shall provide each gig worker with a written notice of rights established
12 by this ordinance. ~~and shall make the notice readily accessible to the gig worker.~~ The Agency
13 may create and distribute a model notice of rights in English and other languages. However,
14 hiring entities are responsible for providing gig workers with the notice of rights required by this
15 subsection 100.030.A, in a form and manner sufficient to inform gig workers of their rights
16 under this ordinance, regardless of whether the Agency has created and distributed a model
17 notice of rights. The notice of rights shall provide information on:

18 1. The right to premium pay guaranteed by this ordinance;
19 2. The right to be protected from retaliation for exercising in good faith the rights
20 protected by this ordinance; and

21 3. The right to file a complaint with the Agency or bring a civil action for a
22 violation of the requirements of this ordinance, including a hiring entity's denial of premium pay
23 as required by this ordinance and a hiring entity or other person's retaliation against a gig worker

1 or other person for asserting the right to premium pay or otherwise engaging in an activity
2 protected by this ordinance.

3 B. ~~Hiring entities are responsible for providing notice to gig workers as required by~~
4 ~~subsection 100.030.A, in a form and manner sufficient to inform gig workers of their rights~~
5 ~~under this ordinance, regardless of whether the Agency has created and distributed this model~~
6 ~~notice. Hiring entities shall provide the notice of rights required by subsection 100.030.A in an~~
7 ~~electronic format that is readily accessible to the gig worker. The notice of rights shall be made~~
8 ~~available to the gig worker via smartphone application or online web portal, in English and any~~
9 ~~language that the hiring entity knows or has reason to know is the primary language of the gig~~
10 ~~worker(s).~~

11 **100.040 Hiring entity records**

12 A. Hiring entities shall retain records that document compliance with this ordinance for
13 each gig worker.

14 B. Hiring entities shall retain the records required by subsection 100.040.A for a period
15 of three years.

16 C. If a hiring entity fails to retain adequate records required under subsection 100.040.A,
17 there shall be a presumption, rebuttable by clear and convincing evidence, that the hiring entity
18 violated this ordinance for the periods and for each gig worker for whom records were not
19 retained.

20 **100.050 Retaliation prohibited**

21 A. No hiring entity or any other person shall interfere with, restrain, or deny the exercise
22 of, or the attempt to exercise, any right protected under this ordinance.

1 B. No hiring entity or any other person shall take any adverse action against any person
2 because the person has exercised in good faith the rights protected under this ordinance. Such
3 rights include, but are not limited to, the right to make inquiries about the rights protected under
4 this ordinance; the right to inform others about their rights under this ordinance; the right to
5 inform the person's hiring entity, the person's legal counsel, a union or similar organization, or
6 any other person about an alleged violation of this ordinance; the right to file an oral or written
7 complaint with the Agency or bring a civil action for an alleged violation of this ordinance; the
8 right to cooperate with the Agency in its investigations of this ordinance; the right to testify in a
9 proceeding under or related to this ordinance; the right to refuse to participate in an activity that
10 would result in a violation of city, state or federal law; and the right to oppose any policy,
11 practice, or act that is unlawful under this ordinance.

12 ~~C. No hiring entity shall, as a result of this ordinance going into effect, reduce or
13 otherwise modify the areas of the City that are served by the hiring entity. It shall be a violation
14 of this subsection 100.050.C if this ordinance going into effect is a motivating factor in a hiring
15 entity's decision to reduce or otherwise modify the areas of the City that are served by the hiring
16 entity, unless the hiring entity can prove that its decision to reduce or modify its services would
17 have been taken in the absence of this ordinance.~~

18 DC. No hiring entity or any other person shall communicate to a person exercising rights
19 protected in this Section 100.050, directly or indirectly, the willingness to inform a government
20 worker that the person is not lawfully in the United States, or to report, or to make an implied or
21 express assertion of a willingness to report, suspected citizenship or immigration status of a gig
22 worker or family member of the gig worker to a federal, state, or local agency because the gig
23 worker has exercised a right under this ordinance.

1 **ED.** It shall be a rebuttable presumption of retaliation if a hiring entity or any other
2 person takes an adverse action against a person within 90 days of the person's exercise of rights
3 protected in this Section 100.050. However, in the case of seasonal work that ended before the
4 close of the 90-day period, the presumption also applies if the hiring entity fails to rehire a
5 former gig worker at the next opportunity for work in the same position. The hiring entity may
6 rebut the presumption with clear and convincing evidence that the adverse action was taken for a
7 permissible purpose.

8 **FE.** Proof of retaliation under this Section 100.050 shall be sufficient upon a showing that
9 a hiring entity or any other person has taken an adverse action against a person and the person's
10 exercise of rights protected in this Section 100.050 was a motivating factor in the adverse action,
11 unless the hiring entity can prove that the action would have been taken in the absence of such
12 protected activity.

13 **GF.** The protections afforded under this Section 100.050 shall apply to any person who
14 mistakenly but in good faith alleges violations of this ordinance.

15 **HG.** A complaint or other communication by any person triggers the protections of this
16 Section 100.050 regardless of whether the complaint or communication is in writing or makes
17 explicit reference to this ordinance.

18 **100.060 Enforcement power and duties**

19 A. The Agency shall have the power to investigate violations of this ordinance and shall
20 have such powers and duties in the performance of these functions as are defined in this
21 ordinance and otherwise necessary and proper in the performance of the same and provided for
22 by law.

1 B. The Agency is authorized to coordinate implementation and enforcement of this
2 ordinance and may promulgate appropriate guidelines or rules for such purposes.

3 C. The Director is authorized to promulgate rules consistent with this ordinance and
4 Chapter 3.02 of the Seattle Municipal Code. Any guidelines or rules promulgated by the Director
5 shall have the force and effect of law and may be relied on by hiring entities, gig workers, and
6 other parties to determine their rights and responsibilities under this ordinance.

7 **100.070 Violation**

8 The failure of any respondent to comply with any requirement imposed on the respondent under
9 this ordinance is a violation.

10 **100.080 Investigation**

11 A. The Agency shall have the power to investigate any violations of this ordinance by
12 any respondent. The Agency may initiate an investigation pursuant to Director rules, including
13 but not limited to situations when the Director has reason to believe that a violation has occurred
14 or will occur, or when circumstances show that violations are likely to occur within a class of
15 hiring entities or businesses because the workforce contains significant numbers of gig workers
16 who are vulnerable to violations of this ordinance or the workforce is unlikely to volunteer
17 information regarding such violations. An investigation may also be initiated through the receipt
18 by the Agency of a report or complaint filed by a gig worker or other person.

19 B. A gig worker or other person may report to the Agency any suspected violation of this
20 ordinance. The Agency shall encourage reporting pursuant to this Section 100.080 by taking the
21 following measures:

22 1. The Agency shall keep confidential, to the maximum extent permitted by
23 applicable laws, the name and other identifying information of the gig worker or person

1 reporting the violation. However, with the authorization of such person, the Agency may disclose
2 the gig worker's or person's name and identifying information as necessary to enforce this
3 ordinance or for other appropriate purposes.

4 2. Hiring entities shall provide gig workers with written notice of an investigation.
5 Hiring entities shall provide the notice in a format that is readily accessible to gig workers. The
6 Agency shall create the notice in English and other languages.

7 3. The Agency may certify the eligibility of eligible persons for "U" Visas under
8 the provisions of 8 U.S.C. § 1184.p and 8 U.S.C. § 1101.a.15.U. This certification is subject to
9 applicable federal law and regulations, and Director rules.

10 C. The Agency's investigation ~~must~~ shall commence within three years of the alleged
11 violation. To the extent permitted by law, the applicable statute of limitations for civil actions is
12 tolled during any investigation under this ordinance and any administrative enforcement
13 proceeding under this ordinance based upon the same facts. For purposes of this ordinance:

14 1. The Agency's investigation begins on the earlier date of when the Agency
15 receives a complaint from a person under this ordinance, or when the Agency provides notice to
16 the respondent that an investigation has commenced under this ordinance.

17 2. The Agency's investigation ends when the Agency issues a final order
18 concluding the matter and any appeals have been exhausted; the time to file any appeal has
19 expired; or the Agency notifies the respondent in writing that the investigation has been
20 otherwise resolved.

21 D. The Agency's investigation shall be conducted in an objective and impartial manner.

22 E. The Director may apply by affidavit or declaration in the form allowed under RCW
23 9A.72.085 to the Hearing Examiner for the issuance of subpoenas requiring a hiring entity to

1 produce the records required by Section 100.040, or for the attendance and testimony of
2 witnesses, or for the production of documents required to be retained under Section 100.040, or
3 any other document relevant to the issue of whether any gig worker or group of gig workers has
4 been or is afforded the proper amount of premium pay required by this ordinance and/or to
5 whether a hiring entity has violated any provision of this ordinance. The Hearing Examiner shall
6 conduct the review without hearing as soon as practicable and shall issue subpoenas upon a
7 showing that there is reason to believe that: a violation has occurred, a complaint has been filed
8 with the Agency, or that circumstances show that violations are likely to occur within a class of
9 businesses because the workforce contains significant numbers of gig workers who are
10 vulnerable to violations of this ordinance or the workforce is unlikely to volunteer information
11 regarding such violations.

12 F. A hiring entity that fails to comply with the terms of any subpoena issued under
13 subsection 100.080.E in an investigation by the Agency under this ordinance before the issuance
14 of a Director's Order issued pursuant to subsection 100.090.C may not use such records in any
15 appeal to challenge the correctness of any determination by the Agency of liability, damages
16 owed, or penalties assessed.

17 G. In addition to other remedies, the Director may refer any subpoena issued under
18 subsection 100.080.E to the City Attorney to seek a court order to enforce any subpoena.

19 H. Where the Director has reason to believe that a violation has occurred, the Director
20 may order any appropriate temporary or interim relief to mitigate the violation or maintain the
21 status quo pending completion of a full investigation or hearing, including but not limited to a
22 deposit of funds or bond sufficient to satisfy a good-faith estimate of compensation, interest,

1 damages, and penalties due. A respondent may appeal any such order in accordance with Section
2 100.210.

3 **100.090 Findings of fact and determination**

4 A. Except when there is an agreed upon settlement, the Director shall issue a written
5 determination with findings of fact resulting from the investigation and statement of whether a
6 violation of this ordinance has or has not occurred based on a preponderance of the evidence
7 before the Director.

8 B. If the Director determines that there is no violation of this ordinance, the Director shall
9 issue a “Determination of No Violation” with notice of a gig worker or other person's right to
10 appeal the decision, pursuant to Director rules.

11 C. If the Director determines that a violation of this ordinance has occurred, the Director
12 shall issue a “Director's Order” that shall include a notice of violation identifying the violation or
13 violations.

14 1. The Director's Order shall state with specificity the amounts due under this
15 ordinance for each violation, including payment of unpaid compensation, liquidated damages,
16 civil penalties, penalties payable to aggrieved parties, fines, and interest pursuant to Section
17 100.200.

18 2. The Director's Order may specify that civil penalties and fines due to the
19 Agency can be mitigated for respondent's timely payment of remedy due to an aggrieved party
20 ~~under pursuant to~~ subsection 100.200.A.4.

21 3. The Director’s Order may specify that civil penalties and fines are due to the
22 aggrieved party rather than due to the Agency pursuant to subsection 100.200.E or 100.200.F.

1 4. The Director's Order may direct the respondent to take such corrective action as
2 is necessary to comply with the requirements of this ordinance, including but not limited to
3 monitored compliance for a reasonable time period.

4 5. The Director's Order shall include notice of the respondent's right to appeal the
5 decision pursuant to Section 100.210.

6 **100.200 Remedies**

7 A. The payment of unpaid compensation, liquidated damages, civil penalties, penalties
8 payable to aggrieved parties, fines, and interest provided under this ordinance is cumulative and
9 is not intended to be exclusive of any other available remedies, penalties, fines, and procedures.

10 1. The amounts of all civil penalties, penalties payable to aggrieved parties, and
11 fines contained in this Section 100.200 shall be increased annually to reflect the rate of inflation
12 and calculated to the nearest cent on January 1 of each year thereafter. The Agency shall
13 determine the amounts and file a schedule of such amounts with the City Clerk.

14 2. If a violation is ongoing when the Agency receives a complaint or opens an
15 investigation, the Director may order payment of unpaid compensation plus interest that accrues
16 after receipt of the complaint or after the investigation opens and before the date of the Director's
17 Order.

18 3. Interest shall accrue from the date the unpaid compensation was first due at 12
19 percent annum, or the maximum rate permitted under RCW 19.52.020.

20 4. If there is a remedy due to an aggrieved party, the Director may waive part or
21 all of the amount of civil penalties and fines due to the Agency based on timely payment of the
22 full remedy due to the aggrieved party.

1 a. The Director may waive the total amount of civil penalties and fines due
2 to the Agency if the Director determines that the respondent paid the full remedy due to the
3 aggrieved party within ten days of service of the Director's Order.

4 b. The Director may waive half the amount of civil penalties and fines due
5 to the Agency if the Director determines that the respondent paid the full remedy due to the
6 aggrieved party within 15 days of service of the Director's Order.

7 c. The Director shall not waive any amount of civil penalties and fines due
8 to the Agency if the Director determines that the respondent has not paid the full remedy due to
9 the aggrieved party after 15 days of service of the Director's Order.

10 5. When determining the amount of liquidated damages, civil penalties, penalties
11 payable to aggrieved parties, and fines due under this Section 100.200 for a settlement agreement
12 or Director's Order, including but not limited to the mitigation of civil penalties and fines due to
13 the Agency for timely payment of remedy due to an aggrieved party under subsection
14 100.200.A.4, the Director shall consider:

15 a. The total amount of unpaid compensation, liquidated damages,
16 penalties, fines, and interest due;

17 b. The nature and persistence of the violations;

18 c. The extent of the respondent's culpability;

19 d. The substantive or technical nature of the violations;

20 e. The size, revenue, and human resources capacity of the respondent;

21 f. The circumstances of each situation;

22 g. The amount of penalties in similar situations; and

23 h. Other factors pursuant to Director rules.

1 B. A respondent found to be in violation of this ordinance shall be liable for full payment
2 of unpaid compensation due plus interest in favor of the aggrieved party under the terms of this
3 ordinance and other equitable relief. If the precise amount of unpaid compensation cannot be
4 determined due to a respondent's failure to produce records or if a respondent produces records
5 in a manner or form which makes timely determination of the amount of unpaid compensation
6 impracticable, the Director may designate a daily amount for unpaid compensation due to
7 aggrieved party. For any violation of this ordinance, the Director may assess liquidated damages
8 in an additional amount of up to twice the unpaid compensation.

9 C. A respondent found to be in violation of this ordinance for retaliation under Section
10 100.050 shall be subject to any appropriate relief at law or equity including, but not limited to
11 reinstatement of the aggrieved party, front pay in lieu of reinstatement with full payment of
12 unpaid compensation plus interest in favor of the aggrieved party under the terms of this
13 ordinance, and liquidated damages in an additional amount of up to twice the unpaid
14 compensation. The Director also shall order the imposition of a penalty payable to the aggrieved
15 party of up to \$5,462.70.

16 D. A respondent found to be in violation of gig worker and consumer protections under
17 subsection 100.027.A.1 shall be subject to the penalties and fines established by this Section
18 100.200; such penalties and fines shall be payable only to the Agency. The Director is not
19 authorized to assess unpaid compensation due under subsection 100.200.B or 100.200.C. for
20 violations of subsection 100.027.A.1. All remedies are available for violations of subsection
21 100.027.A.2 or 100.027.A.3.

22 ~~D~~E. The Director is authorized to assess penalties and shall specify that at least 50%
23 ~~percent~~ of any penalty ~~is assessed pursuant to~~ this subsection 100.200.~~D~~E is payable to the

1 aggrieved party and the remaining penalty is payable to the Agency as a civil penalty. The
2 Director may also specify that the entire penalty is payable to the aggrieved party.

3 1. For a first violation of this ordinance, the Director may assess a penalty of up to
4 \$546.07 per aggrieved party.

5 2. For a second violation of this ordinance, the Director shall assess a penalty of
6 up to \$1,092.13 per aggrieved party, or an amount equal to ten percent of the total amount of
7 unpaid compensation, whichever is greater.

8 3. For a third or any subsequent violation of this ordinance, the Director shall
9 assess a penalty of up to \$5,462.70 per aggrieved party, or an amount equal to ten percent of the
10 total amount of unpaid compensation, whichever is greater.

11 4. The maximum penalty for a violation of this ordinance shall be \$21,849.79 per
12 aggrieved party, or an amount equal to ten percent of the total amount of unpaid compensation,
13 whichever is greater.

14 5. For purposes of this Section 100.200, a violation is a second, third, or
15 subsequent violation if the respondent has been a party to one, two, or more than two settlement
16 agreements, respectively, stipulating that a violation has occurred; and/or one, two, or more than
17 two Director's Orders, respectively, have issued against the respondent in the ten years preceding
18 the date of the violation; otherwise, it is a first violation.

19 ~~EF~~. The Director is authorized to assess fines and may specify that the fines are due to the
20 aggrieved party rather than due to the Agency. The Director is authorized to assess fines as
21 follows:

Violation	Fine
Failure to provide a gig worker with written notice of rights under subsection 100.030.A	\$546.07 per aggrieved party

Failure to retain hiring entity records for three years under subsections 100.040.A and 100.040.B	\$546.07 per missing record
Failure to comply with prohibitions against retaliation for exercising rights protected under Section 100.050	\$1,092.13 per aggrieved party
Failure to provide notice of investigation to gig workers under subsection 100.080.B.2	\$546.07
Failure to post or distribute public notice of failure to comply with final order under subsection 100.240.A.1	\$546.07

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The maximum amount that may be imposed in fines in a one-year period for each type of violation listed above is \$5,462.70 unless a fine for retaliation is issued, in which case the maximum amount is \$21,849.79.

~~F.G.~~ A respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this ordinance shall be subject to a civil penalty of not less than \$1,092.13 and not more than \$5,462.70.

~~G.H.~~ In addition to the unpaid compensation, penalties, fines, liquidated damages, and interest, the Agency may assess against the respondent in favor of the City the reasonable costs incurred in enforcing this ordinance, including but not limited to reasonable attorneys' fees.

~~H.I.~~ A hiring entity that is the subject of a settlement agreement stipulating that a violation has occurred shall count for debarment, or a final order for which all appeal rights have been exhausted, shall not be permitted to bid, or have a bid considered, on any City contract until such amounts due under the final order have been paid in full to the Director. If the hiring entity is the subject of a final order two times or more within a five-year period, the hiring entity shall not be allowed to bid on any City contract for two years. This subsection 100.200.~~H.I.~~ shall be construed to provide grounds for debarment separate from, and in addition to, those contained in Seattle Municipal Code Chapter 20.70 and shall not be governed by that chapter provided that nothing in this subsection 100.200.~~H.I.~~ shall be construed to limit the application of Seattle Municipal Code

1 Chapter 20.70. The Director shall notify the Director of Finance and Administrative Services of
2 all hiring entities subject to debarment under this subsection 100.080.~~HI~~.

3 **100.210 Appeal period and failure to respond**

4 A. A gig worker or other person who claims an injury as a result of an alleged violation
5 of this ordinance may appeal the Determination of No Violation~~Shown~~, pursuant to Director
6 rules.

7 B. A respondent may appeal the Director's Order, including all remedies issued pursuant
8 to Section 100.200, by requesting a contested hearing before the Hearing Examiner in writing
9 within 15 days of service of the Director's Order. If a respondent fails to appeal the Director's
10 Order within 15 days of service, the Director's Order shall be final. If the last day of the appeal
11 period so computed is a Saturday, Sunday, or federal or City holiday, the appeal period shall run
12 until 5 p.m. on the next business day.

13 **100.220 Appeal procedure and failure to appear**

14 A. Contested hearings shall be conducted pursuant to the procedures for hearing
15 contested cases contained in Section 3.02.090 of the Seattle Municipal Code and the rules
16 adopted by the Hearing Examiner for hearing contested cases. The hearing shall be conducted de
17 novo and the Director shall have the burden of proving by a preponderance of the evidence that
18 the violation or violations occurred. Upon establishing such proof, the remedies and penalties
19 imposed by the Director shall be upheld unless it is shown that the Director abused discretion.
20 Failure to appear for a contested hearing shall result in an order being entered finding that the
21 respondent committed the violation stated in the Director's Order. For good cause shown and
22 upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order
23 entered upon a failure to appear.

1 B. In all contested cases, the Hearing Examiner shall enter an order affirming, modifying
2 or reversing the Director's Order, consistent with Ordinance 126068.

3 **100.230 Appeal from Hearing Examiner order**

4 A. The respondent may obtain judicial review of the decision of the Hearing Examiner by
5 applying for a Writ of Review in the King County Superior Court within 30 days from the date
6 of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable
7 law, and court rules.

8 B. The decision of the Hearing Examiner shall be final and conclusive unless review is
9 sought in compliance with this Section 100.230.

10 **100.240 Failure to comply with final order**

11 A. If a respondent fails to comply within 30 days of service of any settlement agreement
12 with the Agency, or with any final order issued by the Director or the Hearing Examiner for which
13 all appeal rights have been exhausted, the Agency may pursue, but is not limited to, the following
14 measures to secure compliance:

15 1. The Director may require the respondent to post or distribute public notice of
16 the respondent's failure to comply in a form and manner determined by the Agency.

17 2. The Director may refer the matter to a collection agency. The cost to the City
18 for the collection services will be assessed as costs, at the rate agreed to between the City and the
19 collection agency, and added to the amounts due.

20 3. The Director may refer the matter to the City Attorney for the filing of a civil
21 action in King County Superior Court, the Seattle Municipal Court, or any other court of
22 competent jurisdiction to enforce such order or to collect amounts due. In the alternative, the

1 Director may seek to enforce a Director's Order or a final order of the Hearing Examiner under
2 Section 100.250.

3 4. The Director may request that the City's Department of Finance and
4 Administrative Services deny, suspend, refuse to renew, or revoke any business license held or
5 requested by the employer-hiring entity or person until such time as the employer-hiring entity
6 complies with the remedy as defined in the settlement agreement or final order. The City's
7 Department of Finance and Administrative Services shall have the authority to deny, refuse to
8 renew, or revoke any business license in accordance with this subsection 100.240.A.4.

9 B. No respondent that is the subject of a final order issued under this ordinance shall quit
10 business, sell out, exchange, convey, or otherwise dispose of the respondent's business or stock
11 of goods without first notifying the Agency and without first notifying the respondent's successor
12 of the amounts owed under the final order at least three business days before such transaction. At
13 the time the respondent quits business, or sells out, exchanges, or otherwise disposes of the
14 respondent's business or stock of goods, the full amount of the remedy, as defined in a final order
15 issued by the Director or the Hearing Examiner, shall become immediately due and payable. If
16 the amount due under the final order is not paid by respondent within ten days from the date of
17 such sale, exchange, conveyance, or disposal, the successor shall become liable for the payment
18 of the amount due, provided that the successor has actual knowledge of the order and the
19 amounts due or has prompt, reasonable, and effective means of accessing and verifying the fact
20 and amount of the order and the amounts due. The successor shall withhold from the purchase
21 price a sum sufficient to pay the amount of the full remedy. When the successor makes such
22 payment, that payment shall be deemed a payment upon the purchase price in the amount paid,

1 and if such payment is greater in amount than the purchase price the amount of the difference
2 shall become a debt due such successor from the hiring entity.

3 **100.250 Debt owed The City of Seattle**

4 A. All monetary amounts due under the Director's Order shall be a debt owed to the City
5 and may be collected in the same manner as any other debt in like amount, which remedy shall
6 be in addition to all other existing remedies, provided that amounts collected by the City for
7 unpaid compensation, liquidated damages, penalties payable to aggrieved parties, or front pay
8 shall be held in trust by the City for the aggrieved party and, once collected by the City, shall be
9 paid by the City to the aggrieved party.

10 B. If a respondent fails to appeal a Director's Order to the Hearing Examiner within the
11 time period set forth in subsection 100.210.B, the Director's Order shall be final, and the Director
12 may petition the Seattle Municipal Court, or any court of competent jurisdiction, to enforce the
13 Director's Order by entering judgment in favor of the City finding that the respondent has failed
14 to exhaust its administrative remedies and that all amounts and relief contained in the order are
15 due. The Director's Order shall constitute prima facie evidence that a violation occurred and shall
16 be admissible without further evidentiary foundation. Any certifications or declarations
17 authorized under RCW 9A.72.085 containing evidence that the respondent has failed to comply
18 with the order or any parts thereof, and is therefore in default, or that the respondent has failed to
19 appeal the Director's Order to the Hearing Examiner within the time period set forth in
20 subsection 100.210.B, and therefore has failed to exhaust the respondent's administrative
21 remedies, shall also be admissible without further evidentiary foundation.

22 C. If a respondent fails to obtain judicial review of an order of the Hearing Examiner
23 within the time period set forth in subsection 100.230.A, the order of the Hearing Examiner shall

1 be final, and the Director may petition the Seattle Municipal Court to enforce the Director's
2 Order by entering judgment in favor of the City for all amounts and relief due under the order of
3 the Hearing Examiner. The order of the Hearing Examiner shall constitute conclusive evidence
4 that the violations contained therein occurred and shall be admissible without further evidentiary
5 foundation. Any certifications or declarations authorized under RCW 9A.72.085 containing
6 evidence that the respondent has failed to comply with the order or any parts thereof, and is
7 therefore in default, or that the respondent has failed to avail itself of judicial review in
8 accordance with subsection 100.230.A, shall also be admissible without further evidentiary
9 foundation.

10 D. In considering matters brought under subsections 100.250.B and 100.250.C, the
11 Municipal Court may include within its judgment all terms, conditions, and remedies contained
12 in the Director's Order or the order of the Hearing Examiner, whichever is applicable, that are
13 consistent with the provisions of this ordinance.

14 **100.260 Private right of action**

15 A. Any person or class of persons that suffers financial injury as a result of a violation of
16 this ordinance, or is the subject of prohibited retaliation under Section 100.050, may bring a civil
17 action in a court of competent jurisdiction against the hiring entity or other person violating this
18 ordinance and, upon prevailing, may be awarded reasonable attorney fees and costs and such
19 legal or equitable relief as may be appropriate to remedy the violation including, without
20 limitation: the payment of any unpaid compensation plus interest due to the person and
21 liquidated damages in an additional amount of up to twice the unpaid compensation; and a
22 penalty payable to any aggrieved party of up to \$55,462.70 if the aggrieved party was subject to

1 prohibited retaliation. Interest shall accrue from the date the unpaid compensation was first due
2 at 12 percent per annum, or the maximum rate permitted under RCW 19.52.020.

3 B. For purposes of this Section 100.260, “person” includes any entity a member of which
4 has suffered financial injury or retaliation, or any other individual or entity acting on behalf of an
5 aggrieved party that has suffered financial injury or retaliation.

6 C. For purposes of determining membership within a class of persons entitled to bring an
7 action under this Section 100.260, two or more gig workers are similarly situated if they:

- 8 1. Are or were hired for the same hiring entity or hiring entities, whether
9 concurrently or otherwise, at some point during the applicable statute of limitations period,
- 10 2. Allege one or more violations that raise similar questions as to liability, and
- 11 3. Seek similar forms of relief.

12 D. For purposes of subsection 100.260.C, gig workers shall not be considered dissimilar
13 solely because the gig workers’

- 14 1. Claims seek damages that differ in amount, or
- 15 2. Job titles or other means of classifying gig workers differ in ways that are
16 unrelated to their claims.

17 **100.270 Encouragement of more generous policies**

18 A. Nothing in this ordinance shall be construed to discourage or prohibit a hiring entity
19 from the adoption or retention of premium pay policies more generous than the one required
20 herein.

21 B. Nothing in this ordinance shall be construed as diminishing the obligation of a hiring
22 entity to comply with any contract or other agreement providing more generous protections to a
23 gig worker than required by this ordinance.

1 **100.280 Other legal requirements**

2 This ordinance provides minimum requirements for premium pay while working for a hiring
3 entity during the COVID-19 emergency and shall not be construed to preempt, limit, or
4 otherwise affect the applicability of any other law, regulation, requirement, policy, or standard
5 that provides for higher premium pay, or that extends other protections to gig workers; and
6 nothing in this ordinance shall be interpreted or applied so as to create any power or duty in
7 conflict with federal or state law. Nor shall this ordinance be construed to preclude any person
8 aggrieved from seeking judicial review of any final administrative decision or order made under
9 this ordinance affecting such person. Nothing in this Section 100.280 shall be construed as
10 restricting a gig worker’s right to pursue any other remedies at law or equity for violation of their
11 rights.

12 **100.290 Severability**

13 The provisions of this ordinance are declared to be separate and severable. If any clause,
14 sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or the
15 application thereof to any hiring entity, gig worker, person, or circumstance, is held to be invalid,
16 it shall not affect the validity of the remainder of this ordinance, or the validity of its application
17 to other persons or circumstances.

18 Section 3. Section 3.02.125 of the Seattle Municipal Code, last amended by Ordinance
19 125948, is amended as follows:

20 **3.02.125 Hearing Examiner filing fees**

21 A. The filing fee for a case before the City Hearing Examiner is \$85, with the following
22 exceptions:

Basis for Case	Fee in dollars
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* * *	
Paid Sick/Safe Leave Ordinance (Chapter 14.16)	No fee
<u>Premium Pay for Gig Workers Ordinance (Introduced as Council Bill XXXXXX119799)</u>	<u>No fee</u>
Public Accommodations Ordinance (Chapter 14.06)	No fee
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Section 4. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 125930, is amended as follows:

6.208.020 Denial, revocation of, or refusal to renew business license

A. In addition to any other powers and authority provided under this Title 6, the Director, or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any business license issued under the provisions of this Chapter 6.208. The Director, or the Director's designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or refusal to renew the license and on what grounds such a decision was based. The Director may deny, revoke, or refuse to renew any license issued under this Chapter 6.208 on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact.
2. The licensee has failed to comply with any provisions of this Chapter 6.208.
3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35, 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.
4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.
5. The property at which the business is located has been determined by a court to be a chronic nuisance property as provided in Chapter 10.09.

1 6. The applicant or licensee has been convicted of theft under subsection
2 12A.08.060.A.4 within the last ten years.

3 7. The applicant or licensee is a person subject within the last ten years to a court
4 order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29
5 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of
6 either:

7 a. The expiration of the time for filing an appeal from the final judgment
8 order under the court rules in effect at the time of the final judgment order; or

9 b. If a timely appeal is made, the date of the final resolution of that appeal
10 and any subsequent appeals resulting in final judicial affirmation of the findings of violations of
11 chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.

12 8. The applicant or licensee is a person subject within the last ten years to a final
13 and binding citation and notice of assessment from the Washington Department of Labor and
14 Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and
15 penalties assessed therewith were not satisfied within 30 days of the date the citation became
16 final and binding.

17 9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4,
18 14.20.080.A.4, 14.22.115.A.4, 14.23.115.A.4, 14.26.210.A.4, 14.27.210.A.4, 14.28.210.A.4, and
19 14.30.180.A.4, and subsection 100.240.A.4 of this ordinance, the applicant or licensee has failed
20 to comply, within 30 days of service of any settlement agreement, with any final order issued by
21 the Director of the Office of Labor Standards, or any final order issued by the Hearing Examiner
22 under Chapters 14.16, 14.17, 14.19, 14.20, 14.22, 14.23, 14.26, 14.27, 14.28, 14.29, and 14.30,
23 and this ordinance, for which all appeal rights have been exhausted, and the Director of the

1 Section 7. By reason of the findings set forth in Section 1, and the emergency that is
2 hereby declared to exist, this ordinance shall become effective immediately upon its passage by a
3 3/4 vote of the Council and its approval by the Mayor, as provided by Article 4, subsection 1.1 of
4 the Charter of the City.

5 Passed by a 3/4 vote of all the members of the City Council the _____ day of
6 _____, 2020, and signed by me in open session in authentication of its
7 passage this _____ day of _____, 2020.

8 _____

9 President _____ of the City Council

10 Approved by me this _____ day of _____, 2020.

11 _____

12 Jenny A. Durkan, Mayor

13 Filed by me this _____ day of _____, 2020.

14 _____

15 Monica Martinez Simmons, City Clerk

16 (Seal)

Amendment 1 to Premium Pay for Gig Workers Ordinance (CB 119799)

Sponsor: CM Morales

Prohibit hiring entities from adding customer charges for delivery of groceries and establish a remedy for violating the prohibition.

On page 15, after line 19, amend the following Section as shown below:

100.027 Gig worker and consumer protections

A. No hiring entity shall, as a result of this ordinance going into effect, take any of the following actions:

1. Reduce or otherwise modify the areas of the City that are served by the hiring entity;
2. Reduce a gig worker's compensation; or
3. Limit a gig worker's earning capacity, including but not limited to restricting access to online orders.
4. Add customer charges to online orders for delivery of groceries.

B. It shall be a violation of this Section 100.027 if this ordinance going into effect is a motivating factor in a hiring entity's decision to take any of the actions in subsection 100.027.A unless the hiring entity can prove that its decision to take the action(s) would have happened in the absence of this ordinance going into effect.

On page 26, after line 15, amend the following Section as shown below:

100.200 Remedies

D. A respondent found to be in violation of gig worker and consumer protections under subsection 100.027.A.1 or 100.027.A.4 shall be subject to the penalties and fines established by this Section 100.200; such penalties and fines shall be payable only to the Agency. The Director is not authorized to assess unpaid compensation due under subsection 100.200.B or 100.200.C. for violations of subsection 100.027.A.1 or 100.027.A.4. All remedies are available for violations of subsection 100.027.A.2 or 100.027.A.3.

Renumber sections and correct any internal references accordingly.

Effect: This amendment would (1) prohibit hiring entities from adding customer charges to online orders for delivery of groceries and (2) establish a remedy for violating the prohibition.



Legislation Text

File #: CB 119804, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the Seattle Police Department; prohibiting the use of chokeholds by officers; amending Section 12A.04.200 of, and adding a new Section 3.28.145 to, the Seattle Municipal Code. WHEREAS, on July 17, 2014, officers of the New York Police Department killed Eric Garner with a chokehold

during an arrest; and

WHEREAS, on March 3, 2020, officers of the Tacoma Police Department killed Manuel Ellis by oxygen deprivation while using physical restraints; and

WHEREAS, on May 25, 2020, officers of the Minneapolis Police Department brutally killed George Floyd, kneeling on his neck while he was handcuffed and in their custody; and

WHEREAS, video and audio recordings of these police killings document Eric Garner, Manuel Ellis, and George Floyd saying “I can’t breathe” just before their death; and

WHEREAS, in Seattle and in cities across the country, people joined a protest movement against this and other police violence, particularly protesting the police violence disproportionately targeting African American people; and

WHEREAS, in Seattle, tens of thousands of community members have joined mass demonstrations for black lives and against police violence on May 30, 2020 and on subsequent days; and

WHEREAS, the Associated Press reported on June 5, 2020 that “Negotiators for the city of Minneapolis have agreed with the state to ban the use of chokeholds by police” in response to the killing of George Floyd; and

WHEREAS, according to the Seattle Police Manual, a chokehold is considered force that causes or is reasonably expected to cause, great bodily harm, substantial bodily harm, loss of consciousness, or death; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 3.28.145 of the Seattle Municipal Code is added to Subchapter I of Chapter 3.28 as follows:

3.28.145 Prohibition of the use of chokeholds

A. Officers of the Seattle Police Department are prohibited from using chokeholds in the discharge of their duties, including neck restraints or carotid restraints.

B. As used in this Section 3.28.145, “carotid restraint” means any technique applied in an effort to control or disable a subject by applying pressure to the carotid artery, jugular vein, or sides of the neck with the purpose, intent, or effect of controlling a subject’s movement or rendering a subject unconscious by constricting the flow of blood to and from the brain.

C. As used in this Section 3.28.145, “neck restraint” means any technique involving the use of an arm or other firm object to attempt to control or disable a subject by applying pressure against the windpipe, or the frontal area of the neck with the purpose, intent, or effect of controlling a subject’s movement or rendering a subject unconscious by blocking the passage of air through the windpipe.

D. A person shall have a right of action against the City for injuries proximately caused by violations of subsection 3.28.145.A.

E. Absent evidence establishing a greater amount of damages, the damages payable to an individual for injuries proximately caused in violation of subsection 3.28.145.A shall be \$100,000, added to attorney fees and court fees.

Section 2. Section 12A.04.200 of the Seattle Municipal Code, last amended by Ordinance 122789, is amended as follows:

12A.04.200 Use of force-When lawful((-))

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases, unless prohibited by Section 3.28.145:

- A. Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him/her and acting under his/her direction;
- B. Whenever necessarily used by a person arresting one who has committed a felony and delivering him/her to a public officer competent to receive him/her into custody;
- C. Whenever used by a party about to be injured, or by another lawfully aiding him/her in preventing or attempting to prevent an offense against his person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his/her possession, in which case the force is not more than is necessary;
- D. Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property in the control of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person's presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;
- E. Whenever used by a carrier of passengers or his/her authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to expel the offender with reasonable regard to his/her personal safety;
- F. Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to himself/herself or another, or in enforcing necessary restraint for the protection of his/her person, or his/her restoration to health, during such period only as is necessary to obtain legal authority for the restraint or custody of his/her person.

Section 3. 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 _____, 2020, and signed by me in open session in authentication of its passage this _____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
LEG	Amy Gore/x69107	

* Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to the Seattle Police Department; prohibiting the use of chokeholds by officers; amending Section 12A.04.200 of, and adding a new Section 3.28.145 to, the Seattle Municipal Code.

Summary and background of the Legislation: This Council Bill would add a new section to the Seattle Municipal Code prohibiting officers of Seattle Police Department from using chokeholds, including both carotid restraints and neck restraints. The legislation:

- adds a new Section 3.28.145 of the Seattle Municipal Code (SMC) to add definitions of these terms, prohibits the use of these techniques, and gives persons a right of action against the City for injuries caused by infractions of this prohibition with potential damages of \$100,000; and
- amends Section 12A.04.200 of the SMC to specify that these techniques are not a lawful use of force.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

If yes, please fill out the table below and attach a new (if creating a project) or marked-up (if amending) CIP Page to the Council Bill. Please include the spending plan as part of the attached CIP Page. If no, please delete the table.

Project Name:	Project I.D.:	Project Location:	Start Date:	End Date:	Total Project Cost Through 2025:

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

If there are no changes to appropriations, revenues, or positions, please delete the table below.

Appropriation change (\$):	General Fund \$		Other \$	
	2020	2021	2020	2021
Estimated revenue change (\$):	Revenue to General Fund		Revenue to Other Funds	
	2020	2021	2020	2021

Positions affected:	No. of Positions		Total FTE Change	
	2020	2021	2020	2021

Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

If so, describe the nature of the impacts. This could include increased operating and maintenance costs, for example.

This legislation could incur costs to the City in the form of damages for the unlawful use of neckhold restraints or carotid restraints, however an estimate of these damages is not available at this time.

Is there financial cost or other impacts of *not* implementing the legislation?

Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs or consequences.

If the Seattle Police Department continue to use these techniques, the City could incur costs in the form of damages from injury or death resulting from the use of these techniques, however an estimate of these potential damages is not available at this time.

If there are no changes to appropriations, revenues, or positions, please delete sections 3.a., 3.b., and 3.c. and answer the questions in Section 4.

3.a. Appropriations

This legislation adds, changes, or deletes appropriations.

If this box is checked, please complete this section. If this box is not checked, please proceed to Revenues/Reimbursements.

Fund Name and number	Dept	Budget Control Level Name/#*	2020 Appropriation Change	2021 Estimated Appropriation Change
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation please provide details in the Appropriation Notes section below. If the appropriation is not completely supported by revenue/reimbursements listed below, please identify the funding source (e.g. available fund balance) to cover this appropriation in the notes section. Also indicate if the legislation changes appropriations one-time, ongoing, or both.

Is this change one-time or ongoing?

Please explain any complicated scenarios – e.g. three-year funding agreement but not permanent ongoing.

Appropriations Notes:

3.b. Revenues/Reimbursements

This legislation adds, changes, or deletes revenues or reimbursements.

If this box is checked, please complete this section. If this box is not checked, please proceed to Positions.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Dept	Revenue Source	2020 Revenue	2021 Estimated Revenue
TOTAL				

This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below. Do the revenue sources have match requirements? If so, what are they?

Is this change one-time or ongoing?

Please explain any complicated scenarios – e.g. three-year funding agreement but not permanent ongoing.

Revenue/Reimbursement Notes:

3.c. Positions

This legislation adds, changes, or deletes positions.

If this box is checked, please complete this section. If this box is not checked, please proceed to Other Implications.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position # for Existing Positions	Position Title & Department*	Fund Name & #	Program & BCL	PT/FT	2020 Positions	2020 FTE	Does it sunset? (If yes, explain below in Position Notes)
TOTAL							

* List each position separately

This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below.

Position Notes:

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

If so, please list the affected department(s) and the nature of the impact (financial, operational, etc.).

No.

b. Is a public hearing required for this legislation?

If yes, what public hearing(s) have been held to date, and/or what public hearing(s) are planned/required in the future?

No.

c. Does this legislation require landlords or sellers of real property to provide information regarding the property to a buyer or tenant?

If yes, please describe the measures taken to comply with RCW 64.06.080.

No.

d. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

For example, legislation related to sale of surplus property, condemnation, or certain capital projects with private partners may require publication of notice. If you aren't sure, please check with your lawyer. If publication of notice is required, describe any steps taken to comply with that requirement.

No.

e. Does this legislation affect a piece of property?

If yes, and if a map or other visual representation of the property is not already included as an exhibit or attachment to the legislation itself, then you must include a map and/or other visual representation of the property and its location as an attachment to the fiscal note. Place a note on the map attached to the fiscal note that indicates the map is intended for illustrative or informational purposes only and is not intended to modify anything in the legislation.

No.

f. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

If yes, please explain how this legislation may impact vulnerable or historically disadvantaged communities. Using the racial equity toolkit is one way to help determine the legislation's impact on certain communities. If any aspect of the legislation involves communication or outreach to the public, please describe the plan for communicating with non-English speakers.

Because persons of color are disproportionately impacted by harmful interactions with police, the benefits of this legislation would disproportionately benefit persons of color by protecting them from being subject to this technique. However, if this prohibition leads to other forms of restraint or use of force, such as tasers or firearms, there could continue to be harmful interactions between police and community members.

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s).

This answer should highlight measurable outputs and outcomes.

N/A

List attachments/exhibits below:

June 13, 2020

MEMORANDUM

To: Seattle City Council
From: Amy Gore, Analyst
Subject: CB 119804 (Chokehold Prohibition)

On Monday, June 15, 2020, Council is scheduled to consider and vote on Council Bill (CB) 119804, which prohibits the use of chokeholds by Seattle Police Department (SPD) officers. This memo provides background and summarizes both council bills. The City Attorney's Office (CAO) has provided legal review of this legislation, which has been provided to Councilmembers in a separate memo.

Summary of Proposed Bill

Council Bill 119804 amends the Seattle Municipal Code (SMC) in three ways:

1. Prohibits SPD officers from using both forms of chokeholds (neck restraints and carotid restraints) without exception.
2. Establishes a right of private action with damages of \$100,000 for violations of this prohibition.
3. Specifies that the prohibition of chokeholds by SPD applies to all situations in which the use of force is deemed lawful by [SMC Section 12A.04.200](#).

Background

The term "chokehold" means one of two types of restraints which are used to control a person's movement or to render a person unconscious. The first type is a "neck restraint" in which an arm or other firm object is used to apply pressure against the windpipe to block the passage of air. The second type is a "carotid restraint" in which an arm or other firm object is used to apply pressure against the carotid artery, the jugular vein, or the sides of the neck to block the flow of blood.

Currently, the [Seattle Police Manual](#) classifies both of these techniques as a Type III Use of Force and prohibits chokeholds "except when deadly force is justified." As stated in the Manual¹:

Neck restraints and carotid restraints are strongly disfavored by the Department due to the create a high risk of injury or death when improperly applied. Any use of a neck or carotid restraint is a Type III use-of-force, will result in a FIT investigation, and will be subject to strict scrutiny by the Force Review Board.

Known inadvertent contact with a subject's neck during the application of a head control tactic, or other control technique which results in momentary contact with the neck of a subject without the risk or intention of restricting the flow of blood or oxygen is not a neck or carotid restraint, but must be screened with a supervisor. Any contact with the neck, causing or reasonably likely to cause injury or loss of consciousness will be screened with FIT.

¹ [Section 8.300 – POL- 9 Use of Force – Neck Holds and Carotid Restraints](#)

1. *Officers Are Prohibited From Using Neck and Carotid Restraints Except When Deadly Force is Justified*
2. *Officers Will Place the Subject in the Recovery Position and Summon Medical Aid Immediately Following the Application of Neck and Carotid Restraint, if-Feasible*
3. *Officers Shall Monitor All Subjects Who Have Been Subjected to Neck and Carotid Restraints While They Are in Police Custody*

As noted above, chokeholds are currently authorized when deadly force is justified.² Other uses of force that can be used during these situations include:

- Shooting a firearm at a person;
- Hard strike to a person's head, neck, or throat with an impact weapon;
- Striking a person's head into a hard, fixed object;
- Using stop-sticks on a moving motorcycle.

Analysis

It is possible that prohibiting the use of chokeholds will cause more reliance on these other methods of force in situations where use of deadly force is authorized. Central Staff (CS) asked SPD staff for feedback on the impact of the proposed prohibition; but SPD staff have not responded at the time of this report was being finalized.

The current chokehold policy is a result of input from the Community Police Commission (CPC) during the policy review conducted as part of the Consent Decree, the 2012 agreement between the City of Seattle and Department of Justice to ensure that police services are delivered to the people of Seattle in a manner that fully complies with the Constitution and laws of the United States, effectively ensures public and officer safety, and promotes public confidence in the SPD and its officers.³ According to the CPC⁴, they reviewed the chokehold policy but were informed by SPD that chokeholds were not being used routinely. The CPC worked to ensure that chokeholds were only used when deadly force was justified, to require the recovery position and that officers monitor subject; however, the CPC did not focus on a ban of chokeholds because of SPD's assertion that they were not used routinely.

Next Steps

As noted above, CB 119804 is scheduled for a vote at the City Council meeting on June 15.

cc: Kirstan Arestad, Executive Director
Dan Eder, Deputy Director

² According to the police Manual, deadly force is authorized when (1) a suspect is acting or threatening to cause death or serious physical injury to the officer or others; and (2) the suspect has the means or instrumentalities to do so; and (3) the suspect has the opportunity and ability to use the means or instrumentalities to cause death or serious physical injury.

³ For more on the Consent Decree, see <http://www.seattlemonitor.com/overview>

⁴ Bessie Marie Scott, Interim Executive Director of the CPC, provided the background for the current chokehold policy.

Amendment #1
to
CB #119804 – LEG Chokehold Prohibition ORD
Sponsor: CM Herbold

Amends definitions, reduces damages and requests notification of the DOJ, Court and Monitor

Underline indicates new language
~~Strikethrough~~ indicates deleted language

1. Amend Section 1 as follows:

Section 1. A new Section 3.28.145 of the Seattle Municipal Code is added to Subchapter I of Chapter 3.28 as follows:

3.28.145 Prohibition of the use of chokeholds

A. Officers of the Seattle Police Department are prohibited from using chokeholds in the discharge of their duties, including neck restraints or carotid restraints.

B. As used in this Section 3.28.145, “carotid restraint” means any technique applied in an effort to control or disable a subject by applying pressure to the carotid artery, jugular vein, or sides of the neck with the purpose, intent, or effect of controlling a subject’s movement or rendering a subject unconscious by constricting the flow of blood to and from the brain.

C. As used in this Section 3.28.145, “neck restraint” means any technique involving the use of an arm or other firm object to attempt to control or disable a subject by applying pressure against the windpipe, or the frontal area of the neck with the purpose, intent, or effect of

Amy Gore

Date: June 15, 2020

Version: D1f

controlling a subject's movement or rendering a subject unconscious by blocking the passage of air through the windpipe.

D. A person shall have a right of action against the City for injuries proximately caused by violations of subsection 3.28.145.A that occur after the effective date of this ordinance.

E. Absent evidence establishing a greater amount of damages, the damages payable to an individual for injuries proximately caused in violation of subsection 3.28.145.A shall be \$100,000, added to attorney fees and court fees.

2. Add a new Section 3 as follows and renumber sections as needed:

Section 3. 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, the Court, and the Monitor.

Effect: The memo makes the following changes to CB 119804:

1. Clarifies that the private right of action applies to violations of this prohibition that occur after the ordinance takes effect.
2. Requests that notice of this prohibition be given to the Department of Justice, the Court, and the Monitor in accordance with the Consent Decree. (*United States of America v. City of Seattle*, 12 Civ. 1282 (JLR))

Amendment #2
to
CB #119804 – LEG Chokehold Prohibition ORD
Sponsor: CM Herbold

Intent to engage with Labor Relations

Underline indicates new language
~~Strikethrough~~ indicates deleted language

1. Add a new Section 3 as follows and renumber sections as needed:

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 prohibition.

Effect: Expresses Councils intent to engage with Labor Relations in the implementation of this prohibition.



Legislation Text

File #: CB 119805, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the Seattle Police Department; banning the ownership, purchase, rent, storage, or use of crowd control weapons; and adding a new Section 3.28.146 to the Seattle Municipal Code.

WHEREAS, The City of Seattle supports the right to freedom of speech and freedom of assembly as essential democratic rights; and

WHEREAS, on May 25, 2020 officers of the Minneapolis Police Department brutally killed George Floyd, while he was handcuffed and in their custody; and

WHEREAS, in Seattle and in cities across the country, people joined a protest movement against this and other police violence, particularly protesting the police violence disproportionately targeting African American people; and

WHEREAS, in Seattle, tens of thousands of community members have joined mass demonstrations for black lives and against police violence on May 30, 2020 and on subsequent days; and

WHEREAS, the SPD has responded to these protests against police violence with crowd control weaponry including lachrymator agents commonly known as tear gas and 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 they had received 15,000 complaints of police misconduct related to the SPD's response to these protests; and

WHEREAS, testimony from protestors and other protest witnesses, along with video evidence has shown the SPD instigating and escalating violent confrontations with these protests; and

WHEREAS, the use of tear gas in war is banned by the Chemical Weapons Convention of 1993, which set forth agreements signed by nearly every nation in the world, including the United States; and

WHEREAS, infectious disease experts warn that the use of tear gas and other lachrymator agents will increase the spread of COVID-19; and

WHEREAS, research shows that tear gas increases the risk of respiratory infection; and

WHEREAS, an open letter signed by over 1,000 healthcare professionals opposes, “any use of tear gas, smoke, or other respiratory irritants, which could increase risk for COVID-19 by making the respiratory tract more susceptible to infection, exacerbating existing inflammation and inducing coughing”; 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, during public comment at the Seattle City Council meeting on June 1, 2020, and the meeting of the Council’s Public Safety and Human Services Committee on June 3, 2020, members of the public attested to being prevented from joining George Floyd protests out of fear of violence at the hands of the Seattle Police Department; and

WHEREAS, a June 1, 2020 release from the Seattle Office of Professional Accountability notes that misconduct complaints stemming from the George Floyd protests include:

- i. Pepper spraying a young girl;
- ii. Punching a person on the ground who was being arrested;
- iii. Placing a knee on the neck area of two people who had been arrested;
- iv. Covering up badge numbers;
- v. Failing to record law enforcement activity on body-worn video;
- vi. Pepper spraying peaceful protesters;
- vii. The use of flashbangs, including causing a significant thumb injury;
- viii. Failing to secure rifles in the rear of a patrol vehicle;

- ix. Punching a person on the ground who was being arrested; and
- x. Officers breaking windows of a Target store; and

WHEREAS, a June 5, 2020 letter to Mayor Durkan and Chief Best from the Seattle Office of Police

Accountability, Seattle Community Police Commission, and Seattle Office of the Inspector General for Public Safety recommends the immediate cessation of CS gas, otherwise known as tear gas; NOW,

THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 3.28.146 of the Seattle Municipal Code is added to Subchapter I of Chapter 3.28 as follows:

3.28.146 Prohibition of the use of crowd control weapons

A. Unless exempted or excepted, no City department shall own, purchase, rent, store or use crowd control weapons.

B. Law enforcement agencies operating under mutual aid agreements are prohibited from using crowd control weapons while rendering aid to the Seattle Police Department or acting in an official capacity within Seattle.

C. As used in this Section 3.28.146, “crowd control weapons” means 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 has the potential to cause pain or discomfort.

D. Oleoresin capsicum (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.

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 against that person.

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.

Section 2. 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 _____, 2020, and signed by me in open session in authentication of its passage this ____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Legislative / Seattle Police Dept.	Greg Doss 206-256-6225	

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to the Seattle Police Department; banning the ownership, purchase, rent, storage, or use of crowd control weapons unless specifically authorized by the Seattle City Council; and adding a new Section 3.28.146 to the Seattle Municipal Code.

Summary and background of the Legislation: Citizens that have participated in the recent rallies and demonstrations protesting the killing of George Floyd have been the target of crowd control devices including lachrymator agents such as OC spray (Oleoresin Capsicum) or CS gas, commonly known as tear gas, and explosive devices such as blast balls and stun grenades.

This legislation would prohibit further use of these crowd control devices and any other device that meets the definition of a Kinetic Impact Projectile, Chemical Irritant, Acoustic Weapon, Directed Energy Weapon, Water Cannon, Disorientation Device or Ultrasonic Cannon. It would also prohibit any device that is designed to be used on multiple individuals for crowd control and has the potential to cause pain or discomfort.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

No

Is there financial cost or other impacts of *not* implementing the legislation?

Without this legislation, citizens will continue to have their physical health and safety threatened by crowd control devices.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

There is a likely workload impact to the Office of Police Accountability to the extent that citizens will no longer make police misconduct claims related to use of crowd control devices. Additionally, the City's reduced risk to liability from such devices may have an impact on the City Attorney's Office.

b. Is a public hearing required for this legislation?

No

c. Does this legislation require landlords or sellers of real property to provide information regarding the property to a buyer or tenant?

No

d. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No

e. Does this legislation affect a piece of property?

No

f. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

Without this legislation, citizens will continue to have their physical health and safety threatened by crowd control devices, including when such devices are associated with police misconduct. A disproportionate number of citizens who experience police misconduct are people of color.

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s).

N/A

June 14, 2020

MEMORANDUM

To: Seattle City Council
From: Greg Doss, Analyst
Subject: Council Bill 119805 (Ban on Crowd Control Weapons)

On Monday, June 15, 2020, the City Council is scheduled to consider and vote on Council Bill (CB) 119805, which prohibits City departments from owning, purchasing, renting, storing or using crowd control weapons. This memo provides background and summarizes the bills. The City Attorney's Office (CAO) has provided legal review of this legislation, which has been provided to Councilmembers in a separate memo.

Summary of Proposed Bill

This legislation would prohibit City departments from owning, purchasing, renting, storing or using Crowd Control Weapons (CCWs). CCWs are 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 has the potential to cause pain or discomfort.

Oleoresin Capsicum (OC) spray is not a CCW when 1) it is used in other context besides demonstrations or First Amendment events; and 2) when it is used to subdue an individual in the process of committing a criminal act or presenting an imminent danger to others. However, in such a circumstance, the OC spray must not land on anyone other than the targeted individual.

The legislation provides a private right of action against the City to individuals who sustain physical or emotional injuries proximately caused by the City's use of CCWs. The damages payable to an individual for injuries shall be no less than \$10,000, added to attorney fees and court fees.

Background

National and international human rights organizations have documented the life-safety dangers and health consequences associated with use of less-lethal Crowd Control Weapons (CCWs).¹ According to a report by Physicians for Human Rights (PHR) and the International Network of Civil Liberty Organizations (INCLO), CCWs include [kinetic impact projectiles](#), [chemical irritants](#), [acoustic weapons](#), [directed energy weapons](#), [water cannons](#), [disorientation devices](#) and [acoustic weapons](#), which can include ultrasonic cannons. The PHR-INCLO report highlights that the use of these weapons in protests across the world has been shown to result in frequent injury, disability, and death.

CCWs are used by Law Enforcement in situations where some degree of force is necessary but where the use of firearms would be unlawful, or as a less dangerous alternative to firearms, in order to reduce the risk to the public. The United Nations Human Rights Guidance on Less-Lethal Weapons in Law

¹ See [Lethal in Disguise](#) – The Health Consequences of Crowd Control Weapons, Physicians for Human Rights, International Network of Civil Liberty Organizations.

Enforcement indicates that “where they [police] are equipped only with a baton and a firearm, the risks to themselves and the public may be heightened.”²

The Seattle Police Department (SPD) possesses several less-lethal weapons that meet the PHR-INCLO definition of CCWs. These devices include a 40mm launcher, OC spray (Oleoresin Capsicum), CS gas (2-chlorobenzalmalononitrile), commonly known as tear gas and explosive devices such as blast balls and stun grenades. All of these CCWs were used by the SPD at recent mass demonstrations in Seattle, covering the period of May 29, 2020 to June 7, 2020. A June 1, 2020 press release issued by the Office of Police Accountability (OPA) noted the City had received 12,000 reports of police misconduct related to the protests, including complaints related to misuse of CCWs and injury caused by CCWs. (See Attachment 1). The OPA Director indicated in a June 3, 2020 public hearing of the Council’s Public Safety and Human Services Committee that the number of complaints had reached a total of 15,000.

During the mass demonstrations, the SPD received aid from other law enforcement agencies. Officers from other police agencies operating under mutual aid agreements for crowd control can deploy tear gas and other crowd-control devices, but generally only do so after a host agency’s incident commander issues dispersal orders. The State Patrol and the King County Sheriff’s Office both have original jurisdiction over the City of Seattle and may follow the lead of an incident commander, but also have the authority to deploy CCWs at their own discretion.

Analysis

The Seattle Office of the Inspector General for Public Safety (OIG) issued on June 6, 2020 an analysis of the SPD’s use of CCWs at the recent demonstrations noted above (See Attachment 2). The analysis includes information on the purpose and function of each weapon that was used, the SPD policies governing weapon use (see SPD Policy Manual [14.090.9](#)), and, where applicable, information from credible external sources on potential health impacts or use limitations. Finally, it provides general guidance about the use of CCWs. The OIG report notes the following:

In its preliminary research, OIG did not find credible external sources advocating a blanket ban on the use of less lethal weapons either in general patrol operations or crowd control. In the absence of less lethal options, officers may rely on greater use of lethal force to respond to threats to their or others’ safety.

The OIG report indicates that the agency is continuing to gather and synthesize information about use of crowd management tools by the SPD and that an analysis of the sufficiency and appropriateness of SPD policy and training related to crowd management will be a forthcoming product.

The OPA has issued Management Action Recommendations (MARs) on SPD’s use of rubber blast ball grenades as well as less-lethal projectiles. The MARs were issued in the form of a letter to the Chief of Police identifying specific issues and recommending changes. OPA’s MARs on blast balls and projectiles are addressed in the OIG report mentioned above (Attachment 2). The OPA Director has indicated in an e-mail to Central Staff that the OPA is supportive of the conclusions and recommendations in the OIG report.

² See United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, United Nations Human Rights [Office of the High Commissioner](#).

After the 2015 and 2016 Black Lives Matter protests, the CPC recommended that the City immediately suspend the use of blast balls and address out-of-policy and harmful use of pepper spray, blast balls, and other projectiles (see Attachments 3 and 4). CPC representatives have indicated that the recommendations have not been implemented.

On June 5, 2020, the OIG, OPA and CPC issued a joint recommendation to the SPD to cease the use of CS gas in response to First Amendment activity “until such time as any appropriate use can be vetted by oversight entities and incorporated into a written SPD policy. That policy should include sufficient safeguards so that CS gas is only used, if at all, in a manner that keeps faith with the public trust.”

Council Central Staff has asked SPD staff whether the Department wants to retain the ability to use CCWs, and if so, whether the SPD can provide data or research that supports the use of CCWs. SPD staff had not responded at the time that this report was being finalized.

Next Steps

As noted above, CB 119805 is scheduled for a vote at the City Council meeting on June 15.

Attachments:

1. Office of Police Accountability processing 12,000 complaints after weekend demonstrations, June 1, 2020
2. Less Lethal Weapons in Protests, Office of the Inspector General for Public Safety, June 12, 2020
3. SPD Response to Post-Ferguson and Black Lives Matter Demonstrations, Community Police Commission, May 19, 2015
4. Community Police Commission Letter on use of Blastballs, June 13, 2016

cc: Kirstan Arestad, Executive Director
Dan Eder, Deputy Director



For Immediate Release

June 1, 2020

Contact: Anne Bettsworth

Deputy Director of Public Affairs

Anne.Bettesworth@seattle.gov

Office of Police Accountability processing 12,000 complaints after weekend demonstrations

Seattle, WA — The Seattle Office of Police Accountability (OPA) recognizes the community's anger and sadness following the death of George Floyd. We whole-heartedly support the movement for equitable policing across the nation.

OPA has received approximately 12,000 individual complaints concerning the Seattle Police Department's (SPD) response to this weekend's demonstrations. We are currently reviewing and processing these complaints. The resulting investigations will be our top priority moving forward.

Below are the ten specific incidents about which OPA has received the most complaints. We have assigned each a case number that can be used to [track the progress](#) online of the corresponding investigation. These investigations will be civilian-led and as transparent as possible given the law and police collective bargaining agreements. We will complete our investigations quickly due to the immense public concern and will provide updates via our website and Twitter.

1. Pepper spraying a young girl (Saturday): **2020OPA-0322**
2. Punching a person on the ground who was being arrested (Friday): **2020OPA-0323**
3. Placing a knee on the neck area of two people who had been arrested (Saturday): **2020OPA-0324**
4. Covering up badge numbers: **2020OPA-0325**
5. Failing to record law enforcement activity on body-worn video: **2020OPA-0326**
6. Pepper spraying peaceful protestors (Saturday): **2020OPA-0327**
7. The use of flashbangs, including causing a significant thumb injury (Saturday): **2020OPA-0328**
8. Failing to secure rifles in the rear of a patrol vehicle (Saturday): **2020OPA-0329**
9. Punching a person on the ground who was being arrested (Sunday): **2020OPA-0330**
10. Officers breaking windows of a Target store (date unknown): **2020OPA-0331**

Please note that we will not prejudge any actions prior to finishing our investigations. We respectfully caution the public about reaching findings without having all the evidence.

We also urge the public to allow the system created by the Police Accountability Ordinance to carry out its respective responsibilities. This includes not only OPA's investigative duties, but the Inspector General's systemic review and the Community Police Commission's raising of community concerns. The system was built to respond to these incidents, and OPA is confident that all involved will do so ethically and to the best of their ability.

We encourage community members to continue filing complaints. We are working to ensure space on our voicemail, but if you are unable to leave a message, please file a complaint via our [web form](#). If you have video that you think may be useful, please include a link to it.

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PO Box 94764
Seattle, WA 98124-7064
www.seattle.gov/oig
(206) 684-3663

June 12, 2020

Less Lethal Weapons Usage in Protests

Informational Summary of Less Lethal Weapons Used by the Seattle Police Department During Mass Demonstrations (5/29/2020 – 6/7/2020)

Objective

This document provides an informational summary of less lethal weapons used by the Seattle Police Department (SPD) at recent mass demonstrations in Seattle, covering the period of 5/29/2020 to 6/7/2020. It includes information on the purpose and function of each tool, SPD policies governing its use, and, where applicable, information from credible external sources on potential health impacts or use limitations.¹ This summary is a preliminary report, as OIG is continuing to gather and synthesize information about use of crowd management tools by SPD. Analysis of the sufficiency and appropriateness of SPD policy and training related to crowd management will be a forthcoming product.

Time constraints and a desire to prioritize the weapons of most immediate public concern mean that this initial document is not an exhaustive list of all possible less lethal devices available to the department. For example, this report does not discuss TASERS, batons, or the full extent of tools available to SWAT when addressing barricaded subjects or other unusual, hostile situations.

Purpose of Less Lethal Weapons

SPD describes the purpose of less lethal weapons as follows:

Less-lethal tools are used to interrupt a subject's threatening behavior so that officers may take physical control of the subject with less risk of injury to the subject or officer than posed by greater force applications.²

In short, less lethal weapons are intended to reduce the need for greater (lethal) use of force. In an ordinary patrol capacity, less lethal weapons offer alternatives to higher levels of force that might otherwise be necessary to protect persons or take control of a dangerous situation. Officers must have an individualized rationale to justify each application of this force. In a crowd management context, the rationale is more generalized

¹ By "credible", OIG refers to sources relying on published scientific evidence, organizations that are widely considered to be standard-setting in the field of policing, and information published directly by manufacturers of the weapons discussed in this report. The list of sources is not exhaustive given the limited time in preparing this report; however, the sources reviewed by OIG appeared to be in alignment.

² Seattle Police Department, "SPD Manual 8.300 – Use of Force Tools", last modified 9/15/2019.

and force used by officers may impact bystanders and other not involved in violent or riotous action.

Less lethal weapons come in a variety of forms, including chemical agents, conducted electrical weapons, impact weapons (such as batons), and impact projectiles. The SPD manual requires all officers to carry at least one less lethal weapon. In general, officers are not permitted to carry and use a less lethal weapon unless they are trained and certified in its use. The manual discourages the use of improvised weapons, such as nearby debris, except in the case of “exigent circumstances.”

Distinguishing between the less lethal weapons available to patrol officers and additional specialized less-lethal weapons available to the Special Weapons and Tactics (SWAT) unit is important when discussing force options and criteria. The training and certification required of SWAT officers is extensive and not comparable to that required of patrol. Use of less lethal weapons by SWAT in their ordinary operations provides options, other than lethal force, to address incidents like barricaded individuals and hostage situations.

Under normal circumstances, only SWAT is authorized and trained in deploying CS gas (tear gas), and only SWAT is authorized to use the 40mm less lethal launcher in crowd management situations. Chief Best temporarily authorized use of CS canisters and the 40mm launcher by patrol officers for the mass demonstrations occurring between 5/31/2020 and 6/5/2020, citing shortages in other less lethal tools such as blast balls and OC spray.³

General Criteria for Use of Less Lethal Weapons

Much of the criteria for the use of less lethal weapons distills down to a subjective assessment by the involved officer that the use of the weapon is necessary to prevent harm to the officer or the public.

Excerpts of SPD policy are provided in [Appendix B](#), and readers will find the phrase “reasonable, necessary, and proportional” repeated multiple times as thresholds for the use of less lethal tools. These factors apply to all uses of force by SPD. The reasonableness requirement is based on Supreme Court case law,⁴ and the necessary and proportional requirements adopted by SPD are policy choices that go beyond legal requirements. However, it is important for non-police readers to know that officer decision-making on these factors is judged against the information known and understood by the officer using the force *at the time of the force*, rather than 20/20 hindsight. The manual – and case law –

³ Seattle Police Department, “Memorandum – Policy 8.300 – POL (5) and POL 11 (13) – 40mm Launcher and Policy 8.300-POL 5” (5/31/2020).

⁴ *Graham v. Connor*, 490 U.S. 386 (1989)

does not expect police officers to be omniscient, but it does require them to use their best judgment in making a force decision.

Similarly, the SPD manual cites a “life safety emergency” as criteria for the use of less lethal weapons in crowd management situations. This is based on the information known to, and interpreted by, officers on the scene.⁵

Police officers analyze potential threats to safety based on their training and experience, which is different from that of an average person. For this reason, force decisions made by police officers may not align with community interpretation of the same event, and thus the actions taken by the police may not align with community expectations. The degree of that dissonance could be alleviated by changes to the guidance and/or training provided to officers, ensuring adherence to proper policy and training, and/or instituting limitations that align with community desire.

General Guidance on Use of Less Lethal Weapons

In its preliminary research, OIG did not find credible external sources advocating a blanket ban on the use of less lethal weapons either in general patrol operations or crowd control. In the absence of less lethal options, officers may rely on greater use of lethal force to respond to threats to their or others’ safety. The International Network of Civil Liberties Organizations (INCLLO) wrote in 2018 that “the lawful exercise of the use of force by policing institutions is a key component in protecting and promoting the rights to protest.”⁶ However, INCLLO goes on to note that the use of force in the context of protests “remains of utmost concern” due to the number of deaths and injuries. It provides the following general guidance:

The disproportionate use of force is a complex problem and is due to several factors, including: limited and insufficient training; inadequate and outdated norms and protocols for intervention; deficiencies in the preparation and design of operational plans; problems in institutional design; the absence of functioning internal and external oversight mechanisms; and, in some occasions, deficiencies in the crowd-control equipment and weapons used.

Force in the context of protests should only be used to protect the right to life and the physical integrity of protesters, bystanders, and police officers, and it must always comply with the principles of: legality, necessity, proportionality, precaution, non-discrimination and accountability.

⁵ Seattle Police Department, “SPD Manual 14.090 – Crowd Management” last modified 11/01/2018.

⁶ International Network of Civil Liberties Organizations and the International Human Rights Clinic of the University of Chicago Law School, “Defending Dissent; Towards State Practices that Protect and Promote the Rights to Protest” (2018), 74.

Proper training, tactics, and equipment are all needed to ensure that unlawful and disproportionate force is not used. Precautionary measures should be taken during preparation for an event to ensure the use of force does not become necessary. This includes training officers to exercise good judgment and improve their communication and de-escalation skills.⁷

OIG includes the full list of recommendations from the 2018 INCLC report in [Appendix A](#).

OIG also reviewed the Crowd Management Concepts and Issues paper developed by the International Association of Chiefs of Police (IACP). In it, the IACP offered general guidance on the use of force in crowd management situations:

Prior to deployment, all personnel engaged in crowd management or control should be made aware of the ground rules for the use of force as part of their briefing and any terms that may have been negotiated between law enforcement and demonstration organizers. Officers providing support from other agencies should always be briefed on policies related to use of force and crowd control. The fact that some individuals in a crowd have engaged in unlawful conduct does not normally provide blanket grounds for use-of-force countermeasures, crowd dispersal, or declaration of an unlawful assembly. When lines of communication have been maintained between event organizers or leaders and a law enforcement liaison, it is sometimes possible to negotiate a resolution to the situation. Given such situations, many crowds tend to become self-enforcing to ensure that they can continue to assemble and convey their message.⁸

Information on Specific Less Lethal Weapons Used in Recent Demonstrations by SPD

For the remainder of this memo, OIG will provide a summary of each weapon, the guidance provided by SPD for its use, and any external guidance or recommendations that OIG identified in its preliminary research.

Oleoresin Capsicum (OC) Spray

Overview of Weapon and Purpose

OC spray distributes a substance that causes an intense burning sensation of the skin, eyes, and mucous membranes. It is often called “pepper spray” because the active ingredient (capsaicin) is derived from peppers (capsicum).

OC spray works by pressurizing an oily liquid containing capsaicin. When the trigger is pulled, the liquid is discharged as an aerosolized spray that is hard to remove, except with a degreasing agent such as baby shampoo. Immediate effects include skin and eye pain, and extensive eye-watering or temporary blindness. The full effect can generally last

⁷ International Network of Civil Liberties Organizations and the International Human Rights Clinic of the University of Chicago Law School, “Defending Dissent; Towards State Practices that Protect and Promote the Rights to Protest” (2018), 74.

⁸ International Association of Chiefs of Police, “Crowd Management” (2019), 6.

approximately half an hour, but secondary effects, such as coughing, may last several hours. Individuals who already have compromised respiratory systems, such as individuals with asthma or who are recovering from respiratory-related illness, may experience more severe effects.

The SPD manual warns that

When inhaled (secondary exposure), the respiratory tract will likely become inflamed and temporarily restrict breathing to short, shallow breaths. The individual may experience choking, gagging, gasping for breath, or, on rare occasion, unconsciousness. The individual may experience nausea, lung pain, or temporarily impaired thought processes. The individual may become disoriented or lose his or her balance.⁹

Summary of SPD Policy on Use¹⁰

During normal patrol operations, officers can use OC spray for officer protection if the officer can justify the force as reasonable, necessary, and proportional. Officers must issue a warning when possible and must document and justify each separate spray. Officers are not required to issue a warning if the officer believes that doing so would compromise the safety of the officer or others. However, in this case, the officer must document the reason for this belief in their use of force statement. OC is widely accepted and used as an intermediate force option in patrol operations when dealing with combative subjects.

During a crowd control event, the incident commander can authorize the use of OC spray if the commander believes that there is an immediate life safety emergency. A lieutenant can also issue this authorization if there is not time to contact the incident commander. The policy instructs a warning to be given if possible, and for officers to direct OC spray away from individuals who are not causing a safety risk or damaging property, if possible.

Officers are required to assist individuals with decontamination and medical aid as soon as reasonably possible.

There is also a policy describing how the department's inventory of OC spray is tracked, maintained, and disbursed, which we do not describe here.¹¹ Issues related to this policy will be fully addressed in future analysis.

Training and Certification

The SPD manual states that officers will be trained and certified in the use of OC spray every two years.

⁹ Seattle Police Department, "SPD Manual 8.300-POL-5 Use of Force – Oleoresin Capsicum (OC) Spray". Last modified 9/15/2019.

¹⁰ Ibid.

¹¹ Seattle Police Department, "SPD Manual 8.310 OC Spray Chain of Custody". Last modified September 2015.

The SPD Training Section notes that the minimum recommended distance for use is between three and twelve feet, depending on the type of spray used (MK-4, MK-9, and MK-46).¹²

Prior Recommendations to SPD on Crowd Management Use of this Weapon

In 2015, the Community Police Commission (CPC) issued the following suggestion to SPD:

*As we discussed in our May 13 meeting, current SPD policy with regard to use of projectiles and pepper spray in crowd management and demonstration situations either provides insufficient guidance to officers about when these tools should be used, or they appear to be used frequently outside of policy. Demonstrators and observers described instances where peaceful demonstrators who posed no threat and were dispersing were sprayed with pepper spray, and the same can be observed in a variety of videos. Use of blast balls in the immediate vicinity of a mass of demonstrators was reported, and we saw on May Day that these projectiles cause significant and painful injury. The CPC suggests that policy in this area requires immediate review, public discussion and clarification, so that individuals participating in free speech and assembly do not feel that they risk serious physical injury just by showing up to participate in a march.*¹³

External Guidance On Potential Health Impacts or Crowd Management Use Limitations

OIG reviewed *Lethal in Disguise: The Health Consequences of Crowd Control Weapons*. This report, published in 2016, is a joint product by INCLIO and Physicians for Human Rights. The report reviewed 31 studies published between 1993 and 2000 examining the health impact of chemical irritants, including CS and OC.

In addition to noting the health effects described above and identifying studies citing evidence of more severe injuries, the report advises that

*Chemical irritants, especially those deployed in gas forms, are inherently indiscriminate and can impact not only the intended targets but also other demonstrators, bystanders, neighborhood businesses and residences, and law enforcement officers themselves [...] because of the indiscriminate nature of chemical irritants, limiting the exposure to individuals or small groups is difficult while exposing large and diverse groups to the weapons poses the risk of widespread injuries, including to potentially vulnerable people.*¹⁴

The Police Executive Research Forum (PERF) issued a report on the use of less lethal weapons in February 2020. This report observes that OC spray tends to spread across wide

¹² Seattle Police Department, “2020 Blast Ball 040620”. Last modified 4/6/2020.

¹³ Community Police Commission, “RE: SPD Response to Post-Ferguson and Black Lives Matter Demonstrations” (May 19, 2015).

¹⁴ International Network of Civil Liberties Organizations and Physicians for Human Rights, “Lethal in Disguise – The Health Consequences of Crowd-Control Weapons” (2016), 51.

areas and, depending on environmental factors, may affect both officers and the intended subject. The report cites some departments who rely on OC spray as an effective less lethal weapon, particularly in combination with other tools such as a polycarbonate shield, but adds that many departments believe it is not effective on individuals who are under the influence of substances or in mental health crisis.

The IACP Crowd Management Concepts and Issues paper suggests that

OC should not be used indiscriminately against groups of people; in demonstrations or crowds where bystanders or other officers would be unreasonably affected; or against passively resistant individuals. High-volume OC delivery systems (such as MK-9 and MK-46) are designed for and can be used in civil disturbances against groups of people engaged in unlawful acts or endangering public safety and security, with approval of the IC [incident commander]. A warning should be issued prior to the use of these systems, whenever reasonably possible.”¹⁵

Blast Balls

Overview of Weapon and Purpose

A blast ball is a less lethal grenade that, in addition to creating a large bang and flash, may release rubber balls. Some types of blast balls also contain OC or CS. Blast balls that contain rubber balls, OC, or CS may spread their payload over a fifty-foot radius, per one manufacturer. SPD training materials indicate that officers are trained to use blast balls with and without OC.¹⁶

Blast balls are designed to create pain compliance, temporary distraction, or disorientation. One manufacturer states that blast balls are “generally reserved as a last selection when chemical agents and less lethal impact munitions have not resolved the disorder or routed the crowd.”¹⁷

A blast ball is not the same thing as an NFDD (noise flash diversionary device), also referred to as a “flash bang” grenade. Per SPD, only SWAT is authorized to use flash bangs. SWAT reported to OIG that no flash bangs were used in the recent demonstration responses.

Summary of SPD Policy on Use In Crowd Control

¹⁵ International Association of Chiefs of Police, “Crowd Management” (2019), 7.

¹⁶ Seattle Police Department, “2020 Blast Ball 040620”. Last modified 4/6/2020.

¹⁷ Defense Technology, “Technical Specifications – Stinger® Grenade Rubber Pellet RP, RP/CS & RP/OC”, accessed 6/10/2020, <https://www.defense-technology.com/on/demandware.static/-/Sites-DefenseTech-Library/default/dw4b6d9f56/product-pdfs/Stinger%20Grenade.pdf>

SPD policy states that blast balls may only be used when the force is reasonable, necessary, and proportional. When feasible, officers should wait until a dispersal order has been issued to the crowd, the crowd has been given time to comply, and a supervisor has authorized the deployment. The policy also instructs officers to avoid using blast balls near people who are not posing a risk to public safety or property, if possible. However, the policy allows for officers to deploy blast balls on their own (without a warning or supervisor approval) to address an imminent risk of harm to a person, or significant property damage. Officers may use an underhand throw or overhand throw, depending on the need for distance and any obstacles in the way.

Officers must report the use of blast balls as a use of force and must re-evaluate (and document) the reason for each subsequent use after the initial deployment. The policy requires officers to request and/or render medical aid as soon as reasonably possible for individuals injured by a blast ball deployment.

Training and Certification

The SPD manual states that only officers who have completed department blast ball training are permitted to deploy blast balls. Officers are only allowed to use department-issued blast balls.

The Training Section instructs officers that “absent exigent circumstances, Officers shall not use chemical agents or less-lethal munitions to overcome passive resistance by non-violent and/or peaceful protestors”.¹⁸

Prior Recommendations to SPD on this Weapon

The CPC recommendation cited in the OC spray portion of this report also encompasses blast balls.

The Office of Police Accountability (OPA) issued a Management Action Recommendation (MAR) in 2015 (2015OPA-0643) about blast balls. The MAR addresses concerns regarding use of blast balls in proximity to individuals and overhand use of blast balls.

Use of Rubber Blast Ball Grenades (blast-balls): OPA recommends that SPD re-evaluate how and under what circumstances officers use blast-balls as a means of moving or dispersing crowds of people. The evidence from May Day 2015 indicates that, while highly effective in getting people to move, the ball-blasts create fear and panic when detonated. Additionally, blast-balls deployed by SPD officers exploded in extremely close proximity to people, not all of whom were engaged in destruction of property or posed a threat to public safety. This is contrary to our understanding of how officers have been trained to deploy blast-balls, specifically so that they detonate in: open areas to create greater distance between the police

¹⁸Seattle Police Department, “2020 Blast Ball 040620”. Last modified 4/6/2020.



and a crowd. Of particular concern, some SPD officers tossed blast-balls over the heads of those immediately in front of them so the explosive devices landed in the middle of a crowd. Because the initial detonation of a blast-ball separates a hard metal fuse device from its rubber base, there is a possibility of the metal fuse acting as shrapnel and causing serious injury to someone in close proximity when it separates. In addition, deployment of blast-balls at the feet of people or into a crowd can cause burns from the second and larger detonation, as well as blunt force trauma from the rubber base as the flash powder inside explodes and the two halves of the base fly apart. The product safety warning included in the literature provided by the manufacturer: "may cause serious injury or death to you or others." We particularly encourage SPD to ensure that its officers' use of blast-balls is consistent with the care due explosive devices.¹⁹

OIG also reviewed a 2016 analysis of SPD crowd management policy commissioned by SPD itself.²⁰ This report was written by an expert in the field of less lethal weapons, Steve Ijames.²¹ Mr. Ijames reviewed material relating to the 2015 May Day protests and wrote:

[T]he area of concern is not the rules or methods of engagement [which he deemed to be comprehensive], but the justification and accountability as it relates to the established protocols and processes not being followed.²²

Mr. Ijames recommended that SPD conduct an inquiry into its deployment of blast balls in May 2016, writing that:

Absent a situation where officers were facing the immediate threat of death or serious physical injury, the intentionally targeting a blast ball device at or in unreasonably close proximity to a human being would not be justified use of force. It is important to learn after every incident whether any misuse and or overuse of the blast ball device was widespread and pervasive, or limited in scope. If widespread and pervasive – which, based on the material I reviewed, I have no reason to believe was the case, that would indicate a disconnect between the blast ball training material, the actual training that was provided, and operational deployment. If limited in scope, future misuse could be prevented by identifying the unit(s) and or person(s) involved, and holding them individually accountable for violating training and policy. It is important to note that blast balls contain the same explosive payload as a noise/flash diversionary device, are registered as destructive devices

¹⁹ Office of Police Accountability, "Management Action Recommendation (2015OPA-0643)" (December 10, 2015), 3.

²⁰ This report does not appear to have been officially released by SPD. SPD provided a final copy of the report to OIG.

²¹ Per the description provided by SPD in the report, Mr. Ijames "created the less lethal force instructor/trainer programs for the International Association of Chiefs of Police (IACP) and the National Tactical Officers Association (NTOA). He authored the IACP National Policy Center position paper on Special Weapons and Tactics, as well as their model policies on TASER, impact rounds, chemical agents, noise/flash diversionary devices, hostage rescue, and barricaded subjects."

²² Steve Ijames, "Preliminary Assessment Report" (April 28, 2016), 4.

with the Bureau of Alcohol, Tobacco, and Firearms (BATF), and are fully capable (as warned by the manufacturer) of causing death or serious injury if ignited against or in close proximity to a vital body part. As such, it is imperative that these devices be used as SPD training specifies, and that this issue be fully addressed and reconciled prior to May Day 2016. It is my understanding, based on my review of the 2016 training curriculum, that these concerns have in fact been addressed.²³

At the time of this writing, OIG was unable to determine if SPD had completed the inquiry recommended by Mr. Ijames. Analysis of the status of previous recommendations will be provided in a future report.

External Guidance On Potential Health Impacts or Use Limitations in Crowd Control

The *Lethal in Disguise* report, while not mentioning blast balls by name, includes a section on “Disorientation Devices” to include flash bang or stun grenades. Health impacts are “the risk of blast injury” which are

...complex and result from the pressure waves created by the blast. The weapons are made of both metal and plastic parts that may fragment during the explosion and act as shrapnel. Blast injuries from close proximity explosions can lead to amputation, fractures, and degloving injuries (extensive skin removal that exposes underlying tissue), while secondary injuries include asphyxiation, heart attacks, and internal bleeding.²⁴

The study also mentions the potential for secondary, tertiary, and quaternary injuries. For example, it states that the “concussive blast of the detonation can injure, and the heat created can ignite flammable materials such as fuel” and that stun grenades thrown into houses or other buildings have resulted in “numerous cases of fires leading to significant injuries[...].”²⁵ Finally, the study notes that “the confusion and panic caused by stun grenades can also lead to serious injuries, particularly in dense crowds.”²⁶ It concludes that “these weapons have no place in effective crowd control management, intervention, and control.”²⁷

The PERF report does not offer specific guidance on blast balls, flashbangs, or stun grenades.

²³ Ijames, “Preliminary Assessment Report” (2016), 4-5.

²⁴ International Network of Civil Liberties Organizations and Physicians for Human Rights, “Lethal in Disguise” (2018), 65.

²⁵ Ibid, 68

²⁶ Ibid, 68.

²⁷ Ibid, 68.

40mm Less Lethal Launcher

Overview of Weapon and Purpose

The 40mm launcher is a single shot launcher that can fire a variety of 40mm diameter munitions. SPD uses both a sponge round and a crushable foam round that contains OC in the sponge. SWAT also uses an extended-range sponge round.

Per the SPD manual, the advantage of the 40mm in general patrol use is that it provides an “extended standoff distance” that may “decrease officers’ exposure and may provide additional time to bring the situation to a safe resolution.”²⁸ As such, the 40mm provides a non-lethal option to address individuals unarmed individuals who are behaving violently or have a bladed or blunt weapon. In other words, because the 40mm allows officers to act without getting too close, it may reduce the immediate threat posed by the individual in question and avoid use of greater, potentially lethal force. The SPD Training Section emphasizes the value of distance, noting “distance provides us with increased time, increased time allows us to assess situation[s] more thoroughly, better assessment leads to more sound tactical planning and responses.”²⁹

The 40mm works through pain compliance and disorientation. Although the round is designed to be less lethal, it is designed to cause pain. The intention in normal patrol use is for officers to move in and take control of an individual while the person is reacting to the pain caused by the impact of the sponge round.

The manufacturer of the sponge round used by SPD states that the minimum safe range is 5 feet, up to a maximum effective range of 131 feet. SPD’s training materials state that the effective range is 5 – 120 feet.³⁰ The extended range round permitted for SWAT use is unsafe to deploy at a distance of less than 33 feet and has a range of up to 229 feet.

Summary of SPD Policy on Use

SPD allows for the use of the 40mm when the force is reasonable, necessary and proportional, the subject is likely to cause injury to officers, and when physical control tactics or other force options would be more likely to cause greater injury than the 40mm munition. The policy states that when possible, officers should issue a verbal warning, unless circumstances or safety do not allow. Officers must document their reasoning for not giving a warning in their use of force statement.

²⁸ Seattle Police Department, “SPD Manual 8.300-POL-11 Use of Force – 40 mm Less Lethal Launcher”. Last modified 9/15/2019

²⁹ Seattle Police Department, “End User 40mm PowerPoint”. Last modified 1/22/2019.

³⁰ Ibid.

The policy instructs officers to avoid targeting the head, neck or genitals and instead instructs officers to target areas such as the buttock, thigh, and calf.³¹ Officers are required to summon medical aid as soon as feasible after an individual is hit by a 40mm round.

Training and Certification

Only officers who are trained and certified by SPD are allowed to use the 40mm launcher. The only exception are SWAT officers, who are permitted to certify separately through annual unit training. Additionally, the SPD manual states that the 40mm launcher cannot be an officer's primary less lethal device. They must carry another option, such as OC spray, a TASER, or a baton.

As stated previously, during crowd management events SPD policy only permits SWAT personnel to use the 40mm launcher. Chief Best issued a temporary exception to this policy from 5/31/2010 – 6/5/2020, based upon an asserted need to defend officers involved in the protest response against the possibility of individuals throwing CS canisters deployed by SPD back at officers.

Prior Recommendations to SPD on this Weapon in Crowd Control

The CPC recommendation cited at the beginning of this report includes “other projectiles”, which OIG is including as applicable to 40mm rounds.

The previously cited OPA MAR also includes a recommendation on less-lethal projectiles:

Use of Less-lethal Projectiles: OPA recommends that SPD review its policy and training with respect to the use of less-lethal projectiles in crowd management situations to reduce the chances of them striking the wrong person or causing serious bodily injury. Although these projectiles are specifically designed to prevent penetration and, instead, stun the target with blunt-force trauma, the fact remains they can and do cause injury. In rare, but tragic cases, less-lethal projectiles have even resulted in death. We are particularly concerned with the possibility that, due to the sometimes chaotic and confusing nature of protests or demonstrations, these projectiles may strike and injure people lawfully exercising their constitutional rights.³²

Mr. Ijames' report also addresses the use of less lethal projectiles. Mr. Ijames writes:

The material reviewed did not provide a clear indication of who was armed with an impact projectile system, the type of system(s) involved, what the specific rules of engagement for use were, how many rounds were fired, in what circumstances, and the outcomes. A review of the

³¹ Guidance provided by the SPD Training Section states that officers should not target the head, neck, spinal cord, kidney area, and center of mass using the 40mm launcher unless deadly force is authorized. Source: Seattle Police Department, “End User 40mm PowerPoint”. Last modified 1/22/2019.

³² Office of Police Accountability, “Management Action Recommendation (2015OPA-0643)” (December 10, 2015), 2.

open source photographic material showed officers with 40mm launchers, pepperball systems, and the FN303. Impact projectiles have been used in public disorder situations for several hundred years. In recent times (1966 to present) they have resulted in the death of 19 people in the United Kingdom, and 17 in the United States. There is a place for impact projectile launching systems in public disorder situations, but only in the hands of highly trained officers who have proven a mastery (validated training) of the potentially deadly limitations of the systems involved.³³

Mr. Ijames again recommends that SPD conduct an inquiry, this time into the use of less lethal projectiles at May Day 2016. This inquiry was to include the rules of engagement, the circumstances of use, the outcomes, and the command level knowledge, among other factors. OIG was not able to determine at the time of this writing whether SPD had conducted that inquiry.

Mr. Ijames concludes his discussion of less lethal projectiles with a warning and advice regarding their use in crowd management contexts:

Impact projectiles are potentially lethal. This is especially true in dynamic environments such as public disorder, where targets are moving and the speed of the round over distance increases the probability of impacting non-selected persons and or body parts. It is important to assess the exact circumstances in which impact launchers were authorized and used in 2015, and whether the deployments were consistent with training, policy, and rules of engagement. It is my understanding that these circumstances were in fact assessed by the Force Review Board following May Day 2015, and I recommend the same practice be in place following May Day 2016. There should be absolute clarity at the operational command level concerning who will be issued an impact launcher, why they are issued a specific type of launcher, the circumstances in which the launcher is intended to be used, and validation of learning concerning the specific impact launcher/rounds involved and the unique risks to citizens as it relates to impact launcher use in crowd control scenarios. Historically, impact launchers have been involved in a disproportionate number of accidental/unintended serious injuries as compared to other force options during crowd control events. Accordingly, the issuing and potential use of these devices in public disorder situations should be limited, and demands specific command level approval, oversight, and ownership at every level referenced above generally, and specifically prior to May Day 2016.³⁴

External Guidance On Potential Health Impacts or Use Limitations in Crowd Control

Literature reviewed and summarized in the *Lethal in Disguise* report discusses the importance of using these tools at the appropriate distance, noting:

...that the deployment of these projectiles often occurs from distances much closer than those deemed safe. Safe shooting ranges are not well validated and vary a great deal

³³ Steve Ijames, "Preliminary Assessment Report" (2016), 5.

³⁴ Steve Ijames, "Preliminary Assessment Report" (2016) 5-6.

between weapons, countries, and manufacturers. Firing distance, while hard to assess in many cases, correlates with the severity of injuries. [...] Some of the literature specifically noted that firing distances in instances resulting in injury were less than those recommended by KIP [kinetic impact projectile] manufacturers, and it highlighted that the firing distance was difficult to assess not only forensically, but also by law enforcement agents working in dynamic and fast-changing conditions.³⁵

The IACP Crowd Management Concepts and Issues document highlights that in a large crowd, direct-fire munitions such as the 40mm may not hit their intended target. The IACP states that for this reason, these weapons should generally be only used “against specific individuals who are engaged in conduct that poses an immediate threat of death or serious injury or significant levels of property damage” in a mass demonstration setting.³⁶

The PERF report does not provide extensive guidance on 40mm launchers, other than to note that like other less lethal weapons, using a launcher is a perishable skill that should be bolstered with regular proficiency training. Lack of refresher training “can increase the chances of user error and inappropriate or unsafe deployments.” This advice is echoed to some degree by the SPD Training Section, which warns that officers are taught to aim for center mass with firearms, but that targeting this area with a 40mm launcher has potential for serious or fatal injury. Thus, the Training Section notes that “in a stressful encounter, the officers may focus on center mass due to prior weapons training and subconscious motor memory”, and advises instructors to ensure that officers are not aiming for center mass with the 40mm launcher unless deadly force has been authorized.³⁷

Specialty Unit Weaponry Used for Crowd Control, including CS

The following is a discussion of the crowd management weapons used by SWAT in the recent demonstrations. It is important to note that SWAT also uses many of these same weapons to address barricaded subjects, hostage situations, and other unusual events involving the potential for violence and the need for force options other than lethal force. Policies and recommendations on use of these weapons in the context of crowd management may not easily translate to those other contexts.

In addition to the 40mm less lethal launcher used by patrol officers, SWAT also has access to three other less lethal launchers. The three launchers are:

³⁵ International Network of Civil Liberties Organizations and Physicians for Human Rights, “Lethal in Disguise” (2018), 31.

³⁶ International Association of Chiefs of Police, “Crowd Management” (2019), 7.

³⁷ Seattle Police Department, “End User 40mm PowerPoint”. Last modified 1/22/2019.



- 40mm multi launcher: This is identical to the single shot 40mm launcher used by patrol except it can fire up to six munitions before having to reload.
- FN303: A CO₂-powered launcher that shoots projectiles slightly heavier than standard paintballs with a range of 50 meters.
- PepperBall Launcher: A CO₂-powered paintball-type launcher that shoots projectiles that contain 5% PAVA (a synthetic form of OC) and have a range of 60 feet.

SWAT confirmed all of these launchers were used during recent demonstrations and provided to OIG a list of the different rounds used.

SWAT also uses a chemical agent orthochlorobenzalmalononitrile, commonly called CS. Per OIG review of both the SPD department manual and the SWAT manual, only SWAT is trained and authorized to use CS. Although SWAT has access to multiple forms of CS, the unit reported to OIG that only hand-thrown canisters were used during the recent demonstrations.

SWAT informed OIG that they have maintained a round count of all munitions used by SWAT for future reference and review.

Summary of SPD Policy on Use

OIG is not including excerpts from the SWAT tactical manual, but notes the tactical manual's guidance on using SWAT weaponry for crowd management is not dissimilar from SPD departmental policy on the use of blast balls, OC spray, and the 40mm launcher. However, the SWAT manual does include more details on environmental factors officers should consider before deploying these tools.

Training and Certification

SWAT manages its own certification and training requirements, distinct from the SPD Training Section. These requirements include regular weapons qualification testing and attendance at specialized courses for certain tools. One of the SWAT instructors is a certified instructor with the National Tactical Officer's Association. SWAT reported to OIG that in addition to initial qualification and on-going evaluation through training, every SWAT officer is required to re-qualify with less lethal tools on an annual basis using a written test. This written test, per SWAT, includes questions on safe and effective ranges of the weapons.

Prior Recommendations to SPD on these Weapons for Crowd Control

OIG is unaware of any previous recommendations made to SPD about these specialty weapons used by SWAT. However, recommendations made to SPD regarding the 40mm would presumably apply to these weapons due to their similar nature.

External Guidance On Potential Health Impacts or Use Limitations in Crowd Control

In one well-documented case in Boston in 2004, a FN303 was fired into the crowd with lethal effect in one instance and caused two serious injuries. The commission investigating the death noted that the manufacturer stated, “the system has been conceived in such a way that it never exceeds the minimum energy levels causing a traumatism or a perforation of the skin.”³⁸ However, the commission found that skin penetrations can occur, although the fatality and the other two penetration injuries were all caused by impacts to the head. The manufacturer states, “Misuse may result in injury or death. Avoid aiming at face or head.”³⁹

Previously included external guidance on health impacts related to the use of OC spray is applicable to the use of CS. However, it is notable that CS may be more difficult to remove or otherwise decontaminate than OC, depending on how it was deployed. CS powder, in particular, may require extensive cleaning procedures.

The IACP Concepts and Issues paper states that CS should be used with caution in crowd control situations, as “uncontrolled use can have negative consequences with respect to efforts to control, management or disperse crowds.” The IACP notes use of CS may escalate violence and states “the crowd should be warned prior to CS deployment and provided with avenues of egress.”⁴⁰

³⁸ Commission Investigating the Death of Victoria Snelgrove, May 25, 2005.

³⁹ See manufacturer’s description of projectiles and safety warnings at <https://fnamerica.com/products/less-lethal/projectiles/>.

⁴⁰ International Association of Chiefs of Police, “Crowd Management” (2019), 8.

Appendix A: INCLC Recommendations on Use of Force from *Defending Dissent: Towards State Practices that Protect and Promotes the Rights to Protest*

- The use of firearms and live ammunition in the context of protests, particularly automatic firearms, should be prohibited.
- The use of CCWs which are indiscriminate in their nature, such as stun grenades and tear gas, should not be used for dispersion or generally in the context of protests.
- The use of force is subject to the principles of legality, necessity, proportionality, precaution, non-discrimination, and accountability, and should only be used in self defence or in defence of others facing an imminent threat to life or serious injury.
- Wherever possible, the use of dialogue and communication should always precede the use of force. Police commanders must be trained in dialogue and engagement and should use these tactics before any decisions are made to resort to the use of force.
- To ensure a graduated, necessary, and proportionate deployment of force, policing institutions may be provided with a range of tools that allow for such a response. This may include CCWs but only when they have been independently and thoroughly tested, are human rights-compliant, and where they are situationally appropriate.
- CCWs must not be misused or used as tools of intimidation.
- The use of armed or weaponised drones equipped to discharge CCWs must be prohibited pending further investigations into their compliance with international human rights law.
- Training on the use of crowd-control equipment and weapons should include: the impact and harm caused by each weapon or piece of equipment; the likely perceptions of and reaction to the use of each weapon, including the possible escalation in tensions; whether less harmful means are available to achieve the particular aim, and if not, whether the overall objective of the use of force is better achieved by not using the provided equipment.
- Any arrests or detentions that occur in the context of protests should be performed by police officials wearing appropriate uniforms and visible name tags. Prompt information on the place of detention should be provided to interested persons and access to legal services for the detainee must be ensured.
- Mass arrests are inherently indiscriminate and should be prohibited as they do not comply with the principles of necessity, proportionality, and legality.
- Dogs and horses can be indiscriminate tools and their use should be prohibited in the context of protests.
- In the event that people are injured or killed – or in any circumstance that requires investigation – a clear chain of custody of evidence must be established. Commands issued (including dispersal orders) must be documented, and all weapons used must be seized for the purposes of investigation.

Appendix B: Excerpted SPD Policies on Less Lethal Weapons and Crowd Management

The complete SPD department manual can be found at <https://www.seattle.gov/police-manual/>. OIG has copied the policies below for easy reference. All content is original to SPD.

8.300 – POL –5 Use of Force – Oleoresin Capsicum (OC) Spray

This policy applies to the use of OC spray by all sworn Department employees.

Oleoresin Capsicum spray (OC spray) is an inflammatory agent that causes an intense burning sensation of the skin, eyes, and mucous membranes. A one second burst applied directly to the face (direct exposure), even with glasses, will usually result in the immediate closing of the eyes. The individual's eyes will likely close, tear, and swell as a result. When inhaled (secondary exposure), the respiratory tract will likely become inflamed and temporarily restrict breathing to short, shallow breaths. The individual may experience choking, gagging, gasping for breath, or, on rare occasion, unconsciousness. The individual may experience nausea, lung pain, or temporarily impaired thought processes. The individual may become disoriented or lose his or her balance.

OC spray may reduce or eliminate the need for substantial physical force to make an arrest or gain custody. It may reduce the potential for injuries to officers and subjects.

1. Education & Training Section (ETS) Will Train and Certify Officers in the Use of OC Spray Every Two Years

The OC spray policy and training will incorporate the evolving guidance contained within the SPD Post-Basic Law Enforcement Academy course on less-lethal force as well as guidance from the medical community.

2. Officers Shall Only Use Department-Issued or Approved OC Spray

Officers will periodically check the manufacturer's date on their issued OC Spray container and if beyond five years, exchange for a new container from the stationmaster or quartermaster.

3. Officers Will Use OC Spray, Including for Crowd Dispersal or Protection, Only When Such Force is Objectively Reasonable, Necessary, and Proportional



See [8.050](#) for definition and explanation of “[objectively reasonable](#),” “[necessary](#),” and “[proportional](#)” force.

For use and reporting of OC spray in the context of crowd management, see [14.090 \(10\)](#).

a. OC Spray May Be Used Against a Dangerous Animal to Deter an Attack or to Prevent Injury to Persons Present

b. OC Spray Shall Not Be Used Unless the Use of Physical Force Is Necessary

4. When Feasible, Officers Shall Issue a Verbal Warning to the Subject, Fellow Officers and Other Individuals Present Prior to Using OC Spray

Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that OC spray will be used and defer using OC spray for a reasonable amount of time to allow the subject to comply with the warning.

Verbal warnings may come from any officer involved in the incident when employing a team tactics approach.

Exception: A verbal warning is not required if giving the warning would compromise the safety of the officer or others. In such circumstances, only the deploying officer should document his/her reason for believing his/her safety would have been compromised in his/her use of force statement.

A verbal warning is required if feasible and unless giving the warning would compromise the safety of the officer or others.

5. Officers Must Justify Each Separate Application of OC Spray

After the initial application of OC spray, each subsequent spray must also be reasonable and the employee should reevaluate the situation accordingly.

6. Officers are Required to Report the Use of OC Spray, Regardless of the Effect, as Well as the Decontamination Procedures That Followed

7. The Application of OC Spray on Persons in Restraints Such As Handcuffs Must Be to Protect an Officer or Member of the Public from Physical Injury

8. Officers Shall Direct OC Spray at the Specific Subject(s) Who are Posing a Threat

Officers deploying OC will attempt to minimize exposure to non-targeted parties.

9. Officers Shall Assist Exposed Subjects with Decontamination and Medical Aid, As Soon as Reasonably Possible

If the subject was exposed in a confined space, officers will remove the subject as soon as feasible from the contaminated area and expose the individual to fresh air.

Officers shall request medical response or assistance for subjects exposed to OC spray when requested by the subject, when the subject complains of continued effects after having been decontaminated, or the subject indicates that they have a pre-existing condition (such as asthma, emphysema, bronchitis, or heart ailment) that may be aggravated by OC spray.

Officers shall monitor exposed subjects for changes in their condition while in police custody and request medical evaluation as needed or as requested.

10. The Department Shall Maintain Written Documentation of the Number of OC Spray Canisters Annually Distributed to Each Employee

8.300 – POL –10 Use of Force – Blast Balls

This policy applies to the use of blast balls by all sworn Department employees.

1. Only Officers Who Have Completed Department Blast Ball Training are Permitted to Deploy Blast Balls

2. Officers Shall Only Use Department-Issued Blast Balls

3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional

When feasible, officers shall avoid deploying blast balls in the proximity of people who are not posing a risk to public safety or property.

4. When Feasible, Officers Will Not Deploy Blast Balls Until a Dispersal Order Has Been Issued to the Crowd, the Crowd Has Been Given a Reasonable Amount of Time to Comply, and a Supervisor Has Authorized the Deployment



Exception: Officers may reasonably deploy blast balls to address an imminent risk of harm to a person or significant property damage.

The preferred method of blast ball deployment is low deployment (“bowling style”). Officers may use a high deployment (“overhand throw”) when the need for a farther deployment or the need to get around an obstruction outweighs the risk created by the separating sub-munition. Officers must document their deployment method and the reasoning for using such in their use-of-force report.

5. Officers Must Justify Each Separate Blast Ball Deployment

After the initial blast ball deployment, each subsequent deployment must be reasonable and the employee should reevaluate the situation accordingly.

6. Officers Are Required to Report the Use of Blast Balls, Regardless of Whether a Subject is Struck

The deployment of blast balls away from people (i.e. a “bang out”) that does not result in any injury or complaint of pain is reported and investigated as Type I force (See [8.400](#)).

The deployment of blast balls within close proximity to people is reported and investigated as Type II force, even if no injury or complaint of pain or injury is reported (See [8.400](#)).

Exception: When the deployment of blast balls results in injury or complaint of injury that meets the criteria for a Type III investigation, the deployment is reported and investigated as Type III force (See [8.400](#)).

7. As Soon As Reasonably Possible, Officers Will Request and/or Render Medical Aid for Subjects Who Appear to Have Been Injured by a Blast Ball Deployment or Who Complain of Pain or Injury Resulting From a Blast Ball Deployment

8. The Department Shall Maintain Written Documentation of the Number of Blast Balls Annually Distributed to, and Utilized by, Each Employee

8.300 – POL-11 Use of Force– 40 mm Less Lethal Launcher

40 mm Less Lethal (LL) Launchers are designed to temporarily interrupt the behavior of a dangerous subject, so that officers can take enforcement action with



less danger of injury or death to themselves and others. The extended standoff distance that the 40 mm LL Launcher may decrease officers' exposure and may provide additional time to bring the situation to a safe resolution.

1. Education and Training Section (ETS) Manages the 40 mm LL Launcher Program

ETS maintains the 40 mm LL Launcher operator's manual.

2. The Firearms Training Squad (FTS) Will Maintain Inventory Records for 40 mm LL Launchers

3. ETS Trains and Certifies 40 mm LL Launcher Operators Annually

Exception: SWAT officers will certify annually through annual specialized unit training. The SWAT commander will forward training rosters to ETS within seven days of completion.

Only officers who have been trained and certified with the Seattle Police Department are allowed to use the 40 mm Less Lethal Launcher.

Officers may only use 40 mm LL Impact Munitions (LLIM) in a manner consistent with the Seattle Police Use of Force Policy and training provided by the Department.

4. Officers Who Have Been Trained, Certified and Issued a 40 mm LL Launcher Will Deploy with It During Their Shift

Officers deploying with a 40 mm LL Launcher will deploy with a primary less lethal device in accordance with [8.300 \(2\)](#)

5. Officers Deciding to Withdraw from the 40 mm LL Launcher Program Will Notify their Chain of Command and Return the 40 mm LL Launcher to the Range Armorer as Soon as Practicable

Officers will notify a supervisor, in person, that they have decided to no longer carry their 40 mm LL Launcher.

Additionally, officers will document the decision to no longer carry a 40 mm LL Launcher by emailing their chain of command and the Department 40 mm LL Launcher coordinator prior to deployment without their assigned launcher.

6. If the 40 mm LL Launcher Requires Inspection and/or Repairs, the Officer Will Notify their Supervisor and take the 40 mm LL Launcher Out of Service



Officers will email their supervisor, the 40 MM LL Launcher coordinator and the 40MM LL Launcher Armorer prior to deployment without their 40 mm LL Launcher.

7. Officers Will Only Use a 40 mm LL Launcher When Objectively Reasonable, Necessary, and Proportional

See [8.050](#) for definition and explanation of “[objectively reasonable](#),” “[necessary](#),” and “[proportional](#)” force.

Officers may use a 40 mm LL Launcher in the following circumstances:

- When a subject poses an immediate threat of harm to any person; or
- When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is

(1) likely to cause injury to the officer; or

(2) if hands-on control tactics or other force options would be likely to cause greater injury to the subject than the use of the 40 mm Less Lethal Impact Munition (LLIM).

Officers will consider Department training regarding deployment distances and target areas. Each situation must be evaluated on the totality of the circumstances at the time of the deployment.

8. When Feasible, Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Deploying the 40 mm LL Launcher

Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that a 40 mm LL Launcher will be used. Absent exigent circumstances, officers shall defer using the 40 mm LL Launcher a reasonable amount of time to allow the subject to comply with the warning.

Verbal warnings may come from any officer involved in the incident when employing a team tactics approach.

Exception: A verbal warning is not required if giving the warning would compromise the safety of the officer or others. In such circumstances, the deploying officer should document his/her reason for believing his/her safety would have been compromised in their use of force statement.



9. Officers Shall Consider the Risk of the 40 mm LLIM Round Causing Serious Harm When Determining Whether to Deploy

10. Officers Will Not Intentionally Target a Subject's Head, Neck or Genitals

Officers will not target the head or neck unless deadly force is justified.

11. Preferred Target Areas for 40 mm LL Launchers Are:

- Buttocks
- Thigh area
- Calf
- Large muscle groups

Officers shall collect and submit into evidence all primary components of the expended 40mm round to include the sponge nose cone with the rifling ring, and the casing.

12. Only Munitions Purchased, Authorized and Issued by the Seattle Police Department May Be Used by Officers

Officers deploying 40 mm LL Launchers are responsible for ensuring the proper munitions are loaded. Officers will inspect each 40 mm LLIM round prior to loading it into the launcher to ensure munitions adhere with this policy.

13. Officers will Securely Store 40 mm LL Launchers

While on duty, 40 mm LL Launchers will be secured in patrol vehicles when not in use.

When not on duty, Officer's will store 40 mm LL Launchers in a secure Department locker.

14. Only SWAT Officers Will Deploy 40 mm LL Launchers During Crowd Management Events

15. Officers Must Justify Each Separate 40 mm LL Launcher Use in Their Use-of-Force Statement

16. Officers Are Required to Report the Use of 40 mm LL Launcher as Force, Regardless of Whether a Subject is Struck

See [8.400-POL-1\(3\)](#)

Officers should also be prepared to employ other means to control the individual — including, if necessary, other force options consistent with Department policy—if the individual does not respond sufficiently to the LLIM and cannot otherwise be subdued.

17. Officers Will Summon Medical Aid as Soon as Feasible, Whenever a Subject Has Been Struck by a 40mm LL Launcher Round

18. The Firearms Training Section (FTS) Will Inspect 40 mm LL Launchers on an Annual Basis to Ensure That All Are Operable and Perform any Necessary Maintenance or Repairs

Exception: SWAT officers will inspect the 40 mm LL Launchers assigned to their unit on an annual basis.

14.090 – Crowd Management

It is the policy of the Seattle Police Department to facilitate free speech and assembly whenever possible, while preserving order and protecting persons and property. This manual section governs the Department's response to such events when transportation and public safety considerations are best served by a police presence.

1. The Department Uses the Incident Command System (ICS) for Crowd Management

When assigned, an Incident Commander will oversee the Department's response before, during and after an event.

- The Incident Commander may delegate authority and assignments.

2. The Incident Commander Will be a Sergeant or Above

- **Exception:** An officer can serve as Incident Commander until a sergeant can respond.



- A lieutenant will assume command when there are two sergeants and/or two squads involved in the event.
- A captain will assume command when there are two lieutenants involved in the event.
- For more information, see [Manual Section 1.020 – Chain of Command](#).

3. As Far in Advance of the Incident as Possible, the Incident Commander Will Coordinate with the Appropriate Department Resources to Obtain Information to Assist with Operational Planning and Staffing

4. The Incident Commander May Consider Utilizing Specialty Units, Based on Operational Needs

In the event of an unplanned crowd management event, the Incident Commander shall request SWAT when feasible.

See [14.090-TSK-1](#) Responsibilities of the Incident Commander.

5. The Incident Commander Will Determine Minimum Staffing for Crowd Management Events

- The Incident Commander will base staffing levels on the projected number of event participants and any pre-event information indicating potential violence.
- The Incident Commander will develop contingency plans regarding staffing and tactics.
- When feasible, the Incident Commander will provide the staffing plan to the SPD Budget Section prior to the incident.

6. The Incident Commander Will Deliver Event Briefings Using a Standardized Format ([SPD ICS Briefing Format](#))

7. The Incident Commander Will Communicate Each Unit's Mission to That Unit's Supervisor or Commander

The involved unit's supervisor or commander will develop the specific methods or tactics that will be used to accomplish the mission. See [14.090-TSK-2](#) Responsibilities of the Supervisor.

- The unit supervisor or commander will submit all unit plans to the Incident Commander, who will approve or modify the plans to accomplish the overall mission, with any modifications communicated back to the unit supervisor or commander.

8. The Incident Commander Retains Ultimate Responsibility for the Decisions of Subordinates

In order to fulfill this obligation, the Incident Commander will be available for on-scene consultation.

9. Crowd Dispersal

a. Upon Determining That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk of Causing Injury to Any Person or Substantial Harm to Property, the Incident Commander May Order That the Crowd Be Dispersed

See [SMC 12A.12.020](#)

Before ordering that the crowd be dispersed, the Incident Commander shall consider whether less restrictive means of crowd management are available. Such means may include strategies such as area denial and/or seeking voluntary compliance.

Upon determining that dispersal is appropriate, the Incident Commander shall ensure that there is an avenue of egress sufficient to allow the crowd to depart.

The Incident Commander or designee will issue the order to disperse prior to instructing officers to disperse the crowd, if feasible.

See [14.090-TSK-3](#) Issuing the Order to Disperse.

b. The Incident Commander Shall Have Authority to Direct the Use of Blast Balls and OC Spray to Disperse the Crowd (See Manual Section 8.300 – Use-of-Force Tools)

A lieutenant may authorize the use of blast balls and OC spray to disperse a crowd if an immediate life safety emergency exists that requires this action be taken and there is insufficient time to obtain incident command approval.

- An immediate life safety emergency is an unplanned, dynamic situation where immediate police action is necessary to protect the officers' and/or the public's safety.



- Only personnel trained to deploy patrol CART tools (blast balls and OC spray) are authorized to carry and use these tools under the supervision of a CART-trained supervisor, unless otherwise directed by the Incident Commander.

When feasible, officers will not deploy blast balls and OC spray until a dispersal order has been issued to the crowd and the crowd has been given a reasonable amount of time to comply.

When feasible, officers shall avoid deploying blast balls and OC spray in the proximity of people who are not posing a risk to public safety or property.

The deployment of blast balls away from people (i.e. a “bang out”) is reported and investigated as Type I force. Deployments in the vicinity of people may be categorized as Type II or Type III force, depending upon the circumstances of the deployment and the resulting injury. (See Manual Section 8.400 regarding force classification.)

c. Each Precinct Will Maintain a Supply of Blast Balls and OC Spray

Each precinct will maintain a log of the serial number of each blast ball in its supply. Blast balls will be issued, by serial number, to specific officers as needed. Officers will be responsible for each blast ball that they are issued. Officers will return unused blast balls after the event, and will provide the event number related to any deployments.

After a crowd management event, the Department blast ball coordinator will be responsible for ensuring that the precinct log is reviewed to verify whether all deployed blast balls were reported.

d. The Incident Commander Will Deploy Department Personnel to Accomplish Specific Tactical Objectives Consistent with ICS

10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force

The authorized use of OC in crowd management situations involving violent activity shall have as a primary objective at least one of the following:

- Defend oneself
- Defend someone else



- Prevent significant destruction of property

a. OC Will be Directed at the Specific Suspect(s) who are Posing a Threat

When feasible, officers shall issue a verbal warning to the suspect(s), other officers, and other individuals present, that OC spray will be used. When feasible, officers will wait a reasonable amount of time to allow the suspect(s) to comply with the warning before using OC spray.

Officers deploying OC will attempt to limit collateral exposure to non-involved parties.

- If there is probable cause to arrest for a crime, it is a priority for officers to arrest individuals against whom OC has been deployed.

b. Officers Will Provide Aid to Subjects Exposed to OC and/or Blast Balls, if Feasible

Officers will request medical response or assistance for subjects exposed to OC when they complain of continued effects after having been decontaminated, or they indicate that they have a pre-existing medical condition (e.g. asthma, emphysema, bronchitis, heart ailment, etc) that may be aggravated by OC.

Officers will request medical response or assistance for subjects who appear to have been injured by a blast ball or who complain of pain or injury from having been struck by a blast ball.

11. Incident Commanders and Officers Must Document Uses of Force

- The Incident Commander authorizing the use of less-lethal tools must justify that decision in a Use-of-Force Report, with a copy submitted to the relevant Bureau Commander in addition to the normal routing.
- Officers shall individually justify and document all reportable uses of force consistent with Manual Section 8.400 - Use-of-Force Reporting and Investigation.

12. Following the Event, Sergeants and Incident Commanders Will Conduct a Day-of-Event Debrief

- Sergeants will conduct a debriefing of their assigned officers and document any observations or suggestions on an Event Debrief Form (form 23.5).



- Sergeants and the Incident Command staff will then have a separate debrief to discuss the following subjects:

- Event staffing
- Deployment
- Command issues
- Communication issues
- Logistical issues
- Use of less-lethal tools
- Areas of success
- Areas for improvement

13. Incident Commander Will Complete an After-Action Report (See: 14.010-After-Action Reports)

14. Uses of Force that Occur During the Course of Crowd Management Are Reviewed in Accordance with [Manual Section 8.500-POL-6](#).

14.90 -TSK-1 Responsibilities of the Incident Commander

During the course of managing a crowd, the Incident Commander:

1. If feasible, **contacts** the event organizer to discuss the Department response
2. **Develops** contingency plan regarding staffing and tactics
 - SPD task force callout criteria
 - Mutual aid callout criteria
3. **Considers** utilizing specialty units
 - Bicycle units for marches or mobile protests



- Officers on foot for static events, or to function as arrest teams or bicycle unit support for marches or mobile protests
 - Mounted patrol for static events, marches or mobile protests
 - Video Unit for events where information indicates that civil disobedience or crowd violence will occur (Recordings must be in compliance with [SMC 14.12 – Collection of Information for Law Enforcement Purposes.](#))
 - Special Weapons and Tactics (SWAT) officers to use less-lethal launchers and tools that are approved for use solely by the SWAT team
 - CART-trained officers when there is insufficient time to deploy SWAT
 - Prisoner processing for events where information indicates civil disobedience or crowd violence will occur
 - Intelligence Unit resources when there is a need for ongoing information gathering and dissemination during the event
 - SPOC for planning and logistical support
4. **Provides** a staffing plan to the SPD Budget Section, if feasible
 5. **Communicates** each unit’s mission to the relevant supervisor or commander
 - a. **Instructs** the supervisor or commander to develop and provide plans
 - b. **Approves** unit plans
 6. **Briefs** officers and supervisors using the SPD ICS briefing format
 7. **Remains** available for on-scene consultation
 8. Debriefs supervisors and commanders following the event
 - a. **Collects** Event Debrief Forms from the supervisors
 9. **Completes** an After-Action Report consistent with the requirements of Manual Section [14.010 – After-Action Reports](#)



- b. **Routes** the After-Action Report and Event Debrief Forms to the Patrol Operations Bureau Commander, via the chain of command

14.90 –TSK–2 Responsibilities of the Supervisor

The supervisor:

1. **Develops** methods or tactics that will be used to accomplish the mission, as directed by the Incident Commander
 - a. **Submits** plans to the Incident Commander
2. **Debriefs** assigned officers after the incident
3. **Documents** observations and suggestions on an Event Debrief Form (form 23.5)
 - a. **Submits** Event Debrief Forms to Incident Commander
4. **Attends** separate debrief with Incident Commander

14.90 –TSK–3 Issuing the Order to Disperse

Upon determining that the crowd presents an imminent risk to public safety or that large-scale property destruction appears likely, the Incident Commander, as feasible:

1. **Considers** placing officers at the rear of the crowd to verify that the order to disperse will be heard by all
2. **Issues** the following order:

“I am (rank and name) of the Seattle Police Department. I am now issuing a public safety order to disperse and I command all those assembled at (specific location) to immediately disperse, which means leave this area. If you do not do so, you may be arrested or subject to other police action. Other police action could include the use of chemical agents or less-lethal munitions, which may inflict significant pain or result in serious injury. If you remain in the area just described, regardless of your purpose, you will be in violation of city and state law. The following routes of dispersal are available: (routes). You have (reasonable amount of time) minutes to disperse.”
3. **Allows** a reasonable amount of time for the crowd to disperse



4. **Repeats** the order to disperse, if feasible

5. **Continually assesses** the balance of dispersal time and the goal of retaining control of the situation



Our City. Our Safety. Our Police. Better Together.

May 19, 2015

VIA EMAIL

Chief Kathleen O'Toole
Seattle Police Department

RE: SPD Response to Post-Ferguson and Black Lives Matter Demonstrations

Dear Chief O'Toole,

As you know, the Community Police Commission (CPC) solicited community input on the Seattle Police Department (SPD)'s response to "Black Lives Matter" demonstrations in December 2014 and January 2015. The input was gathered at a CPC meeting in January and a listening session in February. Since then, we've reviewed additional witness statements received by the Public Defender Association as well as publicly-available video and statements by police officials.

Before finalizing this letter, we wanted to consider the views of SPD officers and sergeants involved in the police response to the demonstrations, so we prepared a survey to solicit that input. We are still in dialogue with SPD about the content of that survey. If it is distributed, we will supplement this letter, as appropriate, with additional information provided by the SPD units that were involved in these events. We fully recognize that a complete understanding of events, and how these situations can go better in the future, requires an appreciation of what occurred and why from the perspective of officers.

Nonetheless, in light of current conversations about events on May Day 2015, we believe it is constructive to send our observations about the policing of protests this past winter without further delay. Many of the issues we identified appear similar to points being publicly discussed in the context of May Day. Thus, a structured dialogue about the issues that arose during the Black Lives Matter demonstrations of this past winter may be illuminating and constructive as May Day events continue to be examined in the media and in court. We urge SPD and other City officials and parties to the police reform effort to join us in a structured, public conversation of the points we identify below.

We acknowledge that others in the community have applauded SPD's approach based either on personal observations or media reports. We further understand that many, including some CPC members, are critical of various tactics employed by some demonstrators, and that these tactics may, in some instances, have placed SPD in challenging situations where no choice would be well received.

However, we are the Community *Police* Commission, charged with providing a robust community voice regarding police practices, because of the unique powers entrusted to law enforcement. If CPC members have critical reactions to the conduct of some demonstrators, we will share those in our individual capacity in settings appropriate to our individual positions in the community. Our collective job as a Commission is to shed light and suggest improvements to *policing* practices.

The CPC's method has always been to create a forum in which people with different views about the legality or appropriateness of certain police practices can come together in support of new approaches that avoid the negative consequences for community trust that flow from certain policing choices, even if those choices are valid and lawful. Here, we hope to engage SPD, City officials and community members in a process that identifies any demonstration command level decisions and policing practices that are unnecessarily destructive to community trust.

As mentioned previously, the CPC's charge is to represent a broad range of community perspectives and to reach out and engage communities directly, get critical feedback, and recommend changes to SPD policies and practices. We are not an investigative body; rather, the CPC gives community members a voice and stake in systemic reform efforts.

The structured dialogue we propose to address issues regarding policing of demonstrations would not be an open comment format. Members of the public have participated in several such sessions at this point. Those who attended our meeting in January and our listening session in February stressed that, while they appreciated the chance to share their experiences, they are now ready to see a meaningful response. Thus, we plan a session in which the CPC will present key questions and SPD will be invited to respond, after which we'll host a strategy session focused on possible changes that may yield better outcomes going forward. The public will then be in a position to assess our collective response to this situation.

The CPC hosted a public forum on Friday, February 6 at the New Holly Gathering Hall to hear firsthand the concerns and experiences of those who participated in the Seattle post-Ferguson and Black Lives Matter demonstrations. The forum was attended by about 50 people. A number of individuals provided testimony, and several video recordings of interactions between protesters and the police were shown.

In addition, we have collectively or individually reviewed publicly-available video of various incidents in December 2014 and January 2015, and we've received redacted summaries of witness statements¹ collected by the Public Defender Association in the aftermath of Black Lives Matter demonstrations this winter. These sources point toward the following areas as key issues generating (possibly avoidable) conflict and mistrust:

1. *Movement control and permitting selective access depending on perceived affiliation with a demonstration.* A critical mass of participants and observers report marches and marchers being herded or directed away from their intended destinations, particularly downtown Seattle, often toward Capitol Hill. This practice is experienced as frustrating the legitimate speech goals of the demonstration, and as elevating business interests downtown over the free speech rights of demonstrators, which was felt to be particularly egregious when the concerns of marchers pertained to the life chances and physical safety of black people in police encounters. There are many reports of individuals participating in peaceful marches, or from bystanders, about having their freedom of movement restricted for short or long periods when they were not under arrest. It is not clear what, if any, legal authority permits such police restraint on movement for individuals who have committed no crime and are not being investigated on suspicion of a crime. There is also a perception from first-hand observers that individuals were permitted to move toward downtown Seattle only if police perceived that they were not affiliated with the demonstrations – in other words, that freedom of movement depended on perceived political views.
2. *Inaccurate statements made by SPD leadership.* Given the widespread understanding that movement of marchers was at times curtailed or directed by SPD, statements by Deputy Chief Best at a [City Council meeting on January 12](#) that this did not occur² were often cited as diminishing public trust. Other SPD statements viewed as inaccurate, partial or misleading were also cited as compromising public confidence, particularly initial SPD descriptions of an “assault” on an officer who (as seen on subsequently-released video) fell during a march on Martin Luther King Day. We are not aware of any official SPD statements acknowledging mistakes or actions that in retrospect were ill-advised, even if that critical self-examination is going on out of the public view; nor were the statements noted above ever corrected publicly by SPD, so far as we are aware (we are aware that SPOG President Ron Smith did publicly correct his initial statements about the officer being assaulted on Martin Luther King Day). Thus, the overall public impression is that every SPD decision in the demonstrations of this winter is one that may be repeated despite any negative impact on community trust, because there has been no public acknowledgment of the validity of any concerns or complaints by demonstrators.
3. *Targeting specific individuals such as leaders of demonstrations.* Several witnesses and observers had the impression that march organizers and leaders were targeted for arrest, and some incident reports buttress this belief. That impression exacerbates the feeling that SPD is trying to

¹ See Appendices A-L in a separate attachment to this letter.

² See 1:22:44, <http://www.seattlechannel.org/CouncilBriefings/?videoid=x30703>. The full question and answer starts at 1:22:08.

demobilize the entire demonstration or group, rather than making enforcement actions based on the alleged criminal behavior of particular individuals, which many participants state they would understand or even support.

4. *Out of policy/harmful use of pepper spray, blast balls and other projectiles.* As we discussed in our May 13 meeting, current SPD policy with regard to use of projectiles and pepper spray in crowd management and demonstration situations either provides insufficient guidance to officers about when these tools should be used, or they appear to be used frequently outside of policy. Demonstrators and observers described instances where peaceful demonstrators who posed no threat and were dispersing were sprayed with pepper spray, and the same can be observed in a variety of videos. Use of blast balls in the immediate vicinity of a mass of demonstrators was reported, and we saw on May Day that these projectiles cause significant and painful injury. The CPC suggests that policy in this area requires immediate review, public discussion and clarification, so that individuals participating in free speech and assembly do not feel that they risk serious physical injury just by showing up to participate in a march.
5. *Unnecessary use of intimidating tactics.* Many observers and participants in the Black Lives Matter marches commented that SPD's appearance in hardened gear or "riot gear," as well as the sheer number of officers deployed at relatively small events and marches, sent a clear message that the department viewed them, and possibly their issue, as a threat.
6. *Disparate responses to demonstrators of different racial and perceived political identities.* We heard reports of some white demonstrators engaged in intentional blocking of traffic who apparently were not viewed as problematic or in need of removal by SPD, while others who were doing nothing except walking, standing or even leaving a march were blocked, removed, or sprayed with pepper spray. The different responses were felt by some to pertain to the demonstrators' racial or perceived political identities. In one arrest of a march leader, video appears to capture an officer using a racial or ethnic slur in reference to the leader who was arrested.

The CPC is deeply aware of the complexity of these types of situations. We know, for example, that SPD was under significant pressure from Seattle residents and businesses to keep protests to a minimum and away from certain geographic locations. This was evident in a letter sent by the Downtown Seattle Association requesting that SPD shut down any public responses that were occurring without a permit. We also know that not all officers engaged in the concerning behaviors outlined above. Some officers can be heard on video acknowledging that tactics they were directed to use were unwise and causing problems. Finally, many commended the strikingly different approach SPD took to the "golf club" protest in support of William Wingate in February 2015.

We believe it is in the interests of our entire community, as well as SPD, to identify any policing practices that unnecessarily diminish community trust and exacerbate conflict, and to identify alternative approaches that would diminish tension between the police and demonstrators and their supporters. We suggest that the SPD and the CPC jointly request the Department of Justice Community Relation Services convene the planned structured dialogue to strategize these alternative approaches. In addition, the CPC will "curate"

key issues to be presented to SPD, and provide notice of those in advance so the Department can be prepared to engage them. Finally, the CPC requests to be included in the revision of SPD's crowd management policy, where many of these issues can and should be addressed.

The CPC would be happy to coordinate with SPD on these requests as soon as possible, which we see as critical to improving police-community relations and working towards mutual trust.

Sincerely,



Rev. Harriett Walden, Co-Chair
Community Police Commission



Lisa Daugaard, Co-Chair
Community Police Commission

Cc:

Mayor Ed Murray

Merrick Bobb, Monitor

J. Michael Diaz, U.S. Attorney's Office

Tim Mygatt, DOJ Civil Rights Division

Seattle City Attorney Peter Holmes

Seattle City Council

Seattle Community Police Commission



Our City. Our Safety. Our Police. Better Together.

June 13, 2016

VIA EMAIL

Councilmember M. Lorena González, Chair, Safety Communities Committee
Councilmember Lisa Herbold, Chair, Civil Rights Committee
Council President Bruce Harrell
Chief Kathleen O’Toole, Seattle Police Department
Mayor Ed Murray
OPA Director Pierce Murphy
OPA Auditor Anne Levinson

Greetings:

We write to request immediate and public review of the Seattle Police Department (SPD)’s policy with regard to the use of “blast balls.” Until such time as blast balls’ propensity for causing injury (including specific evidence from the past two years in Seattle), and their appropriate use given that risk, have been publicly weighed, we ask that SPD suspend their use.

We appreciate that SPD is confronted with a challenging dynamic in certain unpermitted demonstrations, in which a subset of those assembled engage in property destruction and commit assaults, including against officers, and where SPD has no designated demonstration leaders with whom to rapidly work out a plan to minimize destruction and harm. Our impression is that, overall, in recent marches, SPD has respected legitimate speech rights, including of demonstrators without a permit, so long as there are not significant instances of property damage or assault.

We also appreciate that, upon learning of our concerns, SPD leadership immediately agreed to meet and discuss the situation. We have no reason to think the department will not participate sincerely and meaningfully in discussions about the risks and appropriate use of blast balls.

That said, in our collective view, in light of documented serious injuries to bystanders and observers, these weapons should not be used again before their risks and appropriate use have been more openly reviewed.

We appreciated the opportunity to review a draft of the SPD crowd management training prior to May Day 2016, which SPD took the initiative to arrange. During our review, CPC members suggested changes based on the following two observations: 1) the consequences of using blast balls were minimized, and 2) de-escalation principles in a mass context were not emphasized clearly enough. While we don’t have firsthand knowledge of whether the changes we recommended were incorporated into the training (we were not permitted to observe the training), the injuries incurred by numerous non-violent observers on May Day 2016 indicates that further examination of the use of these tools is warranted.

Over a year ago we wrote the attached letter to Chief O’Toole after conversations with many people about how Black Lives Matter demonstrations were handled by SPD. We identified six issues that seemed to warrant high-level review, including “out of policy/harmful use of pepper spray, blast balls and other projectiles.” We noted that similar concerns arose from SPD’s handling of incidents on May Day 2015. It now seems evident from publicly available information that blast balls injured several people on May Day 2016, including several individuals who were reporting on or documenting events. Some of these injuries were serious.

In response to our letter of a year ago, SPD arranged for the Center for Policing Equity (CPE) to review their policing of demonstrations, a plan we welcomed. Members of the CPE team met with some community members, including some demonstrators, and heard a sampling of community views. CPE was also provided with all of the letters and comments gathered by the CPC last year. In addition, we understand that use of force experts working with CPE examined SPD’s past use of blast balls in the demonstration context. However, the CPE review has not proceeded in a timely manner, though we understand that this is not in SPD’s control as CPE was working without charge. Nor has CPE facilitated a more open community conversation that many involved in street demonstrations, including some who attended the invitation-only focus group sessions, called for. Despite what we believe are good intentions, SPD’s commitment to obtain feedback from the public on this topic has not been fully fulfilled through that process.

Due to this series of events, we reiterate the need we identified in May 2015 for a structured conversation in which the police and community members may together explore these issues. We again offer to convene that conversation unless an alternate forum is provided by the Council or other City leaders. Following that dialogue, we likely will offer recommendations for the use of blast-balls and the appropriate use of de-escalation tactics in crowd management situations. Until this can occur, we ask that the use of blast balls as a crowd management tool be suspended.

Sincerely,



Rev. Harriett Walden, Co-Chair
Community Police Commission



Lisa Daugaard, Co-Chair
Community Police Commission

Cc:
Brian Maxey, SPD Chief Operating Officer
Community Police Commission

Amendment #1

to

CB #119805 – LEG Crowd Control Weapons (CCWs) prohibition ORD

Sponsor: CM Herbold

Amends recitals, Identifies exceptions to CCWs, Requests accountability agency recommendations, requests notification of the DOJ, Court and Monitor and make various technical adjustments

Underline indicates new language
~~Strikethrough~~ indicates deleted language

1. Amend recitals as follows:

WHEREAS, testimony from protestors and other protest witnesses, along with ~~video~~ evidence complaints filed with the Office of Police Accountability ~~has shown~~ suggests that some ~~the~~ SPD officers were instigating and escalating violent confrontations with these protests; and

2. Add recital as follows:

WHEREAS, the Office of the Inspector General in a June 12, 2020 Report, Attachment 1 to this ordinance, notes “In its preliminary research, OIG did not find credible external sources advocating a blanket ban,” and that “This summary is a preliminary report, as OIG is continuing to gather and synthesize information about use of crowd management tools by SPD. Analysis of the sufficiency and appropriateness of SPD policy and training related to crowd management will be a forthcoming product”; and

3. Amend Section 1 as follows:

Section 1. A new Section 3.28.146 of the Seattle Municipal Code is added to Subchapter I of Chapter 3.28 as follows:

3.28.146 Prohibition of the use of crowd control weapons

Greg Doss

Date: June 15, 2020

Version: D1a

A. Unless exempted or excepted, no City department shall own, purchase, rent, store, or use crowd control weapons.

B. Law enforcement agencies operating under mutual aid agreements are prohibited from using crowd control weapons while rendering aid to the Seattle Police Department. ~~or acting in an official capacity within Seattle.~~ Seattle Police Department mutual aid agreements for crowd control must prohibit other law enforcement agencies from using crowd control weapons for the purpose of crowd dispersal.

C. As used in this Section 3.28.146, “crowd control weapons” means 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 ~~has the potential~~ is designed to cause pain or discomfort.

~~D. Oleoresin capsicum (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.~~

D. 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, is not a crowd control weapon for the purpose of owning, purchasing, renting, or

Greg Doss

Date: June 15, 2020

Version: D1a

storing under subsection 3.28.146.A if the device is used for a purpose other than crowd dispersal.

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 against that person 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. This does not preclude any other legal recovery or process available to a person under federal and state law.

4. Add a new Section 2 as follows and renumber sections as needed:

Section 2. Consistent with the advisory roles established in the Accountability Ordinance (Ord. 125315), subsection 3.29.030.B, the Office of the Inspector General for Public Safety, the Office of Police Accountability, and the Community Police Commission are each requested to make a formal recommendation to the City Council on whether the Seattle Police Department should be reauthorized to use less-lethal weapons for crowd dispersal purposes. The recommendation shall include: 1) suggested policy revisions to the Seattle Police Department manual for use of less-lethal weapons for the purpose of crowd dispersal; and 2) identification of a crowd dispersal authorization process that requires Executive approval and reflects best practices in policing to minimize harm to protesters. The recommendation shall be provided no later than August 15, 2020.

Greg Doss

Date: June 15, 2020

Version: D1a

5. Add a new Section 3 as follows and renumber sections as needed:

Section 3. 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, the Court, and the Monitor.

6. Add a new Section 4 as follows and renumber sections as needed:

Section 4. Council will engage with the Labor Relations Director and staff as they work with the City's labor partners in the implementation of this prohibition.

7. Add Attachment 1: Less Lethal Weapons in Protests, Office of the Inspector General for Public Safety, June 12, 2020

Effect: The memo makes the following changes to CB 119805:

1. Amend WHEREAS statement on SPD escalation of crowd violence.
2. Add WHEREAS statement reflecting findings from June 12, 2020 OIG Report: Less Lethal Weapons in Protests.
3. Make the following changes to Section 1:
 - a. Exempt from the prohibition of CCWs any device that meets the definition of a CCW but is not used for crowd dispersal purposes.
 - b. Makes technical and legal changes.
4. Requests that the Seattle police accountability agencies provide by August 15, 2020 a recommendation on use of CCWs for crowd dispersal.
5. Requests that notice of this prohibition be given to the Department of Justice, the Court, and the Monitor in accordance with the Consent Decree. (United States of America v. City of Seattle, 12 Civ. 1282 (JLR)).
6. Expresses Council's intent to support Labor Relations in the implementation of this prohibition.
7. Adds Attachment 1: Less Lethal Weapons in Protests, Office of the Inspector General for Public Safety, June 12, 2020.

Amendment #2

to

CB #119805 – LEG Crowd Control Weapons (CCWs) prohibition ORD

Sponsor: CM Sawant

Amends recitals, Identifies exceptions to CCWs, Makes various technical adjustments

Underline indicates new language
~~Strikethrough~~ indicates deleted language

1. Amend recitals as follows:

WHEREAS, ~~testimony from~~ protestors and other protest witnesses have provided statements and video evidence backing up claims that SPD officers used crowd control weaponry to escalate along with video evidence has shown the SPD instigating and escalating violent confrontations with these protests; and

2. Amend recitals as follows:

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

3. Amend Section 1 as follows:

Section 1. A new Section 3.28.146 of the Seattle Municipal Code is added to Subchapter I of Chapter 3.28 as follows:

3.28.146 Prohibition of the use of crowd control weapons

A. Unless exempted or excepted, no City department shall own, purchase, rent, store, or use crowd control weapons.

Greg Doss

Date: June 15, 2020

Version: D1a

B. Law enforcement agencies operating under mutual aid agreements are prohibited from using crowd control weapons while rendering aid to the Seattle Police Department or acting in an official capacity within Seattle.

C. As used in this Section 3.28.146, “crowd control weapons” means 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 ~~has the potential~~ is designed to cause pain or discomfort.

D. Oleoresin capsicum (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. It is~~ used for crowd dispersal purposes.

Effect: The memo makes the following substantive changes to CB 119805:

1. Amends WHERAS statement on SPD escalation of crowd violence.
2. Makes the following changes to Section 1:
 - a. Exempts from the prohibition of CCWs OC spray when it is used: 1) at a demonstration, rally or First Amendment event; or 2) for crowd dispersal purposes.
 - b. Makes technical and legal changes.



Legislation Text

File #: CB 119803, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE requiring that certain uniformed peace officers do not cover with a mourning band the serial number that is engraved on their badge; amending Section 3.28.130 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

WHEREAS, the City of Seattle has a history of promoting trust and cooperation in the interactions of its citizens with the police; and

WHEREAS, anonymous actions by individual uniformed peace officers interfere with and damage this trust and cooperation and harm the integrity of the City's police department; and

WHEREAS, the Seattle City Council passed on September 25, 2000 legislation that requires police officers to wear unobscured name tags that display an officer's first initial and last name; and

WHEREAS, law enforcement officers commonly cover the middle of their badge with a black band, known as a mourning band, to honor officers lost while serving their community; and

WHEREAS, the mourning band will often cover the badge's serial number, which can be used by a citizen to identify an officer; and

WHEREAS, officer name tags are not always visible to citizens that are interacting with officers in crowds such as those that are present at protests and other large events; and

WHEREAS, citizens that have participated in the rallies and demonstrations protesting the murder of George Floyd have indicated that they have been unable to identify officers because they could not see a name tag and that the officer's badge serial number was covered with a mourning band; and

WHEREAS, the City Council overwhelmingly supports the police tradition of using a mourning band to commemorate fallen officers, but also acknowledges that mourning bands are currently preventing citizens from identifying officer badge numbers;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City Council finds and declares that:

A. On Monday, May 25, 2020 in Minneapolis, Minnesota an African American resident, George Floyd, was killed during an arrest.

B. On Friday, May 29, 2020 Seattle citizens held multiple rallies and demonstrations to protest police brutality. While most protests were peaceful, some protesters caused property damage to storefronts. Seattle Police Department officers used pepper spray and flash bang devices to disperse the crowds. The Office of Police Accountability received a complaint of an officer on Friday punching a person on the ground who was being arrested.

C. On Saturday, May 30, 2020 the Seattle Emergency Operations Center activated to support response in coordination with multiple city departments for several scheduled marches and rallies throughout Saturday evening. While the majority of people demonstrated peacefully, there were incidents of burning, looting, and vandalism of multiple vehicles and businesses into the evening hours. In response to these acts, Mayor Durkan issued an emergency order imposing a curfew at 5 p.m. Mayor Durkan also proclaimed in an order issued at 4.58 p.m. that a civil emergency existed in the City of Seattle. Seattle police officers blocked off streets and used pepper spray and flash bang devices to disperse crowds. The Office of Police Accountability received complaints of a pepper spraying of a young girl and placing of a knee on the neck area of two people who had been arrested.

D. On Sunday, May 31, 2020, Mayor Durkan imposed a 5 p.m. curfew. A largely peaceful demonstration marched that evening between downtown Seattle and the Capitol Hill area, while police later

deployed flash bang grenades to disperse people they said had begun to throw rocks and bottles at officers. Demonstrators reported being pepper sprayed when they got close to police lines and said that officers with bicycles pushed people to move back. The Office of Professional Accountability received a complaint of an officer on Sunday punching a person on the ground who was being arrested.

E. On Monday, June 1, 2020 amid a continuing evening curfew, demonstrations continued and remained mostly peaceful throughout the afternoon and into the evening as groups called for racial justice and police accountability in gatherings across the city. At 9 p.m. in Capitol Hill, the Seattle Police Department declared a riot and used tear gas and flash bang devices on crowds near the department's East Precinct.

F. On Tuesday, June 2, 2020 amid a continuing evening curfew, protests remained peaceful until 11:30 p.m., when police used tear gas and flash bang devices in the Capitol Hill area while also clearing an intersection at 11th Avenue and Pine Street, where protesters and police had earlier stood for hours, separated by barricades.

G. On Wednesday, June 3, 2020 the City Council Public Safety and Human Services Committee held a special meeting to hear from City leaders and from a panel of citizens that had been involved in the protests over the preceding days. The Director of the Seattle Office of Police Accountability indicated that over 15,000 police misconduct complaints had been received by his office. Members of the citizen panel indicated that they could not always identify officers because they could not see the name tags and because the badge serial numbers were covered with a mourning band. Amid peaceful protests outside of City Hall, Mayor Durkan lifted the curfew in Seattle, allowing demonstrations to continue into the evening.

H. This ordinance is necessary to become effective immediately to preserve public peace and safety. Keeping officers' badge numbers visible in additional protests on behalf of George Floyd will ensure that protesters are able to identify officers when name tags are not visible.

Section 2. Section 3.28.130 of the Seattle Municipal Code, enacted by Ordinance 120096, is amended as follows:

3.28.130 Certain uniformed Seattle Police Department peace officers required to wear identification and orally identify themselves((-))

A. Every Seattle Police Department peace officer shall, when wearing a Seattle Police Department uniform, also wear a Seattle Police Department authorized and issued badge, name tag or similar identification device bearing that officer's first initial and last name in legible block print of at least 24-point typeface. This requirement shall apply whether or not such officer is on duty.

B. No Seattle Police Department peace officer required to wear a badge, name tag, or similar identification device pursuant to ~~((Subsection))~~ subsection 3.28.130.A ~~((herein))~~ shall alter or obscure such badge, name tag, or device. This requirement shall not apply to a mourning insignia worn on a Seattle Police Department badge, provided that the mourning insignia is not worn over the serial number that is engraved on the badge.

C. All badges, name tags, or similar identification devices required pursuant to ~~((Subsection))~~ subsection 3.28.130.A ~~((herein))~~ shall be worn on the outermost layer of the Seattle Police Department peace officer's uniform, in the upper-front torso area. The outermost layer of such officer's uniform must also identify the name of the officer's law-enforcement agency.

D. In situations where it is reasonably foreseeable that a Seattle Police Department peace officer required to wear a badge, name tag, or similar identification device pursuant to ~~((Subsection))~~ subsection 3.28.130.A ~~((of this section))~~ may remove the outermost layer of the officer's uniform, then that officer also shall wear such a badge, name tag, or device in the required location on any underlying layer of ~~((his or her))~~ the uniform that may become the outermost layer.

E. When required to wear a badge, name tag, or similar identification device pursuant to ~~((Subsection))~~ subsection 3.28.130.A ~~((herein))~~ and, upon request for identification by a member of the public, a Seattle Police Department peace officer shall clearly and audibly state ~~((his or her))~~ the officer's name to the requesting person. The requirements of this ~~((Subsection))~~ subsection 3.28.130.E shall not apply when the officer

reasonably believes that such identification would endanger the life or physical safety of the officer or another person, jeopardize a law((-)enforcement investigation, or hinder a law enforcement function.

F. For purposes of this Section 3.28.130, "uniform" is defined to include, in addition to its normal meaning, any law((-)enforcement agency issued or approved coat, jacket, sweater, jumpsuit, or protective suit that may be worn as an outer layer of clothing or in conjunction with a uniform, but shall not include civilian attire worn by plain-clothes or undercover officers.

G. For purposes of this Section 3.28.130, "peace officer" includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially((-)commissioned Washington peace officer as defined in RCW 10.93.020.

H. This Section 3.28.130 shall not be construed to prohibit the Seattle Police Department from implementing or enforcing any policy, procedure, or rule that is not inconsistent (~~(herewith)~~) with this Section 3.28.130.

I. Nothing in this Section 3.28.130 (~~(or elsewhere in CB 113332)~~) shall be construed to affect the authority of any peace officer to enforce the traffic, criminal or other laws in the City of Seattle, pursuant to (~~(RCW Ch.)~~) chapter 10.93 RCW or otherwise, or to affect the lawfulness of an otherwise lawful act by any such peace officer.

Section 3. The Seattle Police Department shall implement the requirements of Section 2 of this ordinance immediately.

Section 4. The Seattle City Council requests the Seattle Police Department to work with all other law enforcement agencies whose peace officers reasonably may be anticipated to enforce traffic or criminal laws in Seattle pursuant to chapter 10.93 RCW to develop a policy that would require those peace officers, when enforcing those laws, to conform with requirements concerning badges, identification devices, departmental identification on uniforms, and oral identification that are consistent with Seattle Municipal Code Section 3.28.130. The Seattle Police Department is requested to report to the Seattle City Council with a proposal for

the policy by January 2021.

Section 5. Based on the findings of fact set forth in Section 1 of this ordinance, the Council finds and declares that this ordinance is a public emergency ordinance, which shall take effect immediately and is necessary for the protection of the public health, safety, and welfare.

Section 6. By reason of the findings set out in Section 1, and the emergency that is hereby declared to exist, this ordinance shall become effective immediately upon its passage by a 3/4 vote of the City Council and its approval by the Mayor, as provided by Article 4, subsection 1.I of the Charter of the City.

Passed by the City Council the _____ day of _____, 2020, and signed by me in open session in authentication of its passage this _____ day of _____, 2020.

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

Monica Martinez Simmons, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Legislative / Seattle Police Dept.	Greg Doss 206-256-6225	

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE requiring that certain uniformed peace officers do not cover with a mourning band the serial number that is engraved on their badge; amending Section 3.28.130 of the Seattle Municipal Code; declaring an emergency; and establishing an immediate effective date; all by a 3/4 vote of the City Council.

Summary and background of the Legislation: Citizens that have participated in the recent rallies and demonstrations protesting the killing of George Floyd have indicated that they sometimes have been unable to identify officers because they could not see a name tag and that the officer's badge serial number was covered with a mourning band. This legislation would allow the continued use of mourning bands as long as they do not obscure the officer's badge number. This fiscal note assumes that officers would continue to use the badges that have already been issued by SPD, but would simply move the mourning band away from the serial number.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes ___ X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes ___ X No

Does the legislation have other financial impacts to the City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

No

Is there financial cost or other impacts of *not* implementing the legislation?

Without this legislation, citizens may not be able to identify officers that are involved in misconduct and may not be able to avail themselves of the City's police accountability system.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

There is a potential workload impact to the Office of Police Accountability to the extent that officers that commit acts of misconduct are identified by their badge numbers and otherwise would not have been identified at all.

b. Is a public hearing required for this legislation?

No

c. Does this legislation require landlords or sellers of real property to provide information regarding the property to a buyer or tenant?

No

d. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No

e. Does this legislation affect a piece of property?

No

f. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

Without this legislation, citizens may not be able to identify officers that are involved in misconduct and may not be able to avail themselves of the City's police accountability system. A disproportionate number of citizens who experience bias, unjustified use of force or are the victim of other police misconduct are people of color.

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s).

N/A