

April 25, 2023

MEMORANDUM

To: Public Safety and Human Services Committee
From: Greg Doss, Community Safety & Health Team Lead
Ann Gorman, Analyst
Subject: Council Bill 120549 - Protecting Public Officers from Obstruction

On April 25, the Public Safety and Human Services Committee will discuss and possibly vote on [Council Bill \(CB\) 120549](#), which would amend the crime of Obstructing a Public Officer to include obstruction of Seattle Fire Department (SFD) firefighters and other fire department personnel.

Background

[Seattle Municipal Code \(SMC\) 12A.16.010](#) creates a crime of “Obstructing a Public Officer,” (Obstruction) which is a gross misdemeanor, and includes: (1) the intentional and physical interference with a public officer; and (2) the intentional refusal to leave the scene of an investigation of a crime while an investigation is in progress after being requested to leave by a public officer. When a public officer is obstructed, there is a safety risk not only to that officer but to those in the area who are in need of protection. Such obstruction can also compromise the scene of an investigation, which may inhibit the future legal admissibility of evidence from that scene.

The current SMC definition of a “public officer” for the purpose of enforcement does not explicitly include firefighters and other SFD personnel who may be monitoring the scene of firefighter response. SMC 12A.16.010.C defines a public officer as someone who is “responsible for the enforcement of the provisions of the Seattle Municipal Code, including provisions related to the building, zoning, and life and safety codes; those individuals empowered to make arrests for offenses under the Seattle Municipal Code, or those individuals responsible for the enforcement of federal or state criminal laws.”

This definition includes firefighters who work as inspectors in SFD’s Fire Marshal’s Office, but it does not include members of the SFD Operations and Leadership and Administration work units who perform first-response and scene-oversight work. These members include firefighters, public information officers, the Fire Chief and Assistant Chiefs, and others. As written, the SMC may limit the protection that is available to these SFD personnel when they encounter performance-hindering obstructions in the course of their work.

SFD staff have provided Central Staff with incident records that show that aggressive persons have, at times, engaged in behavior that has interfered with SFD personnel who are attempting to perform their duties. Examples of such persons and behavior include overdose patients who

may become combative while regaining consciousness after receiving Naloxone or another overdose reversal treatment; unhoused persons who attempt to prevent SFD personnel from extinguishing illegal burns; or persons in mental or behavior health crisis, or other persons, who throw items at SFD personnel or threaten to physically attack SFD personnel. Not all of this behavior could be a basis for a charge of Obstruction. This is discussed further below in the Proposed Changes and Enforcement of Obstruction sections.

Proposed Changes

CB 120549 would amend the SMC in the following ways:

- It would expand the SMC definition of a public officer explicitly to include SFD firefighters and other SFD personnel, while they are engaged in the performance of their official duties; and
- It would add, in its listing of offenses that may give rise to a charge of obstructing a public officer, explicit reference to the scene of a fire department emergency response as follows (see 12A.16.010, Subsection A6 of CB 120549):

“... when the person’s conduct or presence hinders, delays, or compromises legitimate fire department actions or rescue efforts; threatens the safety of fire department personnel or members of the public; or attempts to incite others to violence.”

The aggregate effect of these changes would be to make clear that all SFD personnel attending an SFD response are entitled to protection from obstructions under SMC 12A.16.010.

Creating Obstruction Zones

The purpose of CB 120549 is to create parity between SPD and SFD personnel in terms of their legal protection from obstructions while they are engaged in paid City work. SFD staff have indicated that the proposed changes would provide the statutory basis for SPD and SFD to collaborate on the development of policies around the establishment and enforcement of “obstruction zones” during SFD response, consistent with existing SPD policies that address obstruction zones for a police investigation.

The proposed bill language in 12A.16.010, Subsection A6 (see #2 above) reflects language in Ordinance 125313, which the Council passed in 2017 to codify SPD policy 5.160 (Citizen Observation of Officers). That ordinance recognized the right of members of the public to observe and record SPD activity; observation and recording are Constitutionally protected activities that are outside the purview of the SMC Criminal Code. The use of parallel language in CB 120549 makes clear that members of the public have the same observe-and-record rights related to SFD activity, and it similarly ensures that an Obstruction charge at the scene of an SFD emergency response must have a substantive basis.

Enforcement of Obstruction

The City's Attorney's Office (CAO) has indicated that the charge of Obstruction would not be made in every instance that a person threatens or becomes physically aggressive with SFD personnel. A person displaying threatening behavior toward SFD personnel would only be charged with Obstruction if they are also interfering with the employee's ability to perform their duties. Additionally, an Obstruction charge would not be made against any SFD patients receiving treatment, including instances when overdose patients became physically aggressive during resuscitation. Therefore, while CB 120549 may allow for better enforcement of obstruction zones, it may not address all of the incidents that SFD personnel have found to impede delivery of services (e.g., combative patients).

A very limited review of arrests made for Obstruction, and no other charge, might suggest that arrests are more likely to be made in a law enforcement context than when firefighters are responding to a structure fire or providing basic or advanced life support (see below).

Racial Equity and Criminal Legal System Issues

To the extent that individuals violate SFD obstruction zones, or otherwise obstruct SFD personnel from performing their duties, there may be an increase in the number of misdemeanor arrests for the charge of Obstructing a Public Officer. If that is the case, it is likely that those arrests will occur with disproportionate impact to vulnerable communities and communities of color, as this is a well-established reality for a criminal legal system that creates harm and perpetuates systems of poverty.

SPD has arrested for Obstruction 242 individuals in 2022 and 60 individuals through March 31 of 2023. An SPD analysis of this year's arrests found that:

1. 85% of arrest events included two or more charge types, with an average of 5.2 charges per event; and
2. The charged most often associated with obstruction was weapon possession (primarily a firearm), followed by a three-way tie for assault, burglary and resisting, eluding or refusing to stop.

SPD staff examined a sample of all the 2023 cases (N=8) where an individual was arrested for Obstruction, but no other charge was made. In these cases, staff found that an officer was "investigating a potential criminal offense, and the arrestee was uncooperative and/or fled the scene after being asked to stay put."

A demographic analysis of individuals arrested for Obstruction, potentially among other charges, shows that the arrests are occurring with disproportionate impact to communities of color¹:

Self-Reported Race as Tracked by SPD	Obstruction Arrests by Race 2019-2022	Race Represented in Seattle Census
White	50.1%	59.5%
Black	33.9%	6.8%
Asian	3.1%	16.9%
American Indian or Alaskan Native	2.1%	0.4%
Unknown	10.7%	*See Below

* Data on Seattle’s [Census Webpage](#) shows the following breakout: 0.3% for Native Hawaiian or Pacific Islander, 0.6% for Another Race, 7.3% for two or more races and 8.2% for Hispanic or Latino (of any race).

Firefighters support vulnerable communities by providing timely emergency responses to 911 calls that may include incidents like overdose reversals and encampment fires. In a best-case scenario, the establishment of an obstruction zone would ensure that care is not delayed, and disproportionate impact created on vulnerable communities, by individuals who could directly access firefighters, prevent them from performing their duties and potentially worsen a situation through assault of a firefighter or other emergency responder. Central Staff has been advised that the CAO is currently examining cases where firefighters have been assaulted in the line of duty. Staff have asked the CAO whether such assaults may have been prevented through the implementation of an obstruction zone. An answer had not yet been received at the time of this writing.

The crime of a Gross Misdemeanor is punishable by up to 364 days in jail and up to a fine of \$5,000. If the subject of an Obstruction charge is suffering from drug addiction or mental illness, it is possible that the City Attorney’s Office may recommend a Dispositional Continuance, or Deferred Sentence, both of which would result in dismissal of the Gross Misdemeanor from a person’s record if they complied with certain conditions such as drug or alcohol treatment.

cc: Esther Handy, Director
Ann Gorman, Analyst

¹ SPD staff have indicated that a comparison of police arrest data with population data is not an appropriate measure of disparity because it does not account for the factors that lead to criminogenic need (e.g., poverty, poor educational outcomes, unstable housing, untreated mental illness, drug use), which are all outcomes of a racist society, end to end.