



SEATTLE CITY COUNCIL

Public Safety and Human Services Committee Agenda

Thursday, December 17, 2020

9:30 AM

Special Meeting

Remote Meeting. Call 253-215-8782; Meeting ID: 586 416 9164; or
Seattle Channel online.

Lisa Herbold, Chair
M. Lorena González, Vice-Chair
Andrew J. Lewis, Member
Tammy J. Morales, Member
Kshama Sawant, Member
Alex Pedersen, Alternate

Chair Info: 206-684-8801; Lisa.Herbold@seattle.gov

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SEATTLE CITY COUNCIL
Public Safety and Human Services Committee
Agenda
December 17, 2020 - 9:30 AM
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Meeting Location:

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Committee Website:

<http://www.seattle.gov/council/committees/public-safety-and-human-services>

This meeting also constitutes a meeting of the City Council, provided that the meeting shall be conducted as a committee meeting under the Council Rules and Procedures, and Council action shall be limited to committee business.

In-person attendance is currently prohibited per Washington State Governor's Proclamation No. 20-28.14 through January 19, 2021. 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 9:30 a.m Public Safety and Human Services Committee meeting at <http://www.seattle.gov/council/committees/public-comment>.

Online registration to speak at the Public Safety and Human Services Committee meeting will begin two hours before the 9:30 a.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 Councilmember Herbold at Lisa.Herbold@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 253-215-8782 Meeting ID: 586 416 9164

One Tap Mobile No. US: +12532158782,,5864169164#

Please Note: Times listed are estimated

A. Call To Order

B. Approval of the Agenda

C. Public Comment

(15 minutes)

D. Items of Business

1. CoLEAD

Supporting Documents: [Presentation](#)

Briefing and Discussion (30 minutes)

Presenters: Jesse Benet, Public Defender Association; Tabatha Davis, Ramon Hernandez, and Tiarra Dearbone, LEAD; Victor Loo, Asian Counseling & Referral Service; Dr. Katherine Beckett, University of Washington

2. [CB 119974](#) AN ORDINANCE relating to civilian and community oversight of the police; creating a subpoena process for the Office of Police Accountability and Office of Inspector General for Public Safety while ensuring due process for individuals who are the subject of the subpoena; and adding new Sections 3.29.126 and 3.29.245 to the Seattle Municipal Code.

Supporting Documents: [Summary and Fiscal Note](#)
[Central Staff Memo \(added; 12/8/20\)](#)
[Proposed Substitute 1](#)

Briefing, Discussion, and Possible Vote (15 minutes)

Presenter: Greg Doss, Council Central Staff

3. **Decision agenda on less lethal weapons recommendations of the Community Police Commission, Office of Inspector General, and Office of Police Accountability**

Supporting Documents: [Presentation](#)

Briefing and Discussion (60 minutes)

Presenters: Greg Doss and Lise Kaye, Council Central Staff; Lisa Judge, Inspector General, Office of Inspector General; Andrew Myerberg, Director, Office of Police Accountability; Shayleen Morris, Community Police Commission; Rebecca Boatright, Seattle Police Department

E. Adjournment



Legislation Text

File #: Inf 1734, **Version:** 1

CoLEAD



Adapting LEAD for the COVID-19 crisis & beyond to test new models of care paired with hotel-based temporary housing.

Co-LEAD is a temporary adaptation of the Law Enforcement Assisted Diversion (LEAD) program in Seattle and Burien, during the COVID-19 emergency period. “Co-“stands Community, COVID and Co-Responder.

Public Safety Briefing with Seattle City Council, December 17, 2020

By: **The Public Defender Association (PDA) & Asian Counseling & Referral Service (ACRS)**

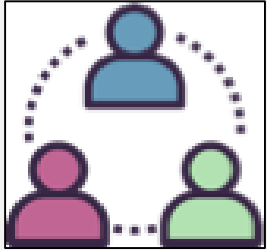


Co-LEAD—born as a variant of LEAD

est. March 2020

- Co-LEAD is running in parallel with standard LEAD operations, which have been constrained under COVID conditions and lack of law enforcement availability (and our national social movement to reduce LE overall) affecting all partners—while need has only increased
- Co-LEAD participants sign the same Release of Information that LEAD participants do, allowing **coordination and information-sharing** criminal legal system partners when needed to address any open court cases and outstanding warrants
- Co-LEAD provides **viable channels** to intercept the population LEAD is intended to serve—people with behavioral health conditions (often living unhoused) who have exposed to enforcement and the criminal legal system
- Co-LEAD applies LEAD core principles of coordination, information-sharing, field-based engagement, is trauma responsive, Housing First, harm reduction and crime reduction

What is Co-LEAD?



- Co-LEAD has a team of temporary team of **intensive outreach responders** and case managers, along with a medical provider. Outreach responders work the following **shifts** *Each shift has a shift lead who supervises the team of outreach responders assigned to geographic region (based on hotel locations)*

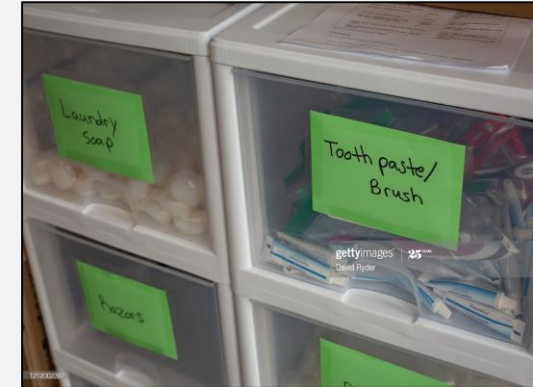
- M-F 8 am to 4:30 pm & 11 am to 7:30pm
- Sat & Sun: 10 am to 4:30 pm
- Overnight on-call shift lead/supervisor availability



- Co-LEAD currently uses **hotels throughout King County** to place participants to shelter in place and reduce. Additional hotel rooms are utilized for staff office space and during each shift to fully support an on-site presence similar to a residential setting.
 - Each participant signs the **Co-LEAD Lodging Agreement** which defines the rules of the lodging and participant requirements
 - Co-LEAD has PDA staff who serve as **lodging liaisons** between hotel staff and Co-LEAD outreach responder program staff (modeled after landlord liaison approach in permanent supportive housing models)

What is Co-LEAD (cont'd)

- Co-LEAD reduces crime and helps stabilize vulnerable individuals by addressing the **basic needs** of Co-LEAD participants, using gift cards, providing cell phones, access to food, sanitation supplies, and crisis management needs
- Co-LEAD provides **intensive case management** connecting participants to Apple Health, entitlements/benefits (DSHS/SSA), obtain ID, and connect to other social services available (behavioral health, primary care, employment)
 - Co-LEAD focuses on the temporary nature of the lodging and works to support participants for longer-term housing and support plans
- **Co-LEAD medical provider** provides assessment of healthcare needs and related care including prescription and pharmacy coordination
 - Goes on-site to hotels with outreach responders to provide field-based healthcare assessment and response (incl Apple Health, prescription mont.)
 - Provides **Covid-19 testing** immediately upon program entry and on demand if symptoms or possible exposure occurs
 - Rapid connection on-site to primary care clinics for Medication Assisted Treatment



CO-LEAD EARLY LESSONS LEARNED

CURRENTLY 68 PARTICIPANTS ENROLLED

- **Lodging (M/Hotel) liaisons** are KEY!
- **Temporary Lodging Agreement:** ensure full understanding
- **Meal delivery/Food strategies:** support food insecurity
- **Medical provider:** provide on-site assessment (primary care and behavioral healthcare) and care at m/hotels
- **Harm reduction oriented protocol for unique Meth users:** provide responsive support (and possibilities of a Stimulant Substitution Therapy/Safe Supply version of MAT)
- **LEAD Prosecutorial liaisons:** critical for understanding the whole picture of those referred to ensure matching with services (conviction history, open court cases, outstanding warrants)
- **Incentives to support financial independence:** support participant needs/reduce law violations
- **Diverse staff:** backgrounds and expertise/knowledge including deep lived experience
- **Medicaid-funded behavioral health system:** Limitations (and frustrations!) especially during Covid-19

CO-LEAD: A DEVELOPMENTAL EVALUATION

Katherine Beckett, Professor
University of Washington
kbeckett@uw.edu

EARLY STEPS

- ✓ Adapted interview protocol used in the Riker's Island Jail Reentry Study (Columbia University)
- ✓ Human Subjects approval from the UW
- ✓ Grant support for the UW West Coast Poverty Center

- ✓ Created the UW research team
 - Emily Soran-Knaphus, PhD in Sociology, Research Scientist
 - Aliyah Abu-Hazeem, PhD student in Sociology
 - Marco Brydolf-Horwitz, PhD student in Sociology
 - Devin Collins, PhD student in Sociology
 - Allison Goldberg, PhD student in Sociology

DEVELOPMENTAL EVALUATION

- Developmental evaluation (DE) supports innovation by collecting and analyzing data in real time in ways that facilitate informed decision making
- DE is particularly well-suited for new innovations for which the path to success is not clear

DE can help answer questions such as:

- What is emerging as the innovation takes shape?
- What do initial results reveal about expected progress?
- What variations in effects are we seeing?
- How have different values, perspectives, and relationships influenced the innovation and its outcomes?

STATUS OF DATA COLLECTION

DATA COLLECTED (JUNE –AUGUST 2020)

- 37 first-round participant interviews
- 30 follow-up interviews
- On-going observation of staff and stakeholder meetings
- On-going collection and analysis of administrative data

DATA TO BE COLLECTED (SEPTEMBER 2020- MARCH 2021)

- Exit interviews (participants)
- Interviews with staff and leadership
- Interviews with community stakeholders/partners
- Continued collection and analysis of administrative data

HIRING CO-LEAD OUTREACH RESPONDERS AND SHIFT LEADS

- Job listings were shared with organizations that would reach a diverse group of people with **lived experience with addiction, homelessness, and the criminal legal system.**
 - These organizations include Community Passageways, REACH, Formerly Incarcerated College Graduates Network, Formerly Incarcerated Student Association at UW-T, Husky Post-Prison Pathways, and Civil Survival
- As a result, applicants and hired outreach responders
 - Have had significant life experience with behavioral health issues, criminal legal system involvement, and/or homelessness
 - Are racially, ethnically, and culturally diverse

CO-LEAD PARTICIPANTS

Gender	
Female	25.7%
Male	74.3%

Race/Ethnicity	
American Indian/ Alaska Native	13.6%
Asian	1.5%
Black	37.9%
Latinx	4.5%
White	40.1%
Unknown	1.5%
Percent BIPOC	58.4%

Age	
Average	40 years old
Range	22-62

- All but one were living unsheltered prior to entering Co-LEAD
 - All have or have had substance abuse issues
- At least 25 have a mental health diagnosis and/or prior psychiatric hold
 - Many face significant physical health challenges

Services and Accomplishments to Date

Intensive case management	66/66
Housing	65/66
COVID-19 testing	66/66
(Re)enrolled in Apple Health (Medicaid)	60/66
Housing assessment completed	12/66
Connected to behavioral health services	11/66
Medication assisted treatment	12/66
Job placement	11/66
Obtained DSHS benefits	9/66
Permanent housing secured	2/66

** Data current through August 31, 2020*

EARLY INTERVIEW THEMES

HOUSING

- Most Co-LEAD participants expressed a **newfound sense of safety and security** after being placed in their own hotel rooms.

- *“It’s like going from hell to heaven.”*
- *“There’s no arguments, no fights, no gun shots, no police sirens, ambulance sirens.”*
- *“Above all things, it’s a stable environment that’s mine. I don’t have to worry about dealing with other people. [...] I’m glad that I have a place that I can call my own, that I can sleep in and be safe. And it gives me stability and peace of mind where I can better my future.”*

OUTREACH RESPONDERS

- Co-LEAD outreach responders were described by many as being supportive, reliable, and willing to go “above and beyond.”
- Many respondents noted that Co-LEAD outreach responders had **shared lived experiences** and felt that this enabled them to approach casework in a **nonjudgmental** and “down to earth” manner.

“Co-LEAD, the counselors... they care. You can tell that they're not self-seeking. They want to help us. That makes me open up more.”

“It's just kinda nice to have a case worker that knows so little about me but I feel like I've known him forever, if that makes sense. He's got a lot of the same lifestyle, not that I had, but similar. He was homeless at one time. And now he works for Co-LEAD. And I'm just like, man, if you can do it, we can. He's an inspiration to me.”

SERVICES AND BENEFITS

- Many interviewees report that **Co-LEAD has improved their ability to access public services and benefits.**
 - Many credited their outreach responders for helping to navigate the “bureaucratic hoops” and being their “advocate.”
 - Consistent access to a phone, internet, and mailing address made basic outreach to and follow-up with social service agencies possible.

“I've had food stamps for about 2 years, something like that, 2-3 years. Getting them was easy. I did it in-person first, and then I had a mid-certification review come up, and they were closed because of the COVID thing, so that sort of messed things up for me. But my case manager helped me get ahold of somebody on the phone and they had my card mailed within the next 2-3 days, along with not only the food stamps but the disaster relief money too.”

HEALTH CARE

- Interviewees consistently report that **Co-LEAD improved their ability to access needed health care.**
- Co-LEAD outreach responders support participants in scheduling and keeping doctors appointments, and an on-site naturopath provides swift, accessible, and consistent care.

“I'm not using street drugs to manage my ADHD and my dyslexia. I'm working with [a] psychologist and a psychiatrist and a naturopathic kind of solution to deal with that. And I think that's wonderful.”

“I slept on a slight incline and I ended up sleeping on my knee wrong a few times and injuring it, to the point where it just got difficult. So thankfully, when I came back [Co-]LEAD hooked me up with the doctor, and they were able to get me some anti-inflammatory so I can begin the healing process on it again. But I'm finally active now and moving again, which is really nice.”

SUBSTANCE USE

- Some participants are not currently working on reducing substance use, but have modified behavior to reduce harmful impact
 - Some stopped using or entered treatment before entering Co-LEAD
 - Others are not interested in or do not feel capable of reducing their substance use at this time
- Other participants are attempting to reduce or eliminate their use of drugs
 - Often these participants see getting clean as a means of addressing other priorities like being reunited with their families

THREE FACTORS SEEM TO HELP PEOPLE REDUCE THEIR DRUG USE

Access to **MAT** is helping some
to address their substance use

“Before I got hooked up with Co-LEAD, like I said it was rough. I was living on the streets. And it was, uh, it wasn't very good at all. I wasn't being very healthy, I wasn't making doctors appointments. I am now. And they've helped me get on Suboxone. They've really been looking out for me... I've cut back on my drug use... I don't like [Suboxone] that much, but it helps. Helps with cravings.”

Stable housing and **support** have
also been key for some

*“[Life before Co-LEAD] was not very good. I was doing a lot of heroin and meth and stuff. I was going to jail pretty frequently, cuz I was doing like burglaries and robbing buildings and all this extra s***. And it was not good. And so Co-LEAD has really helped me stay sober and I've been sober for like two months or whatever, and like, it's really good. So I'm really proud of myself.”*

FUTURE QUESTIONS TO EXPLORE

- For participants who are able to achieve their goals, what particular features of Co-LEAD were most helpful?
- For participants who are unable to achieve their goals, what obstacles prevented this from occurring?
- What do staff and stakeholders see as the most important lessons learned?
- What was the experience of community partners/stakeholders who sought assistance from Co-LEAD, and can this be improved?

ADDRESSING BEHAVIORAL HEALTH WITHOUT POLICE?

Findings from the Seattle LEAD/Co-LEAD Program

FORREST STUART | DEPARTMENT OF SOCIOLOGY | STANFORD UNIVERSITY

WHY FOCUS ON BEHAVIORAL HEALTH?

50%

OF PEOPLE KILLED BY POLICE ARE PEOPLE EXPERIENCING DISABILITIES

25%

OF INMATES COMMITTED OFFENSE TO OBTAIN MONEY FOR DRUGS

25%

OF PEOPLE KILLED BY POLICE ARE EXPERIENCING MENTAL HEALTH DISORDERS

44%

OF JAIL INMATES EXPERIENCE MENTAL HEALTH DISORDERS

20%

OF POLICE ENCOUNTERS INVOLVE PEOPLE EXPERIENCING MENTAL HEALTH DISORDERS

DRUG POSSESSION IS THE MOST ARRESTED CRIME IN THE US, OCCURRING EVERY 25 SECONDS

The current state of reforms

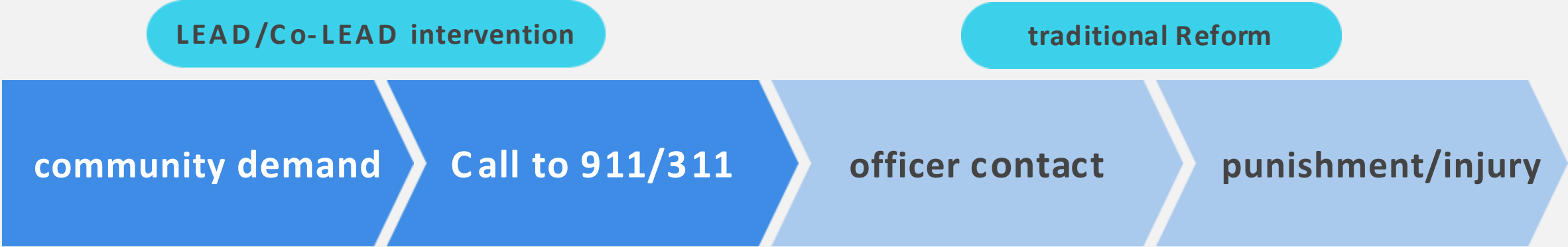
- 1 Basic mental health training for officers**

6.5 hours in academy, 1 hours in-service
Topics range from dementia to drug use
- 2 Crisis Intervention teams (CIT) / memphis model**

40 hours training for officers as first responders
Officers access additional resources for referrals

These Reforms Fail to reduce harm/injury to vulnerable populations
These reforms increase/expand policeability of behavioral health

moving further“ upstream”



providing proactive services

1 Solicit “priority lists” from local police precincts

Locate and initiate services with individuals on the list

2 Solicit “priority lists” from local residents and businesses

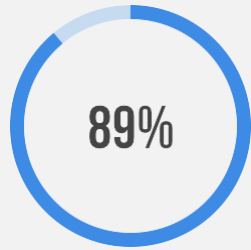
Locate and initiate services with individuals on the list

3 provide alternative complaint system

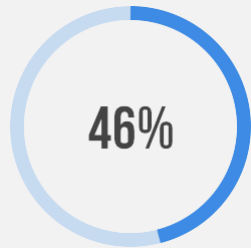
Stakeholders contact LEAD directly when encountering people in acute crisis/law violation



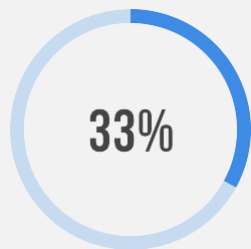
LEAD PARTICIPANT OUTCOMES



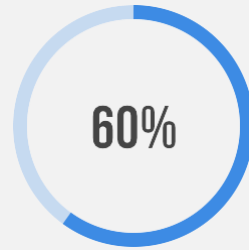
MORE LIKELY TO OBTAIN PERMANENT HOUSING



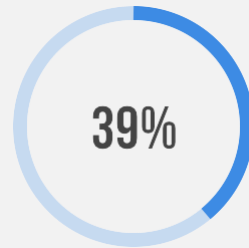
MORE LIKELY TO BE ON EMPLOYMENT CONTINUUM



MORE LIKELY TO RECEIVE BENEFITS (E.G., SSI, DISABILITY)



LESS LIKELY TO BE ARRESTED



LESS LIKELY TO BE CHARGED WITH A FELONY

41 FEWER DAYS IN JAIL = \$6,000 YEARLY COST REDUCTION PER PERSON



Thank You!

Any Questions?



Legislation Text

File #: CB 119974, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to civilian and community oversight of the police; creating a subpoena process for the Office of Police Accountability and Office of Inspector General for Public Safety while ensuring due process for individuals who are the subject of the subpoena; and adding new Sections 3.29.126 and 3.29.245 to the Seattle Municipal Code.

WHEREAS, The City of Seattle requires a strong independent civilian oversight system to ensure constitutional policing and a police department that has the public trust, confidence, respect, and support of the community; and

WHEREAS, the City reaffirms its intention to build a strong civilian-led police accountability system with authority to independently review and investigate individual police misconduct cases, as well as to conduct departmental audits and reviews that critically evaluate the effectiveness of the Seattle Police Department (SPD) in delivering constitutional policing; and

WHEREAS, The City of Seattle is a first-class city in the state of Washington pursuant to chapter 35.22 RCW and has the legal authority to issue administrative subpoenas; and

WHEREAS, subpoenas are crucial information-gathering mechanisms for investigations into police misconduct in the event of an inability to obtain information from department staff due to lack of cooperation from the individual or department, or due to a need to obtain information from a third party on matters related to the investigation; and

WHEREAS, subpoenas are crucial information-gathering mechanisms for audits and reviews of matters of

systemic issues of public concern, in the case of an uncooperative witness or other barriers to obtaining relevant information from the individual, department, or third parties; and

WHEREAS, critical to police accountability is the willingness of complainants and individuals to come forward and provide information in an investigation without the chilling effect of the information later being used against them or having government engage in a fishing expedition for information that may compromise an individual's privacy, civil liberty, and due process rights when they are the subject of a government subpoena; and

WHEREAS, the City desires to strengthen and empower its civilian police oversight entities investigatory authority to gain access to information needed for police accountability, while also protecting the public's right to individual privacy, civil liberty, and due process rights when they are the subject of a government subpoena; and

WHEREAS, nothing in this ordinance shall be construed to weaken constitutional protections, specifically Fourth and Fifth Amendment requirements and those protections afforded by Article 1, Section 7 of the Washington State Constitution that pertain to information that requires a search warrant based on probable cause and judicial review. In the event that any criminal investigation or prosecution is initiated, either subsequent or parallel, to an OPA or OIG investigation, all evidence obtained via subpoena remains subject to constitutional or criminal procedure requirements for a search warrant or other judicially authorized search or seizure prior to use in any criminal proceeding against the individual subject of the subpoena; and

WHEREAS, on May 22, 2017, the City Council unanimously passed the landmark Ordinance 125315 (Accountability Ordinance) establishing a robust, civilian-led, and independent system of community oversight of the police department; and

WHEREAS, subsection 3.29.125.E in the Accountability Ordinance authorizes the Office of Police Accountability (OPA) to issue subpoenas during its investigation if evidence or testimony material to

the investigation is not provided voluntarily to OPA; and

WHEREAS, subsection 3.29.240.K in the Accountability Ordinance provides the Office of Inspector General for Public Safety (OIG) parallel subpoena power; and

WHEREAS, the purpose of this ordinance is to ensure the police oversight system is as strong as originally intended by confirming and making explicit the authority of the OPA and OIG to issue administrative subpoenas and create a clear process for exercise of such authority that respects the constitutional due process rights of individuals who are subject to these subpoenas; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 3.29.126 is added to the Seattle Municipal Code as follows:

3.29.126 Office of Police Accountability and Office of Inspector General - Subpoena authority

A. The OPA Director or the Inspector General may issue a subpoena under subsection 3.29.125.E or subsection 3.29.240.K respectively, or when the Inspector General is performing duties under its authority to act in lieu of the OPA Director pursuant to subsection 3.29.240.D. This authority is subject to any collective bargaining agreement limitations.

B. If the subject of the subpoena fails to comply with the subpoena issued, then the OPA Director or Inspector General may refer the matter to the City Attorney to seek a court order enforcing the subpoena in a court of competent jurisdiction.

Section 2. A new Section 3.29.245 is added to the Seattle Municipal Code as follows:

3.29.245 Notice of due process protections for individuals and complainants who are the subject of the subpoena

When issuing a subpoena pursuant to Section 3.29.126, the issuing agency shall include a written notice containing the following information attached to the subpoena, with a copy sent to the individual whose information is the subject of the subpoena if the individual is not the recipient of the subpoena:

A. The purpose of the subpoena and the basis for seeking the information requested under the subpoena;

B. A statement acknowledging the opportunity to contest the subpoena in a court of competent jurisdiction;

C. A statement acknowledging that a person who provides oral or documentary information requested by the director shall be accorded the same privileges and immunities as are extended to witnesses in the courts of this state; and

D. A statement acknowledging that the evidence shall not be used against the subject in a separate criminal proceeding against the individual without a search warrant or other judicially authorized search or seizure.

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:
MO	Michelle Chen/ 4-5452	

** 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 civilian and community oversight of the police; creating a subpoena process for the Office of Police Accountability and Office of Inspector General for Public Safety while ensuring due process for individuals who are the subject of the subpoena; and adding new Sections 3.29.126 and 3.29.245 to the Seattle Municipal Code.

Summary and background of the Legislation: This ordinance permits direct issuance of administrative subpoenas by the Office of Police Accountability (OPA) and Office of Inspector General (OIG) as part of their investigatory authority to provide civilian oversight of the police accountability system, subject to any collective bargaining agreement limitations. It requires that notice be issued along with the subpoena containing information about legal rights for individuals who are the subject of the subpoena and to the third-party records holder with information about existing legal rights afforded to them under the law, including their right to quash or challenge the subpoena. The ordinance permits subpoena enforcement by OPA/OIG in a court of competent jurisdiction by the City Attorney.

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?
No.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?
OPA, OIG and 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? Strengthening the civilian police oversight and accountability system by making explicit the authority of OPA and OIG to issue administrative subpoenas has an RSJI impact on communities of color, because these communities have historically been disproportionately represented in the criminal legal system. Further, the due process notice and protections afforded under this ordinance impacts vulnerable and disadvantaged communities, because individuals from these communities are more likely to be witnesses or complainants of police misconduct investigations.

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).

No.

List attachments/exhibits below: None.

December 7, 2020

MEMORANDUM

To: Public Safety and Human Services Committee
From: Dan Eder, Interim Director, and Greg Doss, Analyst
Subject: Council Bill (CB) 119974 - Subpoena Notification Bill

On December 8, 2020, the Public Safety and Human Services Committee (“PSHS”) will discuss CB 119974 which would create a process for the Office of Police Accountability (OPA) Director and the Inspector General of the Office of Inspector General for Public Safety (OIG) to provide notice to affected parties when issuing subpoenas.

Bill Summary:

CB 119974 would add a notification process to the OPA Director’s and Inspector General’s existing subpoena powers. The notification process would govern how and when notification must be provided. The intent of the bill is to enhance due process by ensuring the recipient of the subpoena and the person whose information is sought (if different from the recipient) is aware of their due process rights when the City has issued such subpoenas.

CB 119974 would require notice to be given at the same time the OPA Director or Inspector General issues subpoenas. The notice must state:

- A. The purpose of the subpoena and the basis for seeking the information;
- B. An acknowledgment that the subpoena may be contested in court;
- C. A statement describing the privileges and immunities of anyone who provides oral or documentary information; and
- D. A statement that it would require a search warrant or equivalent to use any evidence obtained through the subpoena in a separate criminal proceeding.

Analysis:

The Seattle Municipal Code (SMC) currently includes provisions empowering the OPA Director and the Inspector General to issue legally binding subpoenas to compel employees or other entities (the Seattle Police Department, private banks, private cell phone carriers, etc.) to provide evidence in support of an investigation or systemic review. However, before this SMC-authorized power can become fully effective, the City must first negotiate terms governing such subpoenas in a collective bargaining agreement with affected employees.

The Seattle Police Management Association (SPMA) represents Lieutenants and Captains. The current collective bargaining agreement between the City and SPMA is silent on the issue of subpoenas and accepts the provisions of the Accountability Ordinance ([ORD 125315](#)) unless the

provisions are specifically excluded (see below for background on Ord. 125315). As a result, the OPA Director and Inspector General currently have subpoena power related to investigations of Lieutenants and Captains. CB 119974 would spell out due process and notification protections for any subpoenas that the OPA Director and Inspector General issue related to employees represented by SPMA.

The Seattle Police Officers Guild (SPOG) represents Officers and Sergeants. In contrast to the SPMA agreement, the current collective bargaining agreement between the City and SPOG contains a re-opener on subpoena authority because the parties did not come to an agreement on how the City's subpoena authority might extend to officers, families, and their personal records held by third parties. As a result, the OPA Director and Inspector General do not currently have full subpoena power related to investigations of Officers and Sergeants. CB 119974 provisions would therefore become effective for Officers and Sergeants only after the City and SPOG agree on applicable collective bargaining terms.

Background:

In 2017, the Police Accountability Ordinance (ORD 125315) authorized the OPA Director to “issue a subpoena at any stage in an investigation if evidence or testimony material to the investigation is not provided to OPA voluntarily, in order to compel witnesses to produce such evidence or testimony. If the subpoenaed individual or entity does not respond to the request in a timely manner, the OPA Director may ask for the assistance of the City Attorney to pursue enforcement of the subpoena through a court of competent jurisdiction” (Seattle Municipal Code Section 3.29.125.E).

The same Police Accountability Ordinance also authorized the Inspector General to “[i]ssue a subpoena if evidence or testimony necessary to perform the duties of OIG set forth in this Chapter 3.29 is not provided voluntarily, in order to compel witnesses to produce such evidence or testimony. If the subpoenaed individual or entity does not respond to the request in a timely manner, the Inspector General may ask for the assistance of the City Attorney to pursue enforcement of the subpoena through a court of competent jurisdiction” (SMC Section 3.29.230.K).

Next Steps:

The PSHS Committee may consider voting on CB 119974 at the special meeting scheduled for December 17, 2020.

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CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to civilian and community oversight of the police; creating a subpoena process for the Office of Police Accountability and Office of Inspector General for Public Safety while ensuring due process for individuals who are the subject of the subpoena; and adding new Sections 3.29.126 and 3.29.245 to the Seattle Municipal Code.

..body

WHEREAS, The City of Seattle requires a strong independent civilian oversight system to ensure constitutional policing and a police department that has the public trust, confidence, respect, and support of the community; and

WHEREAS, the City reaffirms its intention to build a strong civilian-led police accountability system with authority to independently review and investigate individual police misconduct cases, as well as to conduct departmental audits and reviews that critically evaluate the effectiveness of the Seattle Police Department (SPD) in delivering constitutional policing; and

WHEREAS, The City of Seattle is a first-class city in the state of Washington pursuant to chapter 35.22 RCW and has the legal authority to issue administrative subpoenas; and

WHEREAS, subpoenas are crucial information-gathering mechanisms for investigations into police misconduct in the event of an inability to obtain information from witnesses or department staff due to lack of cooperation from the individual or department, or due to a need to obtain information from a third party on matters related to the investigation; and

WHEREAS, subpoenas are crucial information-gathering mechanisms for audits and reviews of matters of systemic issues of public concern, in the case of an uncooperative witness or

1 other barriers to obtaining relevant information from the individual, department, or third
2 parties; and

3 WHEREAS, critical to police accountability is the willingness of complainants and individuals
4 to come forward and provide information in an investigation with a full understanding of
5 their rights and without the chilling effect of the information later being used against
6 them or having government engage in a fishing expedition for information that may
7 compromise an individual's privacy, civil liberty, and due process rights when they are
8 the subject of a government subpoena; and

9 WHEREAS, the City desires to strengthen and empower its civilian police oversight entities
10 investigatory authority to gain access to information needed for thorough and fair
11 investigations and police accountability, while also protecting the public's right to
12 individual privacy, civil liberty, and due process rights when they are the subject of a
13 government subpoena; and

14 WHEREAS, nothing in this ordinance shall be construed to weaken constitutional protections,
15 specifically Fourth and Fifth Amendment requirements and those protections afforded by
16 Article 1, Section 7 of the Washington State Constitution that pertain to information that
17 requires a search warrant based on probable cause and judicial review. In the event that
18 any criminal investigation or prosecution is initiated, either subsequent or parallel, to an
19 OPA or OIG investigation, all evidence obtained via subpoena remains subject to
20 constitutional or criminal procedure requirements for a search warrant or other judicially
21 authorized search or seizure prior to use in any criminal proceeding against the individual
22 subject of the subpoena; and

1 WHEREAS, on May 22, 2017, the City Council unanimously passed the landmark Ordinance
2 125315 (Accountability Ordinance) establishing and enhancing a robust, civilian-led, and
3 independent system of community oversight of the police department; by expanding the
4 independence and oversight of the Office of Police Accountability (OPA), making
5 permanent the Community Police Commission, and creating a new Office of Inspector
6 General (OIG); and

7 WHEREAS, subsection 3.29.125.E in the Accountability Ordinance authorizes the Office of
8 Police Accountability (~~OPA~~) to issue subpoenas during its investigation if evidence or
9 testimony material to the investigation is not provided voluntarily to OPA; and

10 WHEREAS, subsection 3.29.240.K ~~of~~ in the Accountability Ordinance provides the Office
11 of Inspector General for Public Safety (~~OIG~~) parallel subpoena power; and

12 WHEREAS, the purpose of this ordinance is to ensure the police oversight system is as strong as
13 originally intended by confirming and making explicit the authority of the OPA and OIG
14 to issue administrative subpoenas and create a clear process for exercise of such authority
15 that respects the constitutional due process rights of individuals who are subject to these
16 subpoenas; NOW, THEREFORE,

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

18 Section 1. A new Section 3.29.126 is added to the Seattle Municipal Code as follows:

19 **3.29.126 Office of Police Accountability and Office of Inspector General – Subpoena**
20 **authority**

21 A. The OPA Director or the Inspector General may issue a subpoena under subsection
22 3.29.125.E or subsection 3.29.240.K, respectively, or when the Inspector General is performing

1 duties under its authority to act in lieu of the OPA Director pursuant to subsection 3.29.240.D.
2 This authority is subject to any collective bargaining agreement limitations.

3 B. If the subject of the subpoena fails to comply with the subpoena issued, then the OPA
4 Director or Inspector General may refer the matter to the City Attorney to seek a court order
5 enforcing the subpoena in a court of competent jurisdiction.

6 Section 2. A new Section 3.29.245 is added to the Seattle Municipal Code as follows:

7 **3.29.245 Notice of due process protections for individuals and complainants who are the**
8 **subject of the subpoena**

9 When issuing a subpoena pursuant to Section 3.29.126, the issuing agency shall include a written
10 notice containing the following information attached to the subpoena, with a copy sent to the
11 individual whose information is the subject of the subpoena if the individual is not the recipient
12 of the subpoena:

13 A. The purpose of the subpoena and the basis for seeking the information requested under
14 the subpoena;

15 B. A statement acknowledging explaining the opportunity and process to contest the
16 subpoena in a court of competent jurisdiction;

17 C. A statement acknowledging that a person who provides oral or documentary
18 information requested by the ~~director~~subpoena shall be accorded the same privileges and
19 immunities as are extended to witnesses in the courts of this state; and

20 D. A statement acknowledging that ~~the~~ evidence provided in response to the subpoena
21 that would otherwise require a search warrant or other judicially authorized search or seizure
22 shall not be used against the subject in a separate criminal proceeding against the individual
23 without a search proper warrant or other judicially authorized search or seizure court order.

1 Section 3. This ordinance shall take effect and be in force on whichever is the later of: the
2 date of court approval in *United States of America v. City of Seattle, 12-cv-1282 (JLR)*; or 30
3 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten
4 days after presentation, it shall take effect as provided by Seattle Municipal Code Section
5 1.04.020.

6 Passed by the City Council the _____ day of _____, 2020,
7 and signed by me in open session in authentication of its passage this _____ day of
8 _____, 2020.

9 _____
10 President _____ of the City Council

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

12 _____
13 Jenny A. Durkan, Mayor

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

15 _____
16 Monica Martinez Simmons, City Clerk

17 (Seal)



Legislation Text

File #: Inf 1733, **Version:** 1

Decision agenda on less lethal weapons recommendations of the Community Police Commission, Office of Inspector General, and Office of Police Accountability



SEATTLE CITY COUNCIL
CENTRAL STAFF

Less Lethal Weapons Discussion

GREG DOSS AND LISE KAYE, COUNCIL CENTRAL STAFF

PUBLIC SAFETY AND HUMAN SERVICES COMMITTEE | DECEMBER 17, 2020

Agenda

- I. **Opening Remarks – Chair Herbold**
- II. **Oversight Agencies’ Positions on Banning Less Lethal Weapons**
– Greg Doss and Lise Kaye, Central Staff
- III. **Committee Discussion of Recommendations – All**
- IV. **January 12 Meeting – Chair Herbold**

I. Opening Remarks – Chair Herbold

- A. Objective for today
- B. Legal landscape

II. Oversight Agencies' Positions on Banning Less Lethal Weapons

Use Category	Ban CS Gas (Tear Gas)			Ban OC Spray (Pepper Spray)			Ban Blast Balls			Ban 40mm Launcher			Ban Noise Flash Diversionary Devices (NFDD)		
	CPC	OPA	OIG	CPC	OPA	OIG	CPC	OPA	OIG	CPC	OPA	OIG	CPC	OPA	OIG
Patrol	Yes	Yes	Yes	No	No	No	Yes	No	No, but see note at end of presentation	No	No	No	No	N/A *	N/A*
Tactical/SWAT	Yes	No	No, but See report; limited to life safety or SWAT non-crowd situations like barricaded people.	No	No	No	Yes	No	No	No	No	No	No	No	No
Crowd Dispersal	Yes	Yes	No, but see report; limited to life safety.	Yes	No	No	Yes	No	No	Yes	No	No, but see note at end of presentation	Yes	No	No

* Policy allows NFDD to be used only by SWAT. See OIG notes at end of presentation

- Use categories not defined/ exclusive (Patrol, Technical / SWAT, Crowd Dispersal)
- Table not inclusive of all potential LLWs
- Caveats - Re-authorization must be made with appropriate controls in place

II. Oversight Agencies' Positions on Banning Less Lethal Weapons

Examples of cautions that Oversight Agencies have identified:

- **All LLW:** can cause serious injury or death; guard against indiscriminate use; risks must warrant use
- **Tear Gas (CS Gas):** particle size can infiltrate surrounding areas
- **Pepper Spray (OC):** guard against use against passive resistance
- **Blast Balls:** overhand deployment not appropriate in crowds, should be deployed away from people.

II. Oversight Agencies' Positions on Banning Less Lethal Weapons

Examples of cautions that Oversight Agencies have identified:

- **40mm Launcher:** potential to strike non-targeted individuals or miss target zone on an individual; risk level outweighs use against individuals not presenting life safety risk to others
- **Noise Flash Diversionary Devices (NFDD):** overhand deployment not appropriate in crowds, should be deployed away from people

II. Oversight Agencies' Positions on Banning Less Lethal Weapons

Policy themes for reauthorization:

- Ban tear gas (CS gas)
- Regulate allowed LLW
- Develop detailed tactical plans prior to deployment
- Don't use LLW during demonstrations solely to prevent property destruction

II. Oversight Agencies' Positions on Banning Less Lethal Weapons

Policy Themes for reauthorization:

- Acquire/use better technology to communicate with large crowds
- Improve content of public/crowd communications
- Improve training
- Increase accountability
- Provide for disposal, as appropriate
- Do not require executive authorization

III. Committee Discussion of Recommendations

Potential Questions for Consideration:

- What LLWs should remained banned?
- Should individual LLWs be addressed in legislation?
- Should Council codify principles of use for LLWs?

IV. January 12 Meeting

- Committee recommendations for legislation – Decision Agenda Voting

Additional Notes from the OIG

(Table on Slide 3)

- **Blast balls/NFDD** – Use of these weapons for patrol would be unusual. In crafting legislation consider using language that makes it clear that such use is being foreclosed, not that such use is expected to occur and therefore being banned.
- **40 mm** – OIG recommended they increase training opportunities for patrol. At the time of the report, patrol 40mm operators had only one training opportunity per year (outside of actual incidents).
- **NFDD** – Patrol doesn't currently have access to NFDD; they are SWAT-specific. As with any weapon, NFDDs should only be issued to trained personnel.
 - Only SWAT trains with NFDDs. They are shaped differently and behave differently than a blast ball; because there are more metal components that become very hot when deployed, there is an increased risk of injury when used in a crowd control context.
 - SWAT uses its own internal trainers, for the most part, and thus SWAT training can't easily be transferred to patrol officers. SWAT follows standards issued by the National Tactical Officer's Association.
 - OIG believes, but would need to confirm, that there was a low frequency of use of NFDDs during the 2020 mass demonstrations by SPD SWAT. As OIG highlighted in the August report, other mutual aid entities may have deployed NFDDs, but this information was not available for review.
- **Pepperball launchers FYI** - SPD is planning to make the Pepperball launchers more accessible to patrol for crowd management. This tool is currently only used and trained on by SWAT. Council may want to add the Pepperball launcher to their table, even though the accountability partners did not comment on it specifically during the reports (as the tool was limited to SWAT at the time). Council can review the draft use of force policies for more info.