

## BASE BILL PROPOSED AMENDMENT 1

**Amendment Name:** Tear Gas Exemptions and Definition of Violent Public Disturbance

**Sponsor:** Councilmember Herbold

**Effects Statement:** Provides an exception to the ban on the use of tear gas in crowd control situations under certain circumstances and defines “violent public disturbance.” Delays authorization of exceptions to the ban until after SPD’s 2020 annual use of force policy review is completed as required by the Consent Decree.

**Proposed Amendment:**

Amend subsection 1.C as follows:

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

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

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

Amend proposed subsection 1.E as follows:

E. Oleoresin capsicum (OC) spray is not banned as a less lethal weapon for purposes of subsection 3.28.146.A, with the exceptions that a) it may ~~((not be used for crowd control in a~~

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~~non-violent demonstration or rally))~~ only be used for crowd control during a violent public disturbance, and b) it may be used only in circumstances in which the risk of serious injury from violent actions outweighs the risk of harm to bystanders.

Insert new subsection 1.F after proposed subsection 1.E as follows:

F. Tear gas is not banned as a less lethal weapon under subsection 3.28.146.A in cases when it is used for crowd control in violent public disturbances, and only when:

1. Deployed under direction of or by officers who have received training for its use within the previous 12 months; and
2. Used with a detailed tactical plan developed prior to deployment; and
3. Use is reasonably necessary to prevent threat of imminent loss of life or serious bodily injury.

Reletter current subsection 1.E (proposed 1.F) to 1.G and further amend as follows:

~~((F.))~~ G. A person shall have a right of action against the City for physical or emotional injuries proximately caused by the use of less lethal weapons that occur ~~((in a non-violent demonstration or rally))~~ in a gathering that is not a violent public disturbance after this ordinance takes effect. A person who, in the judgment of a reasonable person, commits a criminal offense at or immediately prior to the use of less lethal force may not recover under this Section 3.28.146.

Reletter current subsection 1.F (proposed 1.G) to 1.H and insert a new subsection 1.I after 1.H as follows:

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I. Exemptions to the ban of less lethal weapons as provided in this Section 3.28.146 are not authorized until the Seattle Police Department's 2020 annual use of force policy review is completed as required by the consent decree in accordance with *United States of America v. City of Seattle*, 12 Civ. 1282 (JLR).