



SEATTLE CITY COUNCIL

Public Safety and Human Services Committee

Agenda

Friday, September 11, 2020

9:30 AM

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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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. 20-28.9, through October 1, 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 9:30 a.m. meeting at

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

Online registration to speak at the 9:30 a.m. 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

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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. Reports from the Community Police Commission, Office of Inspector General, and Office of Police Accountability on Crowd Dispersal Policy and Less Lethal Weapons

Supporting Documents:

[CPC Recommendations on Crowd Control Weapons Ban](#)
[OIG Review of SPD Crowd Dispersal Policy and Less Lethal Weapons](#)
[OPA Response to City Council Crowd Control](#)
[OPC Presentation \(added; 9/13/20\)](#)
[OIG Presentation \(added; 9/13/20\)](#)
[CPC Presentation \(added; 9/13/20\)](#)
[Accountability Partners Chart \(added; 9/13/20\)](#)

Briefing and Discussion (45 minutes)

Presenters: Shayleen Morris, Policy Director, Community Police Commission; Lisa Judge, Inspector General, Office of Inspector General; Andrew Myerberg, Director, Office of Police Accountability

2. [CB 119879](#) **AN ORDINANCE relating to the operation and maintenance of a new regional 800 MHz emergency public safety radio communication system; authorizing the Chief Technology Officer of the Seattle Information Technology Department to execute for and on behalf of The City of Seattle an interlocal agreement between The City of Seattle, King County, and the Cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, and Tukwila for the purpose of creating a non-profit corporation, as provided under RCW 39.34.030, to own, operate, and maintain the regional emergency radio communication system that is being installed and developed under a separate interlocal agreement authorized by Ordinance 124685.**

Attachments: [Att 1 – Emergency Radio Network Operator Interlocal Cooperation Agreement](#)

Supporting Documents: [Summary and Fiscal Note](#)

Briefing and Discussion (30 minutes)

Presenters: Chief Harold Scoggins, Seattle Fire Department; Saad Bashir, Chief Technology Officer, Seattle Information Technology Department

E. Adjournment



Legislation Text

File #: Inf 1678, **Version:** 1

Reports from the Community Police Commission, Office of Inspector General, and Office of Police Accountability on Crowd Dispersal Policy and Less Lethal Weapons

Seattle Community Police Commission
August 14, 2020



**CPC Recommendations
on Seattle's Crowd
Control Weapons Ban**

Ordinance 126102

Introduction

The Community Police Commission (CPC) appreciates the invitation to provide feedback about Ordinance 126102 -- the Crowd Control Weapons Ban. Seattle has watched as protests against police violence over the past two and a half months have been met with more police violence. These actions by the Seattle Police Department (SPD) made immediate action by elected officials necessary to safeguard the safety and civil liberties of people exercising their First Amendment Rights. Seattleites have made themselves clear – they do not trust SPD’s discretion to use these weapons for crowd control.

It is imperative that as we reimagine public safety, the City listens to the movement unfolding in the streets of Seattle and centers the voices of communities most harmed by policing. Although national outrage over the murder of George Floyd by a Minneapolis police officer preceded the latest protests in Seattle, we cannot continue to reference it as being the lone reason that thousands of Seattleites gathered to exercise their First Amendment rights. Seattle has its own extensive history of police violence. Community members gathered in mass during a global pandemic to hold space for this outrage. Nevertheless, the last two months of constitutionally protected demonstrations have been met with adversarial tactics. SPD’s own timeline focuses on officers, with little to no information about the steps taken to protect the tens of thousands demonstrating across the city.

The 2017 Accountability Legislation solidified the CPC’s existence with the understanding that Community voice was imperative to a truly transformative reform process. This document attempts to center that voice. The CPC’s intent, therefore, with respect to this report is twofold. First, the CPC intends to provide the critical historical and contextual framing necessary to this conversation. Second, to uplift the Community members whose sacrifices necessitated actions by both City Council and a Federal Court.

It is also worth noting our limitations in this report. The 2012 Memorandum of Understanding Between the United States and the City of Seattle states that, “the Commission (CPC) will not review or report on specific cases of alleged misconduct, review or comment on discipline, and will not seek to influence the course or outcome of specific complaint investigations or the discipline of specific police officers. The Commission will not have access to any non-public information regarding an individual police officer or allegation of misconduct or disciplinary action.” Due to that provision, the CPC has relied on publicly available information for this report, and any comments are directed toward systemic issues and not individual cases of alleged misconduct.

As Council reviews this report and considers next steps, we implore you to continue to move in a way that honors the wisdom of those most impacted and not just of those most traditionally credentialed. Solely data driven reforms will only offer retroactive and incomplete solutions. Many of the systems that we frequently rely on as data sources were built to suppress or purportedly validate Community voice. Particularly when speaking of race, complete reliance upon data to drive reform was historically a way to convince white voters and elected officials that a problem, long identified by people of color, did in fact exist. Which means said problem was allowed to continue, unmitigatedly causing harm to the

affected communities. Community voice offers proactive solutions, especially when unbound by the confines of respectability politics.

Finally, we chose to use the term “Crowd Control,” to model the language used within the Ordinance. However, we feel it is important to highlight the actions that lead to the creation of the Ordinance were more akin to protest suppression. These were not spirited crowds after a sporting event. Nor have we seen the same level of response after Seahawk or Sounder championship parades. As we consider what real, substantial change to our current systems look like, it requires using language that represents the honest impact to Community. The more than 18,000 contacts to OPA regarding these protests are evidence of the inadequacies of the techniques and the refusal to acknowledge the social implications of their origins. Protests are an essential tool in social change, not crowds to be herded and gassed.

Background

WHY THE CPC IS MAKING THESE RECOMMENDATIONS

The Crowd Control Ordinance requested the Office of Police Accountability (OPA), Office of Inspector General (OIG), and CPC each submit recommendations that include:

1. Suggested policy revisions to the SPD 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.

PRIOR CPC RECOMMENDATIONS WERE NOT IMPLEMENTED

As the CPC informed the Mayor and Council prior to the approval of the Crowd Control Weapons Ban, our commission has repeatedly raised issues with the SPD’s use of these weapons and the tactics the department uses to police First Amendment protected events. Notably, the CPC made [recommendations in 2015](#) regarding SPD’s response to Black Lives Matter marches in the wake of the events in Ferguson, Missouri. Then in 2016, the CPC called for SPD to immediately [stop using blast balls](#) after several injuries were reported as a result of the explosives. Finally, shortly before the Crowd Control Weapons Ban was introduced in June, the CPC, OIG, and OPA jointly recommended SPD [stop using tear gas](#) on protesters.

Each of the issues the CPC identified in years past are just as pertinent today. For example, in those 2015 recommendations, the CPC recommended SPD, the CPC, and the Department of Justice’s Community Relation Services work with community to reform policies involving:

- Black Lives Matter protesters being blocked from marching;
- Inaccurate statements made by SPD leadership;
- Targeting specific protesters for arrest;
- Out of policy/harmful use of pepper spray, blast balls, and other projectiles;

- Unnecessary use of intimidating tactics such as deploying large numbers of officers in riot gear during peaceful demonstrations; and
- Disparate responses to demonstrations of different racial and political identities

SPD did not take our recommendation. Instead they partnered with an outside group to review their policies. The results of that report were never published. [The Inspector General says](#) it's unclear whether the report's recommendations to hold individual officers accountable for their misuse of crowd control weapons from that report were ever implemented.

Then, in 2016, the CPC issued additional recommendations to SPD urging them to stop using blast balls. The CPC cited [serious injuries to protesters and reporters](#), including many of the same injuries people sustained at the latest protests. SPD rejected the CPC's recommendation.

All of this to say, issues with use of force during protests, including the use of latest uses of Crowd Control Weapons (CCW) that spurred this action by Council, were made well known to SPD by the CPC and other groups. However, many of the recommendations made to address them were never implemented.

ACTIONS NEEDED FROM SPD AND THE CITY OF SEATTLE

In its [June 8 letter](#) to Mayor Jenny Durkan and Council, the CPC recommended the City make sure “the CPC is empowered to meet community expectations regarding its oversight.” It is imperative that the CPC work together with Council and other city leaders to ensure the CPC is guaranteed timely access to information and the CPC be granted power to ensure our recommendations are not ignored or immediately dismissed. When problems like those the CPC identified with SPD's response to protests are allowed to fester for years and the CPC's recommendations to fix those problems go unheeded, it causes real harm. It also undermines the credibility of Seattle's police accountability system to prevent those harms.

Crowd Control Weapons for Use In Crowd Control

INDISCRIMINATE USE OF FORCE

“Crowd control weapons,” as defined by the [Crowd Control Weapons Ban](#) largely references weapons that have an indiscriminate impact on people. Tear gas, blast balls, and other weapons SPD has used during the recent protests are not designed, nor are they being used to target specific individuals engaged in illegal activity. Rather, the use of these weapons indiscriminately impacts people, often when they are exercising their First Amendment rights.

In June alone, there were [reports of infants suffering](#) from the effects of tear gas while sleeping in their Capitol Hill homes, dozens of protesters being seriously burned or maimed by blast balls, [munitions hitting journalists](#) reporting on the protests, and SPD's “less-lethal” explosives [nearly killing people](#). Neither SPD's use of force policies nor the tenets of constitutional policing provide for the use of indiscriminate force.

CROWD CONTROL AND USE OF FORCE POLICIES ALREADY EXISTED

It's clear now that even these modest reforms made to SPD's crowd management policies under the Consent Decree have either been ignored in many circumstances or have proven wholly insufficient in keeping the community safe.

[Policies](#) already exist within SPD that require officers, when feasible, to:

- Consider whether less restrictive means of crowd management is available before dispersing protesters
- Issue orders to disperse prior to use of OC spray and blast balls
- Avoid deploying blast balls and OC spray in the proximity of people who are not posing a risk to public safety or property
- Give verbal warnings before using crowd control weapons
- Attempt to limit collateral exposure of crowd control weapons
- Limit the use of OC spray unless the use of physical force is necessary

While some may argue that individual policies can be tweaked to lessen the impact of crowd control weapons on protected speech, that has repeatedly not worked in practice. Therefore, the immediate, practical concern of protecting constitutional rights by legislating away these weapons outweighs the unproven, theoretical benefit of small tweaks and good faith in addressing the ills we've witnessed.

Community has also seen SPD's use of force policies be abandoned on a whim without public notice. We now know that on May 31 Chief Best [authorized officers to use tear gas](#), despite the fact SPD has no policies or training on how officers should be using tear gas for crowd control. Because of that lack of policy, officers were instructed to use tear gas the same way they would use OC spray (handheld pepper spray), a completely different weapon, both chemically and tactically.

Troublingly, the reason tear gas was deployed en masse was not due to any strategic need SPD faced. Tear gas was green lit because SPD had used so much pepper spray and blast balls in the first days of the protests that they were running out. Tear gas, an indiscriminate weapon outlawed in warfare and condemned by groups like [Amnesty International](#), was chosen as an appropriate replacement.

On June 5, in a rare joint recommendation, the CPC, OIG, and OPA recommended SPD immediately stop the use of tear gas in response to First Amendment activity. That recommendation was made in solidarity with hundreds of community members, public health officials, and civil rights advocates. The afternoon after the CPC published those recommendations, Mayor Durkan and Chief Best held a press conference announcing they would largely accept our recommendations, banning tear gas against protesters for 30 days. But, less than three days later, SPD [once again deployed tear gas](#) against protesters.

The community has repeatedly witnessed crowd control weapons policies disregarded or proven. That is what makes the Crowd Control Weapons Ban the only viable way at this time to ensure real harm is not continually done to people's personal health, safety, and civil rights.

COMMUNITY TRUST HAS BEEN BROKEN

The community no longer trusts SPD's discretion in using these weapons. That has been made abundantly clear by, among other things, the more than 18,000 police misconduct complaints OPA has received; the thousands of people who have expressed their support for this ordinance both at and outside of [Council meetings](#); and the more than [1,000 health officials](#) who have expressed their concern that these weapons will exacerbate the Coronavirus epidemic.

What we have seen at protests since May was presumably SPD on their best behavior. These events happened as the department was trying to [convince a federal judge](#) to discharge the substantive commitments of the Consent Decree, as a different federal judge had already issued [a restraining order](#) against the city, and as the eyes of the nation were squarely on Seattle. There is hardly any further scrutiny SPD could have been under that would have changed their behavior. Still, night after night, we saw SPD fail to meet the community's most basic expectations.

RELIANCE ON WEAPONS

The reliance on use of these weapons during protests since late May has made the elimination of these crowd control techniques necessary. It's worth remembering that the basis for SPD owning and using many of these weapons is to ensure, when all else fails, less lethal tools are available to reduce the severity of force used. What we have witnessed over the past few months is the liberal use of these tools as weapons of first resort.

Recommendation 1: The CPC supports the City's ban on the use of crowd control weapons during First Amendment protected activity and recommends SPD implement it as soon as possible.

COLLABORATIVE POLICY REVISIONS

The CPC understands that revising policies and training will likely be necessary for SPD to comply with the City's Crowd Control Weapons Ban. The CPC is prepared to assist SPD with that task both in the immediate future and through a longer community-centered review of SPD policies involving crowd management and use of force. While the specifics of that process are open for discussion, it is imperative that the process is community driven and those most impacted by policing are well represented.

Recommendation 2: SPD should immediately revise, with input from the CPC, OIG, OPA, and Federal Court, crowd control policies and training to comply with the City's elimination of Crowd Control Weapons. Over the coming months, those policies and trainings, along with all other SPD crowd control policies and tactics, should go through a community-centered review process that incorporates input from CPC, OPA, OIG, and Federal Court.

UPDATES TO TRAINING

The CPC was surprised hear to the Department of Justice (DOJ) argue, during the July 24 Consent Decree hearing, that SPD had not yet prepared revised policies and training to comply with the Crowd Control Weapons Ban. That ordinance, as you know, received a unanimous vote in Council more than a month earlier on June 15. While the CPC understands Mayor Durkan and Chief Best had objections to the Crowd Control Weapons Ban, the ordinance was passed through the democratic process. If the DOJ's characterization of SPD's preparedness is accurate, the CPC calls on SPD to better comply with democratic mandates.

MOVING BEYOND "BATONS AND RIOT SHIELDS"

The CPC was also troubled by the [July 23 letter](#) the Seattle Police Department sent to Council in which she warned SPD would be left to intervene with "riot shields and batons." Those comments, and many others in the letter, do not promote community trust. As [the CPC said at the time](#), focusing on the degree of force SPD intends to use on protesters, rather than the ways in which SPD can protect First Amendment rights and public safety does not promote community trust. Attempting to undermine laws implemented to address SPD's own officers' unprecedented use of force against protesters does not promote community trust. This response demonstrates that even seven years after the consent decree went into effect, there is still much work remaining to dismantle the warrior mentality of police officers.

Since then, the CPC has had an opportunity to talk with Chief Best about de-escalation techniques and the use of crowd control weapons. In that conversation, she acknowledged that innovation is needed in the way that SPD handles protests, particularly around the use of indiscriminate force. The CPC agrees and intends to work with interim Chief Adrian Diaz and many others to facilitate that innovation.

Crowd Control Weapons for Use Outside Crowd Control

LESS LETHAL OPTION IN PATROL

The City Attorney's Office (CAO) has informed the CPC that, in its interpretation, the Crowd Control Weapons ban as written restricts SPD's use of virtually all less-lethal weapons, even outside of crowd control. While the CPC recognizes the need to eliminate SPD's use of crowd control weapons against protesters, we are concerned about limiting less-lethal force in patrol operations. It is not clear to the CPC at this time if it was the Council's intent to limit less-lethal force tools outside of demonstration management, or if it is their understanding that the Crowd Control Weapons Ban is being interpreted that way.

The CPC requests more information from the Council regarding the CAO's interpretation, and recommends the Council ensure Crowd Control Weapons Ban allows for the use of appropriate less lethal options, with strong policies and accountability mechanisms, outside of crowd control. The CPC believes that still provides for the full elimination of indiscriminate, crowd control weapons such as tear gas and blast balls regardless of their use.

There is no immediate solution for the systemic racism and willfully unaddressed bias that pervade the system of policing. But if access to less lethal options during patrol prevents even one death, it serves an

immediate purpose. Our colleagues in OPA will offer more specific usage data of these tools. While the CPC acknowledges the need to reevaluate SPD's entire use of force policy, including rules around the use of less-lethal weapons outside of crowd control, we are concerned about the effect immediately taking those weapons away could have.

Recommendation 3: The City should ensure the Crowd Control Weapons Ban allows for the use of some appropriate less lethal options, with strong policies and accountability mechanisms, outside of crowd control.

EXPANSION OF NON-LETHAL PATROL TOOLS & TECHNIQUES

While the CPC acknowledges the importance of focusing on Crowd Control in this report, we encourage City and SPD leadership to collaboratively build on non-lethal patrol techniques. This discussion of less lethal options is not new. Certainly, there is long and demoralizing history of Black, Indigenous, and other people of color advocating for their right not to be shot by a force sworn to protect and serve. But as reforms move at an unprecedented pace in the coming months, now is the time to continue to expand policing practices that protect rather than threaten life. SPD has continually noted its position as a national leader in force reduction and police reform. But leadership cannot be sustained with past action. As nationwide reform efforts pick up pace, so much SPD's efforts if they wish to lead.

Who Should Declare Riots and Under What Conditions?

THE CITY SHOULD IMPROVE STANDARDS FOR WHEN POLICE AND THE MAYOR ARE ABLE TO LEGALLY DECLARE UNLAWFUL ASSEMBLIES, RIOTS, AND CURFEWS

First Amendment demonstrations are fundamental to the healthy functioning of our democracy. Seattle particularly has a rich history when it comes to social justice movements and protesting. Police and elected official's authority to end lawful protections for free speech should meet high standards. Unfortunately in Seattle, state and local law do not provide for that. Under current policy, SPD incident commanders are authorized to disperse protests with force, "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. [Washington State law](#) only requires three people to be present.

Seattle has seen the weaknesses of that policy during the latest protests. We have witnessed explosives and chemical weapons be used against hundreds of protesters in response to a couple of people throwing water bottles across police lines. In some cases, like the June 1 protest near Cal Anderson Park, [it appears](#) officers declared a riot and used tear gas, blast balls, and pepper spray to break up a protest when an officer grabbed a pink umbrella a protesters was using to guard against police pepper spray.

There were also constitutionally questionable directives from the Mayor's Office during the protests. During large protests on May 30, Mayor Durkan issued a citywide curfew starting at 5 pm. Troublingly, that news was not made public until just minutes before the curfew went into effect. [Mayor Durkan tweeted](#) at the time, "I will *soon* be signing an emergency order and the City of Seattle will be imposing a

5 pm curfew soon.” That was at 4:46 pm. Indeed, many protesters reported not receiving the emergency notification on their phones until after the curfew went into effect, making the order impossible to comply with.

Mayor Durkan issued that citywide curfew despite [her acknowledgement](#) that “most of the protests were peaceful” and reports of violence and destruction were “isolated.” The Mayor then left that [curfew in place for days](#), despite there being no further reports of significant violence or destruction. That action effectively made First Amendment demonstrations illegal during key hours of a mass movement. At the time, [Michelle Storms, Executive Director of ACLU of Washington, said](#) “The curfew orders issued by multiple Washington cities risk chilling the free speech of communities and individuals who are calling for a change to Washington’s and this country’s history of biased policing and disparate use of force against Black people. They open the door to selective enforcement, potentially magnifying the very harms that protestors and communities have been demanding be addressed for decades.”

Recommendation 4: The CPC recommends the City work with us, OPA, OIG, and other community stakeholders to set clear, strong, and high standards for when police and city officials are able to declare unlawful assemblies, riots, and put curfews in place.

DOCUMENTING REASONS FOR ISSUING ORDERS TO DISPERSE

During demonstrations, SPD’s incident commanders determine if and when the event meets the criteria necessary to qualify for an order to disperse or be declared a riot. However, other than selective posts on the SPD’s website, the reasons that cause incident commanders to take such drastic action are not publicized.

Recommendation 5: The CPC recommends in the event SPD issues orders to disperse or declare a riot, the authorizing officers should thoroughly document and an agency outside of SPD should subsequently review any and all actions taken and resulting outcomes. Additionally, we recommend make all documentation publicly available within 24 hours of the incident, effective immediately.

How SPD should dispose of its current stockpile of CCW

BAN THE SALE OF CROWD CONTROL WEAPONS TO OTHER LAW ENFORCEMENT

The Crowd Control Weapons Ordinance states, “Unless exempted or excepted, no City department shall own, purchase, rent, store or use crowd control weapons.” This presents a challenge to the department on how to properly dispose of the crowd control weapons identified, including: “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.”

To align with the intent of the Crowd Control Weapons Ordinance crafted to mitigate harms perpetrated upon peaceful demonstrators, it is imperative that the City prohibit the sale of crowd control weapons to other law enforcement agencies. The sale of weapons would go against the spirit of the ordinance and likely ensure those weapons are used by other departments to the detriment of the populations they serve.

Recommendation 6: The CPC recommends the City prohibit the sale of banned Crowd Control Weapons to other law enforcement agencies.

INVESTIGATE AND PUBLICLY DISCLOSE THE ORIGINS OF CROWS CONTROL WEAPONS

In order to appropriately decide the fate of the crowd control weapons, the CPC recommends SPD investigate and divulge the origins of the weapons within their inventory. Presently, disposal of the weapons presumes to be the best course of action. However, if the weapons were obtained directly from a manufacturer, the possibility exists the City may recoup monies spent through a buy-back agreement. Once SPD has determined the origins of the crowd control weapons, the CPC welcomes collaboration with the City, the Department, and the accountability partners to determine the verdict of said weapons.

Recommendation 7: The CPC recommends SPD investigate and make public the full inventory of the Department’s Crowd Control Weapons to determine next steps of disposal.

Areas for additional improvement

INITIATE A REVIEW OF SPD’S ENTIRE USE OF FORCE POLICY

The ongoing protests have called for a paradigm shift in how Seattle approaches policing. In response to those protests, the high levels of force recently used by SPD against protesters, and the City’s commitment to reimagining policing, the CPC recommends the City begin a community-centered review of the entirety of SPD’s use of force policies.

It has been seven years since those policies were first evaluated and reformed under the Consent Decree. Even then, the CPC submitted recommendations to the Federal Court overseeing the Consent Decree that officers should only be allowed to use the “lowest level of physical force that is objectively reasonable and necessary.” However, the City adopted a standard that force is justified if it is “proportional,” which the CPC identified as problematic.

This June, an [evaluation by the University of Chicago](#) found police use of force policies in every major American city, including Seattle, fail to meet fundamental international human rights law and standards. That evaluation graded Seattle’s lethal force policy 11th out of the 20 cities surveyed. Seattle received particularly poor grades for accountability regarding use of force.

Seattle cannot reimagine policing without reimagining the way in which police officers are authorized to and held accountable for using force against its people. The CPC is ready and willing to partner with community members, SPD, the Federal Court, and other stakeholders to ensure our policies set an example for the rest of the nation.

Recommendation 8: The CPC recommends the City initiate a community-centered review of SPD’s use of force policies in collaboration with key community stakeholders, CPC, SPD, and the Federal Court.

INITIATE REVIEW TO EVALUATE POTENTIAL DISPARITIES IN SPD’S RESPONSE TO PROTESTS

During discussions with SPD, the Department stated that Seattle boasts an average of 300+ demonstrations each year, with approximately 80 of those mentioned being monitored by police. Presuming purported numbers are correct, 26% of demonstrations are monitored by SPD annually. However, in recent months, the Department has attended a majority of demonstrations that are specifically rallying against police violence and brutality. Moreover, SPD’s presence during protests was perceived by community as an intimidation tactic with a looming sense of threatening force, which was actualized.

The unsettling nature of SPD’s presence during recent demonstrations is underlined by the way in which officers attended and presented – in riot gear, by the hundreds. It is unclear what intelligence was gathered by the Department to warrant such a response to planned peaceful protests, largely led by young people.

Recommendation 9: The CPC recommends a review of SPD’s strategic plans for disparities in the way officers attend, appear, and use force during demonstrations.

Recommendations

Recommendation 1: The CPC supports the City's ban on the use of crowd control weapons during First Amendment protected activity and recommends SPD implement it as soon as possible.

Recommendation 2: SPD should immediately revise, with input from the CPC, OIG, OPA, and Federal Court, crowd control policies and training to comply with the City's elimination of Crowd Control Weapons. Over the coming months, those policies and trainings, along with all other SPD crowd control policies and tactics, should go through a community-centered review process that incorporates input from CPC, OPA, OIG, and Federal Court.

Recommendation 3: The City should ensure the Crowd Control Weapons Ban allows for the use of some appropriate less lethal options, with strong policies and accountability mechanisms, outside of crowd control.

Recommendation 4: The CPC recommends the City work with us, OPA, OIG, and other community stakeholders to set clear, strong, and high standards for when police and city officials are able to declare unlawful assemblies, riots, and put curfews in place.

Recommendation 5: The CPC recommends in the event SPD issues orders to disperse or declare a riot, the authorizing officers should thoroughly document and an agency outside of SPD should subsequently review any and all actions taken and resulting outcomes. Additionally, we recommend make all documentation publicly available within 24 hours of the incident, effective immediately.

Recommendation 6: The CPC recommends the City prohibit the sale of banned Crowd Control Weapons to other law enforcement agencies.

Recommendation 7: The CPC recommends SPD investigate and make public the full inventory of the Department's Crowd Control Weapons to determine next steps of disposal.

Recommendation 8: The CPC recommends the City initiate a community-centered review of SPD's use of force policies in collaboration with key community stakeholders, CPC, SPD, and the Federal Court.

Recommendation 9: The CPC recommends a review of SPD's strategic plans for disparities in the way officers attend, appear, and use force during demonstrations.



Seattle Office of
Inspector General

Review of the SPD Crowd Dispersal Policy and Less Lethal Weapons

In Response to Ordinance 126102

August 14, 2020

Office of Inspector General
City of Seattle
PO Box 94764
Seattle, WA 98124-7064
oig@seattle.gov
(206) 684-3663

Introduction and Overview

The right to peaceably assemble to protest the government is a cornerstone of democracy and a critical right protected by the Constitution. As such, the Seattle City Council's ban on the use of less lethal force against persons engaged in peaceful protest rightfully acknowledges the need to protect community members exercising their First Amendment rights. Communities across the country and around the world were rightfully outraged at the murder of George Floyd by Minneapolis police. Protests in Seattle ultimately resulted in numerous incidents of peaceful protestors being subjected to chemical and other less lethal weapons. This created a loss of community trust in SPD and a call to City leaders for action. On June 15, 2020, City Council passed Council Bill 119805, later enacted as Ordinance 126102 and referred to as the Crowd Control Weapons (CCW) ordinance.

The CCW ordinance, however, goes further than protection of peaceful protestors. It also permanently removes certain less lethal weapons for use in addressing acts of violence in an otherwise peaceful crowd, as well as to disperse groups of people who have become violent. An outright ban in all circumstances, even those posing a life safety risk, leaves officers without sufficient tools to address violence or disperse a riot. SPD's choice then becomes using tools less suited to the task that may increase the risk of injury to protestors and officers or withdrawing from the situation leaving violence and life safety issues unaddressed. As the likely outcome for either option presents significant risk to community and officers, OIG does not support a complete ban of all less lethal weapons. If Council is inclined to continue the outright ban, SPD should be afforded sufficient opportunity to establish and train for alternative response strategies and mechanisms.

If Council determines that less lethal weapons may remain available for use in the protest context, it is critical for community trust that they are not used against peaceful protestors, and that there is accountability for their use. Use of these weapons must be in clearly delineated circumstances involving violence or life safety. Also, as previously stated in a joint memorandum from the three accountability entities to the City on June 5, 2020, OIG remains concerned about use of CS (tear) gas against protestors and continues to recommend against general use in a protest setting. Similarly, many recommendations have been made to SPD regarding use of blast balls, so any authorized use should consider previous recommendations and address concerns about the significant risk of injury associated with their use.

The CCW ordinance goes even further, to ban the use of those same less lethal tools in a patrol or SWAT capacity where they are can be legitimate and necessary options to control persons in crisis, or to take a violent person into custody without resorting to higher, including deadly, levels of force. For example, the 40 mm launcher is effective in utilizing distance between a person in crisis or an armed subject to allow for creation of a

distraction to safely take the person into custody. Another example is SWAT use of chemical irritants and noise flash diversionary devices (NFDDs) to take violent, barricaded persons into custody without resorting to lethal force.

Given the importance of certain less lethal tools banned by the ordinance in ordinary patrol and SWAT operations, Council should seriously consider amending the ordinance to clearly distinguish between use in a protest context from other patrol and SWAT functions and afford appropriate exemptions.

The remainder of this report:

- identifies specific considerations that must be addressed with any reauthorization of less lethal tools;
- provides an analysis of SPD crowd management tactics and policy with associated suggestions for addressing issues that emerged in recent protest responses;
- discusses the inadvisability of adding a layer of outside decision-making in the form of Executive authorization for crowd dispersal; and,
- describes OIG's ongoing work to review crowd management and protest related issues

OIG acknowledges that this report and the contributions of the other accountability partners does not resolve the greater issues of community concern about the specific actions taken by SPD. This report is but one step in a long process involving community, the accountability partners, the Court, and City decision-makers. The report concludes with a discussion of the upcoming sentinel event review, a review process of SPD's response to the 2020 protests that for the first time will center community perspective in departmental review of force.

Note about This Report

To review the existing crowd dispersal policy and determine whether it is sufficient to ensure public safety while minimizing harm to protestors, as well as to determine whether the SPD crowd dispersal policy was in line with industry norms, OIG began this project as a formal audit under GAGAS federal auditing standards. The rigor of these standards require that OIG evaluate relevant risks and related internal controls, and that audit findings are supported by sufficient and appropriate evidence. OIG was unable to complete this product as a GAGAS audit due the compressed timeline required by the ordinance, given the complexity and magnitude of identified issues. While the results of this review are still supported by factual evidence and analysis, OIG offers its conclusions as suggestions for Council and SPD to consider rather than formal audit recommendations.

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Section One: Foundational Concepts

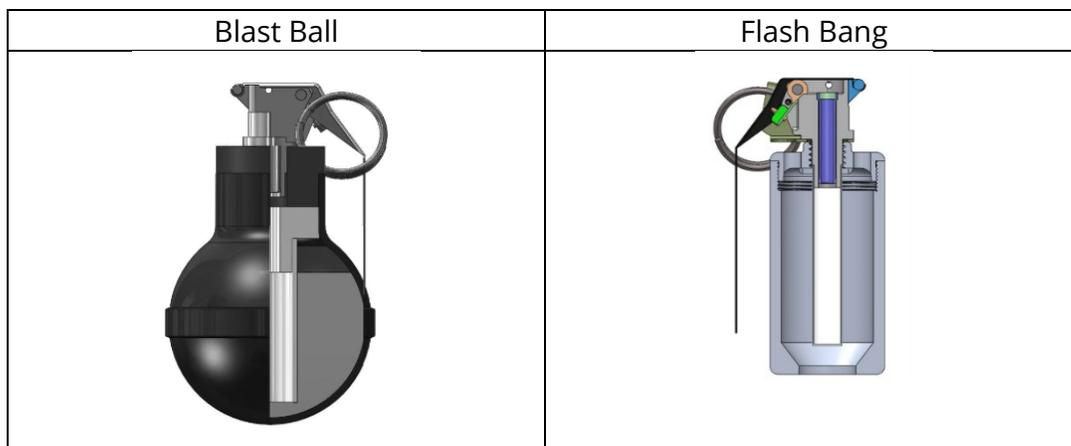
This review covers a wide variety of topics and terms. To provide informational context, the following is a summary of less lethal weapons, principles of de-escalation, and summary of less lethal weapon use during the recent protests.

Overview of Less Lethal Weapons

A previous OIG memo outlining different less lethal weapons more detail is included as Appendix A. However, a brief description is included here to provide immediate context for readers. These descriptions are specific to weapons used by SPD. OIG does not have information about weapons used by other agencies that may have provided mutual aid to SPD during the demonstrations.

A **blast ball** is a device designed to create diversionary light and sound. The principal difference between a blast ball and a traditional noise flash diversionary device (NFDD or “flash bang”) is that a blast ball is round and made of rubber, while a NFDD is metal and cylindrical. SPD asserted that it only uses blast balls that are “inert” (i.e. only produce light and sound), or that contain a small amount of OC.¹ SPD personnel stated the department does not use the “Stinger”-style blast balls that contain small rubber pellets or blast balls containing tear gas (CS).² SPD tracks the serial numbers of blast balls and their use per requirements from the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Personnel must attend annual training to use blast balls and the training is led by a certified instructor. See Exhibit 1 for illustrations of a flash bang and blast ball.

Exhibit 1



Source: images taken from item information sheets made available online by Defense Technology, one of the vendors used by SPD. See <http://www.defense-technology.com>.

¹ OC is the abbreviation for oleoresin capsicum, the active ingredient in pepper spray.

² CS is the abbreviation for 2-chlorobenzalmalononitrile. The abbreviation is based on the two scientists who invented the compound.

A **less-lethal launcher** is a weapon that is designed to propel a less lethal projectile. SPD has a variety of these launchers. Patrol officers only have access to the 40mm single shot launcher that fires a foam-tipped “blue nose” projectile. SWAT has access to additional launchers, including a multi-shot 40mm launcher, the FN303 launcher, and a Pepperball launcher.³ SWAT is also able to use a wider variety of 40mm projectiles than patrol, including a longer-range foam projectile, and aerial burst rounds that are designed to be aimed above a crowd to dissipate OC into the air. By policy, only SWAT can deploy the 40mm launcher in a crowd control situation. However, SPD temporarily authorized patrol to use the 40mm during recent protests, citing concern that protestors would pick up and throw CS canisters back at SPD.

Chemical irritants include the use of OC and CS, more commonly referred to as pepper spray and tear gas.⁴ These weapons are designed to cause coughing and physical distress, and thereby distract or interrupt the recipient’s actions. Under normal circumstances, only SWAT is authorized to use CS. SPD temporarily authorized use of CS by patrol after running out of blast balls.⁵ Medical and safety literature often include CN as a form of tear gas;⁶ however, SPD personnel stated that the department does not use CN, explaining that it displaces air from lungs and can cause death. OIG review of manufacturer safety information indicates that OC has a longer active effect time than CS, with the effects of OC lasting approximately 45 minutes and the effects of CS lasting approximately 20 minutes. However, CS is significantly more difficult to decontaminate from indoor settings, as it absorbs into a variety of surfaces including plastic and food.

Principles of De-escalation

This report refers to the term “de-escalation,” so the following provides an explanation of the term as used in a law enforcement context.

De-escalation, as defined by SPD, is:

“Taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, and thereby reduce or eliminate the necessity to use physical force.” – SPD Policy 8.050, Use of Force Definitions

³ The FN303 and Pepperball launchers use rounds that are similar to paintballs.

⁴ Per OIG research, SPD deployed OC in a variety of formats, including in canisters, blast balls, aerial burst rounds from less lethal launchers, and various sizes of sprays. SPD stated that CS was only deployed via canisters (versus from a launcher or in liquid form).

⁵ Per SWAT, there is no real tactical difference in deploying canisters of OC and CS, and patrol would not require additional training to safely deploy CS if they were already trained to deploy OC.

⁶ CN is the abbreviation for phenacyl chloride or chloroacetophenone.

De-escalation may still involve the use of force, if doing so prevents the need for a higher level of force. For example, if someone attempting to engage in violence can be incapacitated with a TASER, officers can refrain from a higher level of force (such as a firearm) to control the situation.

Three primary components of traditional de-escalation are time, distance, and shielding. With *time*, the situation can be slowed down or even stabilized. Further action may not be necessary or additional resources can be called to assist to reduce the necessity for force. With *distance*, the individual is kept further from the officer and others, lessening potential safety threats, reducing the need for higher levels of force, and ideally creating more time for thoughtful action. *Shielding* works in a similar fashion. For example, officers interacting with a person armed with a knife have more non-force options, like negotiation, if they are able to stay well away from the person. A physical barrier can create space and time to try and resolve the problem peacefully.

Most less lethal weapons, when used in an ideal circumstance, help create time and/or distance. A 40mm less lethal round is fired from a distance, with the goal of interrupting someone without putting officers in close contact (and thus creating potential safety risks that may result in higher levels of force). A blast ball is designed to move individuals away from an area, creating greater distance between individuals and officer(s) or objects. Chemical irritants can be used both to incapacitate (e.g., pepper spray) and interrupt an action, or to discourage individuals from remaining in a specific area (creating distance). A TASER incapacitates someone to stop their action and creates a small window of time for officers to apply handcuffs or otherwise gain control.

Preliminary Summary of Force Used

For context, below is a summary of less lethal force reported by SPD during the first phase of demonstrations.

A review of [public timelines](#) posted by SPD for the period of May 30, 2020 to June 10, 2020, include twenty-nine references to use of less lethal weapons, including

- 7 entries referencing the use of blast balls without other less lethal weapons;
- 8 entries referencing the use of pepper spray (OC);
- 5 entries referencing a combination of blast balls and OC;
- 7 entries referencing use of CS gas;
- 1 entry referencing no further use of CS; and
- 1 entry referencing a combination of blast balls and CS.

This time period includes the downtown demonstrations on the first weekend after the murder of George Floyd as well as a series of protests at the East Precinct, culminating in the temporary departure of SPD from the East Precinct. A review of preliminary use of

force data for the time period of May 30, 2020 to June 11, 2020, indicates the following force was used by SPD:⁷

- At least 35 uses of the 40 mm less lethal launcher, including 7 uses by non-SWAT personnel;
- At least 12 uses of the FN303 less lethal launcher;
- 1 use of a NFDD or 'flash bang' device;
- At least 163 uses of blast balls;
- 176 uses of OC spray; and
- 48 reported uses of CS gas.

These numbers do not include uses of force by other agencies providing mutual aid to SPD, as discussed further in Section Three.

⁷ SPD reported that these numbers were preliminary and should not be considered complete, as SPD had not finished its force review processes at the time of the OIG request.

Section Two: Re-authorization of Less Lethal Weapon Use

Re-Authorization in Crowd Control Situations

Use of force, including use of less lethal weapons, on peaceful protestors or other persons not engaged in acts of violence is not lawful. If no threat to safety or substantial property damage exists, there is no legal justification to use force on protestors and interfere with their First Amendment activities. However, the question remains of what tools should be available to SPD to address protestors who are engaged in violence, such as individuals who set occupied buildings on fire or injure others, including both protestors and police officers. This discussion seeks to provide guidance for circumstances when acts of violence threaten the safety of persons.

Re-authorization of less lethal weapons in crowd control situations is the more prudent course of action to afford the widest range of options in addressing violence. However, given the large number of complaints and injuries arising from the use of less lethal weapons during recent protests, any re-authorization of less lethal weapons in crowd control situations should be accompanied by changes in policy and training to reduce risk of harm to non-violent protestors.

Less lethal weapons are often used by police departments because they can stop unwanted activity without progressing to a higher level of force. When violence is occurring on a larger scale, chemical agents, blast balls, and sponge rounds, while undeniably painful and capable of causing injury, pose less physical risk to groups of violent protestors than broken bones from riot batons or potentially lethal force from firearms. However, chemical agents and blast balls also have the potential to be indiscriminate, inflicting pain and potential injury on peaceful protestors as well as those responsible for the violence.

OIG specifically highlights concern with three of the weapons at issue, the first being CS gas. The very small particulates of CS, unlike OC, disperse indiscriminately and widely, as demonstrated by complaints from residents about CS seeping into their homes during demonstrations on Capitol Hill. Blast balls have the potential to inflict serious injury or even death if detonated too close to a person, underscoring the importance of policy, training, and the ability to practice before use in a live setting. Providing warnings to the public before use of these weapons would help mitigate risk. Finally, less lethal launchers, such as the 40mm, can cause lethal harm if rounds hit the head, neck, or chest, or at too close range. Policy and training should continue to emphasize safe targeting practices for these weapons.

Council faces a substantial policy choice. If SPD is re-authorized to use less lethal weapons, this report makes clear that revisions to the current policy should be made to reduce risk

of indiscriminate or inappropriate uses of force. Suggestions by OIG in this report include updating the policy to more clearly distinguish when each level and type of force is authorized, improving the way SPD communicates with protestors to ensure peaceful individuals are aware of SPD's decisions concerning the larger crowd, and devising better methods of handling large, angry, stationary crowds. OIG also highlights the need to closely review how and whether senior level command is held accountable for their decision-making in authorizing force and determining overall tactics. Focusing solely on the actions of individual line officers without reviewing how senior personnel managed the overall event would be a significant oversight. Widespread, indiscriminate use of less lethal weapons, such as tear gas, often occurs after dispersal orders or other directions from the incident commander (IC).

Federal courts that have reviewed the specific circumstances in Seattle have also provided salient guidance on appropriate use of less lethal weapons in crowd management. In the matter of *Black Lives Matter Seattle-King County et al v. City of Seattle* litigation, Judge Jones provides that SPD should restrict its use of less lethal weapons to “reasonable, proportional, and targeted action to address a specific imminent threat of physical harm, acts of violence, or property damage”.⁸ OIG acknowledges that use of force in defense of property is controversial and is a policy question for Council.

Further, OIG agrees with the statements of Judge Robart in the context of the Consent Decree litigation that banning these weapons without adequate time to re-train officers and develop alternative tactics for managing a violent crowd creates a substantial risk of harm to the public.⁹ Banning a tool (less lethal weapons) is not equivalent to taking away the triggering event (perceived public safety need). If Council bans less lethal weapons without allowing time for the development of an alternative, SPD will be responding to the same situations seen in May and June 2020 with only batons and firearms at their disposal. Expecting officers to resolve the same problems with only these tools and no further instruction, in highly stressful situations, creates a significant risk of inconsistency and, potentially, higher levels of force. OIG is not suggesting that the only way to manage a crowd is through less lethal weapons. But SPD should be given time, in concert with the dedicated oversight bodies and the input of community, to develop and train an alternative approach.

Re-Authorization in Non-Crowd Control Situations

OIG highlights that the CCW Ordinance, as currently worded, bans the use of less lethal weapons in all contexts, unless an exemption from Council is granted. Although the legislation makes specific reference to “crowd control weapons,” the prohibition on owning,

⁸ *Black Lives Matter Seattle-King County v. City of Seattle*, Document 34.

⁹ *United States v. City of Seattle*, 12 Civ.1282 (JLR), Document 630.

storing, or otherwise having access to these weapons means SPD is unable to retain access for patrol and SWAT purposes. This is a flaw in the legislation and implicates broader public safety concerns.

To provide the public and Council with context, OIG requested that SPD provide a summary of the recent use of less lethal weapons. Per department use of force tracking systems, which have previously been approved by the Monitor and the Court, SPD used less lethal force 316 times from January 1, 2017 to April 30, 2020.¹⁰ Use of the 40mm less lethal launcher was limited compared to other weapons, and SPD notes the subject was armed in all but one of these incidents. In three of the incidents, the subject had “explicitly stated their desire to commit suicide by cop and/or [had] attempted to do so in the past.” OIG is including the SPD report in Appendix B for reference.

Less lethal weapons are an important option for incidents in which some level of police action is necessary for safety reasons. It is an unfortunate fact that not all situations can be resolved through extended discussion, and that police may need to take more immediate action due to safety considerations for themselves or the public. For example, if an agitated, potentially armed individual begins advancing towards bystanders, using a less lethal launcher such as the 40mm may allow officers to interrupt the individual long enough for other officers to gain control of the person without further force. Without such a less lethal option or other resources, officers might need to resort to higher, and potentially lethal, levels of force. In this type of scenario, a TASER is generally not a consistent or effective solution because of distance, movement and clothing.

SWAT operations are another area in which less lethal tools can play an important role in reducing the need for higher levels of force. Although SWAT does make use of trained hostage negotiators, it is not always possible – or safe, given exigent circumstances – to verbally persuade someone to surrender peacefully. If verbal persuasion does not work and SWAT can convince a barricaded, hostile, armed individual to surrender using a flash bang or chemical irritants, this is objectively preferable to using deadly force on that individual.

¹⁰ Of that population, 312 (98.7%) consisted of Type I and Type II force, i.e., force that did not cause great or substantial bodily harm. SWAT reported 48.1% of the less lethal force, of which the vast majority (86.2%) were uses of flash bang devices, followed by chemical agents. 38.9% of the reported force was used by patrol, who reported using the TASER for 79.7% of their incidents, followed by OC spray (14.6%).

Section Three: Review of Crowd Management Policies and Related Training

Summary of Section

While SPD policy related to crowd management is consistent with other jurisdictions and SPD conducted training consistent with this policy, the policy lacks specificity in addressing varying crowd dynamics. Further, overall SPD tactics and training concerning crowd management are not designed to address large, stationary, volatile crowds. There are also conflicting risks concerning mutual aid from other law enforcement agencies: the City cannot compel other agencies to follow SPD policies or document their use of force on Seattle residents, but also lacks the resources to manage large-scale demonstrations without the assistance of other agencies.

The SPD crowd dispersal policy is consistent with other jurisdictions, but lack of detail may lead to cycles of escalation and inconsistent decisions within SPD.

The criteria and means of crowd dispersal, as outlined in SPD policy, are consistent with other policies reviewed by OIG. However, better communication tools may help reduce confusion and improve opportunities for crowd de-escalation. Additionally, OIG found that other policies provide greater clarity and detail by breaking the behavior of a crowd into more than two phases. With this added level of detail, including information about acceptable tactics and uses of force permissible at each stage, both the public and officers have a better understanding of expectations and goals in managing a crowd, and the possibility of inconsistent use of force decisions by ICs is reduced.

SPD Policy is Consistent with Other Jurisdictions Reviewed by OIG

SPD's stated policy objective for crowd management is to "facilitate free speech and assembly whenever possible, while preserving order and protecting persons and property." This philosophy is echoed in SPD crowd management training materials, which describe the preferred means of crowd management as communicating with demonstration leaders, agreeing on a safe means of achieving the objectives, and allowing the demonstration to proceed with as little interference as possible. Those same training materials discuss legal criteria governing when SPD can, and cannot, interfere with demonstrations, permitted or otherwise. The complete SPD crowd dispersal policy is included with the previous OIG memo on less lethal weapon usage, submitted as Appendix A of this report. For comparison, OIG reviewed crowd dispersal materials from eight other jurisdictions:

- City of Los Angeles, CA;
- Oakland, CA;
- San Francisco, CA;
- University of California Santa Barbara, CA;
- Portland, OR;
- Austin, TX;
- Vancouver, Canada and
- Toronto, CA.

All jurisdictions reviewed, including those from Canada, use variations of the FEMA Incident Command System model to plan and manage crowd events. Given that their response is based on the same model, the major elements of crowd control and conditions for crowd dispersal are similar. For example, all cities granted the IC the ability to issue dispersal orders. OIG did identify that other jurisdictions included more detailed description of crowd phases and attendant authorized police responses, as discussed in more detail below.

All of the entities permitted less lethal force for crowd control. However, the Los Angeles Police Department was a notable exception in that it required commander approval before chemical agents other than OC could be used. OC was still permitted in response to individual crowd members, but not as an indiscriminate tool.

Protestors May Not Distinguish Between Force Used for Formal Dispersal and Force Used at the Discretion of Individual Officers, Creating the Potential for a Cycle of Escalation

SPD permits officers to make independent decisions to use force at demonstrations if there is either a threat to safety or a threat of significant property damage. However, it is crucial to note – and likely unclear to protestors in the crowd – that SPD policy distinguishes between a formal dispersal of a crowd and individual officer discretion to use force to address specific acts.

A dispersal order creates a circumstance where the crowd is no longer legally allowed to be present in a certain area, and force to disperse the crowd is presumed to be reasonable. The decision to disperse a crowd is solely the responsibility of the IC, who is operationally in charge of SPD's response to a given demonstration. This person is typically a senior lieutenant or captain. The IC can disperse a crowd, per policy, if "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 policy requires the IC to consider whether there are less restrictive means of crowd management available, such as seeking voluntary cooperation, and to ensure there is a

safe route for the crowd to depart. If feasible, the IC then issues the order to disperse.¹¹ The IC is not required to ensure all of the crowd (those in the rear, for example) can hear the warning, but the policy requires the IC to consider the option. If the crowd does not disperse, the IC has the authority to direct the use of blast balls and OC spray to disperse the crowd. CS is not mentioned in the policy, but SWAT is authorized to use it at the direction of the IC, according to the SWAT manual. The policy is silent on the minimum time, if any, to be given for the crowd to disperse before less lethal force is used; this is likely to allow the IC to immediately authorize force if a life safety emergency exists.

While the IC controls the decision to disperse a crowd, they do not have complete control of the type and timing of all uses of force by SPD personnel at the event. SPD, in alignment with other department policies reviewed by OIG, affords individual officers discretion to use force if they believe it is necessary to defend themselves, defend someone else, or prevent significant destruction of property.¹² All individual use of force is still subject to SPD use of force policies and accountability protocols, including the requirement for force to be documented and subsequently reviewed.

Authorizing individual discretion in the context of an immediate life safety concern, or when the IC is not immediately present to authorize the force, is reasonable. For example, SPD's preferred model of crowd management is mobile bike squads, which are not always near the IC as they engage in their duties. However, individual deployment of blast balls or OC spray could be confusing for protestors within a crowd, who may not understand why force is being used without a dispersal order. Additionally, the individuals may not receive a warning before this force is used. SPD policy requires personnel to issue a verbal warning, if feasible, before deploying OC spray or the 40mm launcher, but does not include any warning requirement for blast balls.

As discussed further in this section, crowd psychology literature and SPD training materials recognize that if protestors do not understand why police are using force, they are likely to view the force as illegitimate and the police as an unreasonable, violent entity stifling First Amendment expression. Protestors may then respond by becoming increasingly confrontational. This, in turn, may lead to police perceiving increased violence and a

¹¹ The language of the order is set by policy: "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." SPD stated to OIG that per training materials, ICs are required to issue the order; however, this is not required by policy.

¹² OIG identified that the description of the property damage threshold as "significant" appears vague; however, when asked, personnel gave very consistent responses. They gave examples of broken windows (actionable) versus overturned garbage cans (not actionable).

corresponding need to use more force, creating a toxic cycle of escalation. The effect is magnified if dispersal orders are not issued, or not issued in a way that is not audible and understandable to the entire crowd. OIG identified at least two incidents in which dispersal orders were not issued prior to initiation of a large-scale use of force designed to move the crowd, per SPD communication records.

Better communication to the entire crowd could help break the cycle of escalation, as peaceful members of the crowd would be able to understand what is happening and respond accordingly. Reviews of major demonstration incidents in other cities, including the 2007 May Day demonstrations in Los Angeles and the 2010 G20 Summit demonstrations in Toronto both highlight the role of communication in potentially de-escalating the crowd. In Los Angeles, the authors recommended that the department create a mobile sound unit vehicle, preferably with visual aids such as the signs used to relay traffic information, to help communicate dispersal orders and warnings to the crowd.

The SPD Policy Lacks Detail and Specificity on the Stages of Crowd Dynamics, Which May Create Confusion for Protestors and Lead to Inconsistent Actions by ICs

Although the SPD crowd dispersal policy is clear as to the conditions under which crowds can be dispersed and less lethal force can be used, the general nature of the policy reduces crowd status to two conditions: lawful, and unlawful. In a very general sense, protestors are allowed to assemble, until they are not. The transition from managing a lawful demonstration to dispersing an unlawful assembly has the potential to be abrupt and confusing to non-violent participants in the crowd who are unaware of violence occurring elsewhere in the crowd, and who then may become understandably angry when subjected to unexpected force.

In comparison, a more detailed matrix of crowd management considerations provides clearer expectations for SPD and the public alike as to what actions may trigger dispersal, and what tactics are permitted at each stage. OIG includes an excerpt from the LAPD matrix as Exhibit 2. The full matrix is included as Appendix C of this report.

Exhibit 2: LAPD Crowd Management Matrix Excerpt

Isolated Unlawful Behavior	Unlawful Assembly
<p><i>Isolated unlawful activity by individuals or small groups within a crowd should not automatically form the basis for declaring an assembly unlawful.</i></p> <ul style="list-style-type: none"> • Isolated destruction of property • Isolated acts of violence • Isolated rock or bottle throwers • Individual sit down demonstrators 	<p>407 PC Two or more persons assemble</p> <ul style="list-style-type: none"> • To do an unlawful act or • To do a lawful act in a boisterous or tumultuous manner <p><i>Assemblies may be dispersed when they are: Violent, or pose a clear and present danger of violence, or the group is breaking some other law in the process. If a crime is occurring action may be taken to stop it prior to a Dispersal Order being given.</i></p> <ul style="list-style-type: none"> • Civil Disobedience • Sit down demonstration
Police Action	
<p>Use Crowd Intervention strategies:</p> <ul style="list-style-type: none"> • Use organizers and monitors to gain voluntary compliance • Isolate, arrest and remove law violators as quickly as possible • Video action of officers and law violators • Use amplified sound (sound trucks or CIUVs) to communicate intent or to gain compliance • Use low profile tactics when possible. Don't become the focus of the demonstration. • Use Passive Arrest Teams, Tangle Teams, Shadow Teams, Cross Bows, Arrest Circles • When it is not possible to make an immediate arrest, identify and track suspects using cameras, observation posts, an air unit or shadow teams • Continue to assess; escalate and deescalate as behavior changes • Don't increase crowd tension or change crowd focus to law enforcement by unnecessary aggressive appearance or behavior 	<p>Use Crowd Control strategies:</p> <ul style="list-style-type: none"> • Obtain voluntary compliance • Video action of officers and law violators • Act quickly • Request resources (MFF) • Put control forces in place • Identify dispersal routes • Put a traffic plan in place • Move media to protected area. Use amplified sound (sound trucks or CIUVs) to communicate intent to declare an unlawful assembly • Disperse unlawful crowd • Track and contain groups involved in illegal behavior using cameras, observation posts, Shadow Teams or Air Unit • Arrest individuals who fail to disperse or who are involved in illegal activity • Use Arrest Links to move arrestees • With appropriate approval, deploy the appropriate less lethal munitions to defend officers or to disperse the crowd • Ensure only reasonable force • Report use of force and munitions • Restore traffic flow

In comparison, SPD's policy is much more general. This creates the risk of varying interpretations by SPD personnel and affords a considerable degree of latitude to ICs. Additionally, the general nature of the policy makes it hard for members of the public to predict how SPD will respond to a given crowd. See Exhibit 3, SPD criteria for crowd dispersal.

Exhibit 3: SPD Criteria for 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.

While considerations referenced in the LAPD matrix are included in various SPD training materials, this information is not readily accessible to the public, or by SPD personnel looking for quick reference. Providing greater detail in policy promotes opportunities for public understanding and cooperation, while also reducing the risk that SPD personnel may not be aware of departmental expectations and techniques or may apply policies in a widely varying manner.

Suggestions for Council and SPD to Consider

1. Augment the existing crowd dispersal policy with a matrix containing different stages of crowd dynamics and associated authorized techniques to respond. In accordance with Suggestion 10, ensure the matrix addresses the possibility of both mobile and static crowds. SPD may wish to consider delineating when each type of less lethal weapon is authorized, based on the stage. For example, given the highly indiscriminate nature of CS gas, SPD and Council may wish to consider limiting use of this weapon to full-scale riot situations involving violence. SPD and Council may also wish to consider prohibiting the use of weapons such as CS solely in defense of property.
2. Research and acquire technology to communicate with large crowds, such as a sound truck, and visual display boards. This technology could be used in a variety of settings and SPD may wish to explore partnership with other departments to share the cost. Social media is another low-cost option for wide-spread, real-time communication with crowds and the public at large during a protest to keep the crowd apprised of developments and any forthcoming police action.

3. Research and enhance policy requirements for increased communication with crowds, especially during large or stationary protests, to manage expectations and provide greater credibility for police action. For example, the current policy does not require dispersal orders to be announced.
4. Review and, if necessary, modify policy language for all less lethal weapons to ensure policy has consistent warning requirements, or include language explaining why inconsistencies exist.
5. Provide public education concerning crowd dispersal policies, procedures and overall SPD crowd management tactics.

Training is consistent with current policy but does not afford sufficient practice opportunities with less lethal weapons.

OIG found that, per SPD records, all individuals providing incident command and supervision had attended crowd control training within the past two years, and 83% had attended in-person training in the past fifteen months.¹³ Further, almost all relevant personnel had records of training related to supervision (sergeants) or incident command (lieutenants and above).¹⁴ Individuals informed OIG that they had a clear understanding of the crowd control policy and the conditions under which crowds could be dispersed and less lethal weapons could be used. These results, together with analysis of the content of the commanders' crowd control training, indicate that personnel in charge of supervising and managing demonstrations were knowledgeable as to SPD's expectations and requirements for crowd management.

OIG examined whether individuals identified as using force during the demonstrations were qualified by the department to use that force. SPD provided OIG with dates indicating all officers who reported using the 40mm launcher had attended the required training in the previous year (2019), and all officers who reported using OC had attended training within the past two years as required by policy (2018-2019). OIG also found that all individuals who reported using blast balls had received some level of training, per SPD's reported records, although a small minority of officers deployed having not taken training for several years. OIG determined that four officers received blast ball training for the first time during the demonstrations, but per the department blast ball coordinator, these officers were given the opportunity to deploy a test device prior to deploying live blast balls in the field. OIG acknowledges that CPC and OPA, as well as external experts, have issued

¹³ Due to the covid-19 pandemic, in-person training was halted in 2020.

¹⁴ SPD did not find records of supervisory training ("sergeant school") for two sergeants involved in the demonstrations. One acting sergeant had not attended sergeant school because they are not permanently assigned to the acting sergeant role. SPD noted that the remaining sergeant's records may be missing due to attending an outside course on supervision.

multiple recommendations concerning SPD use of blast balls in the past, and the status of these recommendations should be reviewed for implementation in future work.¹⁵

OIG also reviewed the training materials and interviewed department specialists concerning blast balls and the 40mm launcher and determined that department training did incorporate information about safe use and applicable manufacturer's regulations. However, OIG identified that there are limited opportunities for officers to gain proficiency and experience with practice in using these weapons. Practice munitions are not available to officers for the 40mm launcher outside of annual qualification requirements, and officers may not have an opportunity to deploy live blast balls during annual re-training, depending on supply. In both cases, personnel described department budget as the limiting factor.

OIG did not review training materials for the deployment of CS, as this weapon is typically only authorized for use by SWAT, and its normal use is outside a crowd control setting. As referenced in Section One of this report, the Chief of Police made a policy decision to authorize patrol officers to deploy CS without prior training. By default, this means that patrol officers deploying CS did so without the safeguards of training or policy. While SWAT officers asserted the deployment of CS is not substantially different than the deployment of OC canisters, there is nevertheless risk associated with officers deploying weapons with which they have neither been trained or qualified. Additionally, officers not formally trained in use of CS may be unfamiliar with dispersal patterns, as well as proper first aid or decontamination procedures.

Personnel also reported that SPD likely used expired CS canisters during the recent demonstrations. Upon inquiry from OIG, personnel explained that expired canisters lose effectiveness over time, but there should not be any additional danger when deployed. OIG notes that deploying a less lethal weapon that does not have the desired effect (e.g., dispersal from CS gas) creates a risk that officers may then compensate with additional, or higher, uses of force to achieve the desired response. SPD asserted that the status of other less lethal weapons, such as OC and blast balls, are monitored through inventory tracking procedures.

Suggestions for Council and SPD to Consider

6. Address previous recommendations issued by CPC, OPA, and external experts on blast balls.

¹⁵ OIG has requested that SPD provide a status update on these recommendations but did not receive the results in time to review for this report.

7. Evaluate the effectiveness of any expired munitions and, if no longer deemed safe or effective for use, dispose of the munitions in accordance with regulatory guidance.
8. Increase opportunities for SPD personnel to train with the 40mm launcher and ensure each officer is able to deploy a live blast ball safely and within policy during annual recertification.
9. If it is determined that non-SWAT officers will be authorized to deploy CS in future demonstrations, ensure officers receive training regarding the proper use of CS and related first aid and decontamination procedures.

SPD tactics and training for crowd management are designed for mobile crowds and do not adequately prepare personnel to respond to large, volatile, stationary crowds, or individual instigators using the cover of large crowds to engage in violence.

In conducting this review and future related analysis, OIG feels it is important to distinguish between the events that occurred downtown during the first weekend (May 29, 2020 to May 31, 2020) and the protests that took place in the vicinity of the East Precinct. Although SPD was not prepared for the scale and violence of the downtown protests,¹⁶ this was still generally a moving crowd and could theoretically be managed with existing mobile crowd control tactics given sufficient personnel. The protests at the East Precinct were unusual in that they involved a stationary, volatile crowd that was focused on a fixed location. As will be discussed, SPD policy and training did not prepare personnel to manage such a crowd, and SPD was unable to de-escalate the crowd. Consequently, SPD relied on widespread use of less lethal weapons to respond to perceived safety threats.

SPD training and related material are designed for mobile crowds, not static ones.

SPD trainings and related material provide a detailed overview of crowd psychology and crowd management techniques. By 2016, SPD recognized many deficiencies related to the use of traditional fixed riot lines. These weaknesses were both tactical – in that fixed lines were less flexible and had a limited ability to de-escalate the crowd – and psychological, in that the appearance and nature of a “hard line” may cause the crowd to be more antagonistic towards the police. It is clear from these documents that SPD understands the problems inherent in the design of a fixed riot line:

“At the core of the tactical changes [made by SPD after WTO] was the recognition that allowing a disruptive crowd to coalesce at fixed points creates a greater likelihood of

¹⁶ OIG addresses this lack of preparation in the “Matters for Consideration and Future Work” section of this report.



confrontation. Once officers and crowds are fixed in place, officers and demonstrators are often face with individual confrontations at close range; literally face-to-face or arms-length away from each other. These confrontations, at these distances, carry a high degree of risk to both sides and have a high potential for physical confrontation due to the perception of danger by each side. WTO and later events all point to the limitations of these traditional police demonstration tactics. Fielding enough officers in line formations, on short notice, to handle crowds from 500 – 10,000 demonstrators is almost impossible for all but the largest police agencies. [...] Line formations become very inflexible once engaged with a crowd. Without sufficient backing officers, line formations are easily penetrated, flanked or otherwise displaced through the pressure of a large crowd.”

- SPD 2016 ISDM on Crowd Management

The ISDM goes on to specifically note that fixed lines are to be avoided whenever possible.

In these materials the department acknowledges the value of perceived legitimacy and procedural justice when managing a crowd. In a discussion of the Elaborated Social Identity Model of Crowd Behavior, SPD personnel write

“how the police act can influence a crowd in ways that promote conflict. Defensive police actions that are interpreted as considering a group as dangerous forms a reality for the crowd, who then consider the police as the opposition and promoting eventual conflict with those viewed as opposing the crowd. Interestingly, one of the theory’s primary principles is that the more the police are viewed as legitimate, the less likely there will be conflict.”

- SPD 2016 ISDM on Crowd Management

Supported by this research, SPD designed its crowd management tactics to avoid fixed lines, enhance the mobility of officers and the crowd, and emphasize the need for cooperation and engagement with leaders of demonstrations. The 2019 Commanders’ Crowd Control training specifically states that commanders should create distance and limit physical confrontation between the demonstrators and officers.

While SPD training materials refer to the difficulties of applying these tactics to a confrontational crowd or less mobile crowd, they offer few details on how to resolve these problems. Further, it is apparent that SPD has wrestled with the problem of how to intervene against coordinated individuals who use a larger crowd to conceal acts of violence and property damage for years, but has not developed a durable solution other than mobile bike officers. That solution is not workable in a large, fixed crowd as it is almost impossible for officers to safely enter the crowd and extract the individuals in question, especially if they are intent on disappearing into the larger crowd.

SPD personnel stated it was unprecedented to defend a fixed location against what they described as a large, angry crowd. They believed the situation effectively nullified SPD's standard tactics for managing protests.¹⁷ Officers explained that mobile bike troops were not effective against a static crowd, but SPD could also not simply withdraw and allow the crowd unfettered movement, as the risk that individuals might enter the precinct was too great. Personnel listed several reasons for believing they were unable to abandon the precinct without preparation, including:

- 1) Intelligence that a group was trying to burn down a precinct and signs in the crowd to that effect;¹⁸
- 2) The presence of weapons and confidential information in the precinct, including informant files; and
- 3) Concern that if the precinct was set on fire, it would spread to other nearby buildings containing apartments.

One IC added that retreating inside the East Precinct was not a viable option, as the building is awkward to defend. It has no plaza or other area to place barriers without blocking the street, and the placement of the entrances and exits mean it would be easier for personnel to be trapped inside by individuals purposely blocking the way. The IC indicated that for these reasons, SPD was concerned that officers could be trapped inside a burning precinct.

Without the ability to deploy standard crowd management tactics or effectively de-escalate, SPD engaged in significant use of less lethal weapons.

In addition to not being able to deploy the department's primary means of managing a protest – moving the crowd – the events at the East Precinct indicated that the standard de-escalation principles of time, distance and shielding were not effective or not feasible.

Time did not appear to work, perhaps as SPD itself was the focus of the crowd's agitation. Distance was compromised by the nature of the fencing used at the East Precinct. This fencing was repeatedly destroyed or moved by protestors, allowing the crowd to close the space between themselves and the police.¹⁹ One officer interviewed by OIG argued that by engaging in extended skirmishes with protestors, SPD actually escalated the situation. The officer reasoned that by tossing blast balls and then allowing the crowd to re-approach or move the fencing, SPD de-legitimized its actions by making it appear as if force was used

¹⁷ In reviewing operational plans for the protests, it was apparent that SPD shifted rapidly from viewing their primary objective as safe facilitation of First Amendment activity to defending officers from violent protestors.

¹⁸ In interviews, SPD maintained they had specific information about threats to precinct facilities.

¹⁹ One individual interviewed by OIG stated that SPD had suggested placing more durable barriers that were effectively mounted into the street, but this was allegedly met with resistance from decision-makers.

for no reason. The officer argued that if SPD had fully dispersed the crowd early on, events may not have escalated to such a degree later.

OIG includes an extended section of CAD (radio) traffic as Exhibit 4. Although lengthy, this section depicts how the fencing set up by SPD was not suitable for enforcing distance between officers and protestors. **Note: the chronological order of the CAD output reads from bottom to top, as seen by the time stamps on the far left.**

Exhibit 4: CAD Excerpt from the Night of June 7, 2020

22:21	OD/8009	A	216	(5774)IF CONFRONTED UNITS WILL DEFEND SHIELD OFFCRS,AUTHORIZED USE OF OC AND BLAST BALLS
22:21	OD/8009			(M)216 IF CONFRONTED UNITS WILL DEFEND SHIELD OFFCRS,AUTHORIZED USE OF OC AND BLAST BALLS
22:21	OD/8009	A	216	(5774)11/PINE,CROWD APPROACHED WITHIN 5 FT OF OFCRS
22:21	OD/8009			(M)216 11/PINE,CROWD APPROACHED WITHIN 5 FT OF OFCRS
22:20	OD/8009			(M)PER 2D,PASSING OUT WALKIE TALKIES AT FRONT OF THE CROWD
22:20	OD/8009			Related Call:ADDED DUPLICATE:20-183479
22:20	OD/8009			(M)DUPLICATE: 20-183479: RP REPORTING 20 PEOPLE IN MIDDLE OF INTERSECTION BLOCKING TRAFFIC, ALSO SEE TRASH CANS & DEBRIS IN ROAD, NO WPNS SEEN
22:20	SPVB/7274			WEST SIDE SLOWLY ADVANCING,MALE WITH A DUMPSTER PUSHING IT IN ROAD
22:19	OD/8009	A	CAR21	(5648)SLOWLY ADVANCING
22:19	OD/8009			(M)CAR21 SLOWLY ADVANCING
22:19	OD/8009			(M)GRN DUMPSTER NB ON 13 AV FROM PIKE ST
22:18	OD/8009			(M)NORTH SIDE MALE APPROACHIKNG THE LINE,HM,BLU,RED BANADANA
22:18	OD/8009			(M)BIKE FENCE FULL APART AND MOVING FORWARD
22:17	OD/8009			(M)BICYCLE FENCE HALF REMOVED TO THE SOUTH SIDE
22:17	OD/8009			(M)PER 214,AM BLK JKT YEL SHIRT N95 MASK BLU UMBRELLA AESOL CAN COULD BE USED AS FIRE ACCELERANT,INFO ONLY
22:13	OD/8009			Related Call:ADDED DUPLICATE:20-183476
22:13	OD/8009			(M)DUPLICATE: 20-183476: CALLER: [REDACTED] PHONE ONLY
22:13	OD/8009			(M)DUPLICATE: 20-183476: RP REPORTING APPROX 20 PROTESTERS WITH SHIELDS, WEARING BULLET PROOF VESTS AND GAS MASKS, HELMETS, LOOKS LIKE THEY ARE GOING TO START A RIOT, NO WEAPNS SEEN.
22:12	OD/8009			(M)CROWD BREAKING THE FENCE AND USING IT AS WEAPONS,USING THE RODS
22:07	ED/8018			BROADCAST INFO
22:07	OD/5396			(M)INFO PER CITIZEN TO 3131
22:07	SPVB/7274			ED ADVISED OF UPDATE
22:06	OD/5396			(M)***** MAN WITH PISTOL. ***** 12,OLIVE.. WM,25,RED HOODIE,BLK BACKPACK
22:06	OD/5396			(M)WM,25 PISTOL 12/OLVIE RED HOODIE,BLK BACKPACK...
22:05	OD/5396	A	CAR21	(5648)ADV CROWD THEY HAVE ADVANCED TOWARD THEIR LINES. WE HAVE NOT ADVANCED TOWARDS THEM ONCE THEY CAME THRU THE LARGER FENCE. REPEATEDLY TOLD THEM THEY WANT IT PEACEFUL. BUT DONT WANT THEM THRU THE LINE WE HAVE SET HERE

Further, the open construction of the fencing did not provide the shielding element of de-escalation, consequently exposing officers to projectiles from the crowd. OIG reviewed use of force statements in which officers described the following:

- Officers struck with glass bottles and rocks, including rocks from a slingshot device;
- Fireworks “similar in size to mortar shell fireworks” being thrown at officers;
- Green lasers shone into officers’ eyes;²⁰
- Officers hit with boards; and
- Officers hit with other items, such as a full gallon of milk and full cans of drinks.

These reported injuries are highlighted to illustrate the perceived safety risk, and the role this played in subsequent decisions to use less lethal weapons. SPD policy allows for the dispersal of crowds, including the use of blast balls and OC spray, if there is a “substantial risk of causing injury to any person or substantial harm to property.” Injury to officers would qualify as meeting that criteria. ICs interviewed by OIG cited acts such as large rocks or frozen water bottles being thrown at officers as the primary factor in deciding to issue a dispersal order, accompanied by subsequent use of less lethal tools to carry that order out. Again, this is borne out in the CAD data, in which exposure to projectiles from members of the crowd appear to be a key factor in the decision to use CS as seen in Exhibit 5. **As with the previous excerpt, readers should review the excerpt from the bottom up.**

²⁰ The American Academy of Ophthalmology states that laser pointers with above 5 milliwatts of power have the potential to cause permanent eye and skin damage. They note consumer-grade lasers often lack adequate labeling and warning about their output power, and that per the FDA, about sixty percent of consumer laser pointers have greater power than their label states. Pointing lasers at aircraft and law enforcement officers has been designated a criminal offense in some jurisdictions.

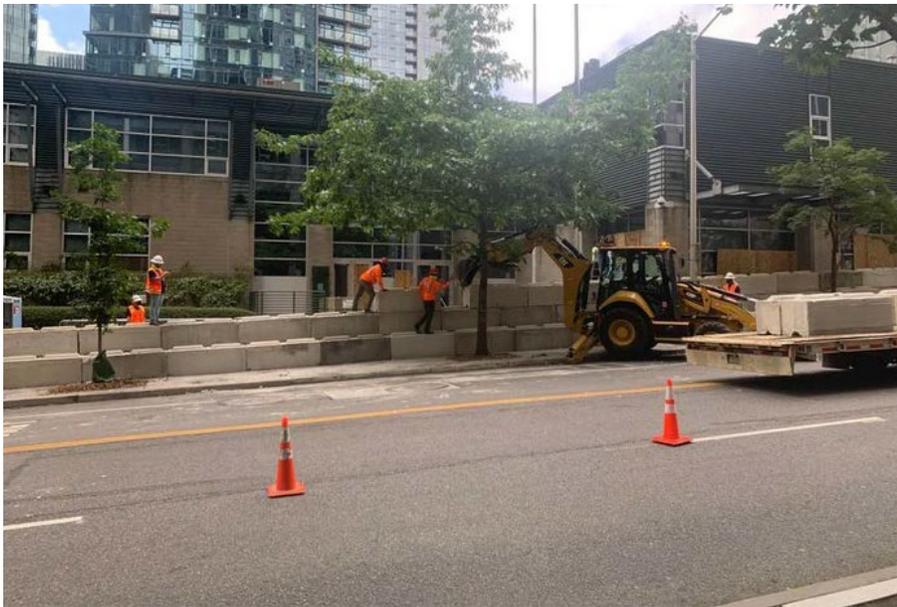
Exhibit 5: CAD Excerpt from the Morning of June 8th, 2020

00:14	OD/8009 (M)CAR21 DEPLOY CS		
00:13	OD/8009 (5774)STARTING TO WITHDRAW	A	216
00:13	OD/8009		
file:///C:/vdx2k/MWS/MDT/Temp/msg_5TE0QVXAQ.htm			
7/16/2020			
Page 16 of 33			
00:12	(M)216 STARTING TO WITHDRAW OD/8009 (M)WB ON PINE TO GET TO 216		
00:12	OD/8009 (M)NEED MORE MUNITIONS AT 11/PINE		
00:11	OD/8009 (M)PER 198 OFFICERS SURROUNDED ON 3 SIDES		
00:11	OD/8009 (5774)HOLDING HERE,TAKING HEAVY PROJECTILES	A	216
00:11	OD/8009 (M)216 HOLDING HERE,TAKING HEAVY PROJECTILES		
00:10	OD/8009 (5648)CONTINUE THE PUSH	A	CAR21
00:10	OD/8009 (M)CAR21 CONTINUE THE PUSH		
00:10	OD/8009 (5774)TAKING PROJECTILES,WE HAVE PUSHED THEM ACROSS INTERSECTION	A	216
00:10	OD/8009 (M)216 TAKING PROJECTILES,WE HAVE PUSHED THEM ACROSS INTERSECTION		
00:10	OD/8009 (5774)MOVE FORWARD TO BARRICADES	A	216
00:10	OD/8009 (M)216 MOVE FORWARD TO BARRICADES		
00:09	OD/8009 (5774)CROWD IS USING BLAST BALLS AND PROJECTILES	A	216
00:09	OD/8009 (M)216 CROWD IS USING BLAST BALLS AND PROJECTILES		
00:08	OD/8009 (5774)UNITS TO HOLD THE INTERSECTION	A	216
00:08	OD/8009 (M)216 UNITS TO HOLD THE INTERSECTION		
00:08	OD/8009 (5774)SHIELD TROOPS MOVE FORWARD	A	216
00:08	OD/8009 (M)216 SHIELD TROOPS MOVE FORWARD		
00:08	OD/8009 (5774)SHIELDS PREPARE TO MOVE FORWARD	A	216
00:08	OD/8009 (M)216 SHIELDS PREPARE TO MOVE FORWARD		
00:07	OD/8009 (M)INJURED OFFCER W/NAT GAURD MEDIC IN SALLEY PORT		
00:07	OD/8009 (5648)ITEMS BEING THROWN AT OFFCRS,I HAVE GIVEN 2 DISPERSAL ORDERS,GRN LAZER SHINING AT OFFICRS EYES	A	CAR21
00:07	OD/8009 (M)CAR21 ITEMS BEING THROWN AT OFFCRS,I HAVE GIVEN 2 DISPERSAL ORDERS,GRN LAZER SHINING AT OFFICRS EYES		
00:06	OD/8009 (5774)STILL TAKING,MULTIPLE BOTTLES AND FIREWORKS FROM CROWD	A	216
00:06	OD/8009 (M)216 STILL TAKING,MULTIPLE BOTTLES AND FIREWORKS FROM CROWD		
00:05	OD/8009 (5648)DISPERSAL ORDER GIVEN	A	CAR21
00:05	OD/8009 (M)CAR21 DISPERSAL ORDER GIVEN		
00:05	OD/8009	A	216

In dispersing the crowd, SPD used significant amounts of blast balls and CS, as summarized in the background section of this report. Personnel noted that protestors appeared to acclimate to blast balls (which work primarily by surprise) and so chemical irritants appeared to be the only successful means of dispersing the crowd.

SPD appeared to devise successful alternate strategies at other precincts as the demonstrations continued, including providing minimal visible officer presence in response to protestors and erecting large, immovable concrete barriers.²¹ The barriers erected at West Precinct are included as Exhibit 6, below. However, it is fair to note that other precincts benefit from infrastructure advantages such as plazas or parking lots that render retreat or barriers more feasible.

Exhibit 6: Barriers Being Erected at West Precinct



Source: photo published on Reddit by user kodaobscura on July 24, 2020.

Conclusions for Tactics and Training

In reviewing departmental training materials, SPD clearly recognizes the challenges and counterproductive nature of relying on a fixed line to manage crowds, and additionally recognizes the difficulty of intervening with isolated individuals within a larger, otherwise non-violent crowd. However, identifying and acknowledging areas of concern is simply one step in the process of establishing policies, training, and protocols for stationary crowd management. SPD should develop complete stationary crowd management plans, supported by clear policy and training, to manage those situations when they arise.

²¹ One SPD officer described arriving at the North Precinct, determining the crowd was likely to be peaceful (i.e., comprised of individuals in loungewear and teenagers being dropped off by their parents), and making the decision to bring officers inside so as not to create a focus for the crowd.

Although these recent events were driven by anger at police and focused on police facilities, police precincts are not the only occasion on which SPD may need to defend a fixed location. For example, it is not inconceivable that a future demonstration may target a building completely unassociated with the police, such as a place of worship or a school. SPD must be able to respond to such situations in a way that presents greater opportunities for a peaceful resolution or avoiding confrontational strategies.

Traditional approaches to “de-escalation” involving time, distance and shielding were developed to address, and are generally effective on, individuals presenting a threat of violence or in crisis. However, these traditional approaches may not translate to managing the actions of a large, stationary, volatile crowd. Other strategies that may be more effective to de-escalate large groups include enhanced communication before and during the event, and modulating police presence to possibly include wearing “softer” uniforms and limiting the number visible officers. For example, SPD could communicate to the overall peaceful crowd that a small section has become violent and the police may need to take corresponding action.

Reasonable police intervention using force is sometimes necessary to secure public safety. By researching, developing, and training on policies and tactics that address large, static crowds, and individual agitators within such crowds, SPD can improve its ability to respond to such events while lessening the likelihood that less lethal weapons will be improperly used on non-violent protestors. OIG recognizes that this tactical issue is not unique to SPD and is a long-standing, complex problem in policing. That does not absolve the City of Seattle from attempting to seek solutions that meet community expectation. The City and the Seattle Police Department are known for setting new and best practices in many areas and this area of intersection between policing and free exercise of expression is ripe for innovation and new thinking.

Suggestions for Council and SPD to Consider

10. Research and develop policies, strategies, and tactics to manage a fixed, confrontational crowd that may contain isolated individuals throwing projectiles or otherwise creating life safety concerns and incorporate tactics into departmental crowd control training. For example, tactics could include acquiring and deploying sturdier barriers, or intentionally reducing visible police presence.

The City faces two substantial and conflicting risks when working with other law enforcement agencies providing mutual aid during protests.

First, there is inadequate transparency and accountability concerning use of force by non-SPD entities. Second, without additional resources in the form of mutual aid, SPD does not have the capacity to manage large-scale demonstrations in a peaceful manner.

SPD and, by extension, accountability entities tasked with reviewing recent protest responses, do not have sufficient data to determine if force used by mutual aid agencies was in alignment with SPD policies and crowd dispersal procedures because almost all involved agencies have not yet complied with SPD's request to submit use of force statements.²² Review of what documentation exists indicates that mutual aid partners were making use of, at minimum, blast balls, OC, 40mm less lethal launchers, and CS gas.

Agencies that provide mutual aid to SPD are not compelled to follow SPD policy on use of force or force documentation. Although SPD frequently trains with neighboring jurisdictions to develop a common understanding of crowd control techniques, this is not a guarantee the other jurisdictions will follow SPD's policy, training, tactics, and importantly, philosophy on use of force. In its research for the on-going mutual aid audit, OIG determined that none of the agreements between SPD and federal task force partners require the other entity to follow SPD policy, as a local agency cannot compel federal agents to follow local policies. For local law enforcement partners, Washington state law allows for any law enforcement officer in the state to "enforce the traffic or criminal laws of this state" subject to SPD request for assistance. This law does not compel the other agency to follow SPD policy as part of enforcing the law.

This creates a risk that when engaging the assistance of outside agencies, Seattle community members may be subjected to force outside normal community expectations and standards for SPD. Additionally, there is a risk that individuals in the crowd may confuse the actions of other agencies for those of SPD, increasing anger towards the department and further damaging trust in SPD. This anger may reduce the ability of SPD personnel to de-escalate the crowd.

However, it is also apparent that SPD felt unable to manage the recent protests without reliance on mutual aid assistance. In reviewing email correspondence, OIG identified requests for 400 members of the National Guard and varying daily requests throughout the relevant period for between 15 and 50 officers from other agencies, depending on the

²² SPD asserts that the King County Sheriff's Office and the Washington State Patrol have assured SPD that they will provide statements via a public records request; however, these statements have not yet been received by the department. SPD stated that the agencies have supplied statements in the past.

expected protest activity. Early on, a City of Seattle employee requesting aid wrote the following, expressing the dire need for support:

“please note: all local resources have been exhausted; mutual aid has been exhausted; commercial resources have been exhausted or predicted to be exhausted in the near future; the City is willing to pay for assistance.”

One IC noted to OIG that lack of sufficient officers raised the potential that increased reliance on less lethal weapons would be needed to manage the crowd and address safety risks.

As the protests progressed, it became harder for SPD to secure mutual aid assistance, potentially because of the high-profile nature of the demonstrations. The King County Sheriff's Office wrote that “We are unable to support the East Precinct due to the potential to be drawn into demonstrations.” Several individuals interviewed by OIG implied that the lack of mutual aid was a factor in the shifting rules of engagement from SPD concerning the use of less lethal weapons. For example, personnel reported that command staff appeared to waver between allowing force in response to property damage and then removing property damage as actionable criteria. One of these individuals explained that other agencies viewed the changing rules of engagement as putting officer safety at risk, because the other agencies felt that their officers would not be able to take action to protect themselves within the rules of engagement specified by SPD. This individual stated that the other agencies were worried that they would be targeted for following their own policies instead of those deemed acceptable by SPD and the Seattle community.

Use of mutual aid raises the risk that force may be used outside the boundaries set by SPD policy. However, without assistance by mutual aid agencies to back-fill patrol during a demonstration or assist in the demonstration itself, SPD may either:

- be more reliant on less lethal weapons to manage crowds;
- be unable to adequately protect crowds, as in the event of counter-protestors or individuals intent on attacking protestors as in the case of Charlottesville, VA; or
- be unable to respond to high priority calls for service in a timely manner.

Although it may be difficult, if not impossible, to compel other agencies to follow SPD policy, the City may be more successful in convincing other agencies to report their uses of force as a matter of routine. This may mitigate the immediate safety risk created by lack of mutual aid while still providing data that oversight agencies can use to determine whether the value of mutual aid is worth the compromise.

Suggestions for Council and SPD to Consider

11. Work with Council, regional law enforcement agencies, and, if necessary, state legislative partners on a long-term solution for prompt and transparent reporting of force during large-scale events. Use of force reporting does not necessarily need to include identifying information for individual officers from other agencies.

Other Matters to be Addressed by SPD

These issues emerged during the course of the review, but OIG did not have sufficient time or data to draw full conclusions. Nevertheless, they emerged as significant matters for SPD to research further.

Consider requiring formal documentation of tactical briefings prior to demonstration events.

SPD does not document detailed tactical information and rules of engagement in the Incident Action Plan, in part to avoid this information being included in public records requests. SPD policy requires that briefings including this information be provided to personnel. OIG was unable to obtain copies of written briefing materials given at roll call and other events during the timeframe of this review. Further, OIG was informed by SPD personnel that briefings did not always occur, and that some briefings were not detailed enough to properly inform officers as to new objectives and situational changes. If briefing material is not preserved in written or other form, SPD and accountability partners will be unable to evaluate whether personnel had appropriate and useful information to inform decision-making in the field. Further, lack of documentation of instructions and guidance issued by senior SPD command makes it difficult to hold these personnel accountable for decision-making, versus the comparative transparency that policy and modern technology mandate for line personnel (i.e., body-worn video and videos captured by bystanders).

Consider improving communications equipment for individuals involved in supervision during crowd management events.

Personnel stated it could be very difficult to hear instructions over the radio using existing equipment, particularly when wearing gas masks. If personnel cannot hear instructions clearly, they may misunderstand instructions and take action which unnecessarily or improperly escalates the situation. For sergeants and above, improved headsets or other technology may mitigate this risk.

Consider conducting debriefing exercises with the public and officers.

It is evident that the public does not understand why SPD undertook many of its actions during the recent demonstrations and are horrified by the scenes of violence and perceived indiscriminate use of force. These actions have eroded public trust in the department. By conducting outreach to explain its actions and begin to understand community concerns, SPD may begin to restore this trust.

It is equally apparent that personnel interviewed by OIG were unprepared and shocked at the perceived level of hostility and violence leveled at them by the public.²³ It is possible for the City to address the harm created by the institution of policing while also acknowledging concern for injuries and trauma inflicted on individual officers. At a minimum pragmatic level, officers with unresolved trauma and related mental health concerns may be more likely to react to future demonstrations and events in an unwanted manner. On a more philosophical level, SPD officers are employees of the City and should be afforded the same concern for their mental and physical health as the City expresses for its non-sworn personnel. Per personnel, SPD has not conducted debriefing exercises with officers concerning the recent protests, or otherwise provided wellness resources other than an app listing mental health providers.

Consider less technical language in public communications.

Language such as “improvised explosives” has a specific military connotation for members of the public, and SPD may consider using more accessible language in its communications. While it may be technically correct, using such terms and then including photos of items that do not meet public expectations – such as broken candle – do not enhance department credibility. Personnel shared with OIG that the concern was not actually about the candle-as-bomb, but rather that individuals were throwing accelerants on officers and then throwing incendiary devices. In other words, the actual concern was that protestors were attempting to light officers on fire. Using more direct language such as “officers were injured because individuals attempted to set them on fire” affords an opportunity to build greater legitimacy than describing a candle using a term the public associates with a bomb. See Exhibit 7, below, for an example of a tweet and public response.

²³ In addition to physical injuries, officers reported that SPD personnel were targeted with racist insults and threats. For example, one officer informed OIG that someone in the crowd threw a noose at a Black officer.

Exhibit 7: Seattle Police Department Tweet Alleging Candle as Improvised Explosive and Sample Public Responses

 **Seattle Police Dept.** ✓
@SeattlePD

At about 7:30 p.m. demonstrators outside the East Precinct began moving barricades at 11th and Pine despite multiple requests from police to stop. Individuals began throwing rocks/bottles/and explosives at officers. Several officers injured due to improvised explosives.



8:42 PM · Jun 6, 2020 · [Twitter for Android](#)

 Jun 6
it's true the autumn breeze from yankee candle co is a well-known anti-personnel fragmentary device used extensively on the battlefield in syria, rwanda, south ossetia, etc

2 9 214

 Jun 6
You couldn't even be bothered to take the label that clearly says "CANDLE" off before you posted claiming it was an explosive?



3 27 245

Section Four: External Executive Authorization Processes

Council requested that OIG and other accountability partners identify crowd dispersal processes requiring Executive approval. Requiring Executive approval would introduce an additional layer of oversight in the decision to disperse a crowd. In theory, external approval has the potential to provide a non-police perspective that could complement the decision-making perspective of police officers who are following policies rooted in tactical, operational, and safety considerations. However, this approach raises several significant practical concerns: timing, expertise, and availability of information. As such, OIG does not support requiring external Executive authorization.

Sufficient time to seek executive approval may not exist for all crowd situations that shift from lawful to unlawful. Often, crowd dynamics are fast-moving and police may need to act quickly to address an act of violence or a life safety issue. Executive decision-makers will also generally lack tactical expertise, as well as access to sufficient on-the-ground information that ICs have, putting the Executive's decision-making at a disadvantage. Compounding that disadvantage, the Executive's source of information would likely be the police, so Executive authorization does not provide a truly independent source to evaluate the necessity of a dispersal order. This makes it less likely that the Executive would have a separate basis upon which to disagree with a police recommendation to issue a dispersal order. These factors may explain why in research of other jurisdictions' crowd management policies,²⁴ OIG did not find any that give crowd dispersal authority to decision-makers external to the department in exigent circumstances.

²⁴ See page 12 for a list of these jurisdictions.

Section Five: Future Work for OIG

Sentinel Event Review

OIG completed this report to address specific questions posed by Council, as described above. The report is not, and does not endeavor to be, an overall evaluation of the specific events occurring between SPD and the Seattle community in May, June, and July 2020. Digging into this set of concerns requires an inclusive process with community input and appropriate expertise in the form of a sentinel event review.

Community has identified urgent and important issues to be considered in an overall review process, including why SPD used less lethal force during what many felt were peaceful demonstrations. There are also broader questions being posed, locally and nationally, about whether policing can be sufficiently reformed to address concerns about institutional racism, militarization, and violence. OIG acknowledges that addressing systemic and historic concerns will require more than a single sentinel event review and will require commitment by policymakers and leaders to implement structural changes. A comprehensive review of an unwanted outcome can inform structural change by revealing underlying causes to future harm. Even if the ultimate objective involves completely replacing the current structure with a different one, understanding failings or defects in the current system is necessary to avoid reproducing the same core flaws in a new structure.

Based on the data and interviews OIG conducted for this report, understanding the root causes of what happened during the 2020 demonstrations involves understanding both the immediate chain of events beginning May 29th, 2020 as well as a review of institutional practices and culture around demonstration response. It will also involve acknowledging the vast gulf in perspective between protestors and SPD personnel of the same events. For example, many protestors in the crowd expressed outrage at being subjected to force without warning or cause. Meanwhile, SPD personnel stated this was the most violent and hostile crowd they had ever encountered. Understanding how and why both perspectives exist will be at the heart of determining what went wrong, and how similar outcomes can be avoided in the future.

The oversight role of OIG, informed by subject-matter expertise and access to SPD data affords some insight into what occurred and why.²⁵ However, it is neither appropriate nor

²⁵ This review project highlighted the tenuous nature of OIG reliance on voluntary participation by SPD personnel in OIG oversight projects. In previous work, OIG has experienced no issues with cooperation by SPD personnel. However, for this report, given the high-profile and on-going nature of the issues discussed, personnel expressed concern that information shared with OIG could be used punitively by others. Some personnel declined to participate entirely. Other personnel stated they understood the value of the project and wanted to participate, but they were concerned that their rights against self-incrimination and to labor representation be preserved. To invoke “Garrity” protections, the Seattle Police Management Association

viable for OIG to complete such a review on its own. The forthcoming sentinel event review will combine community input, relevant external expertise, access to SPD data and personnel, and technical assistance from OIG to form a more complete response to community questions and concerns about SPD actions.

SPD may also wish to consider including community input in its existing force review processes to ensure that its analysis and investigation address community questions and concerns. Members of the public may not be experts on defensive tactics, but their input can shed an important early warning light on aspects of police procedure and practice that are confusing and jarring to non-police observers. SPD can take advantage of these opportunities to provide more public education or amend its policies, as appropriate, before another serious event occurs that may further damage public trust.

Future Projects

OIG was unable to fully investigate these issues during the compressed timeframe of the review but plans to conduct further research.

1. Disparity analysis of SPD response to current and past demonstrations.

OIG was unable to analyze whether SPD displayed bias in its response to the 2020 demonstrations in the context of this review. Analysis of the Incident Action Plans revealed that SPD very quickly began considering the entire crowd as violent and a potential threat, and arguably did not change this general assessment throughout the entire series of protests (with some exceptions for planned events such as the silent march organized by Black Lives Matter Seattle-King County). Treating the entire crowd as a single entity prevented OIG analysis of how SPD responded to specific groups within the crowd.

OIG recognizes and plans to conduct a future disparity analysis to consider whether SPD response to demonstrations changes depending on the nature of the protest. While there are some significant logistical barriers – for example, lack of body-worn video at peaceful protests means that it is difficult to assess events in which SPD officers did not exert force – the OIG policy unit will make maximum effective use of the available data.

2. Review of department preparation for large-scale mobilization.

Personnel interviewed by OIG reported that SPD was unprepared for the scale and violence associated with protests from the first night (May 29, 2020). One IC estimated that they had

(SPMA) requested that the Chief of Police order their cooperation, but she declined to do so, citing concern about intervening in a labor relations matter and over the applicability of Garrity. As an alternative, SPD suggested establishing a policy requirement for personnel to cooperate fully with OIG. OIG eventually arrived at a solution in cooperation with the City Attorney; however, the time needed to develop this workaround took valuable time from the project, especially in such a short overall timeline.

400 officers available to respond to demonstrations with 10,000 attendees and rated the observed violence as a “9.8” compared to “4 or 5” for May Day 2016.

Because the department reportedly lacks an electronic staffing system, the department was unable to easily identify available staff to recall for duty, leading to extraordinarily extended hours and fatigue for officers assigned to shifts at the start of the protest.²⁶ Multiple commanders noted that the department ultimately had to revert to twelve hour rotating shifts, which had not been done since the 1999 World Trade Organization demonstrations. One officer interviewed by OIG reported working 150 hours in the first two weeks. Other personnel identified problems with basic logistical issues such as providing food to personnel.

Extended working hours may negatively affect officer behavior. OIG research indicates that impaired sleep due to extended hours is associated with negative impacts to vigilance, reaction time, information processing, and decision-making. OIG also found studies indicating that lack of sleep in law enforcement officers, specifically, is associated with a higher probability of serious administrative errors, safety violations, and exhibiting uncontrolled anger towards suspects.

Additionally, emails from the Emergency Operations Center reveal that SPD ran out of its stock of less lethal munitions during the first weekend of protests, and the City had to scramble to resupply, including (possibly) chartering a private cargo flight from Florida.²⁷ Review of APRS blast ball audits indicate that by 2019, the department’s supply of blast balls was at a historic low, and SPD personnel indicated that SPD stopped performing an annual assessment of OC supplies several years ago.

Further research and interviews are required to determine why the department did not plan or prepare for the possibility of such a large-scale event. Given the history of natural disasters in Washington state, it is not unreasonable to expect that the department would be better prepared to schedule, feed, and otherwise manage a full-scale deployment of staff.

²⁶ OIG notes that the City Auditor identified SPD’s lack of an electronic workforce scheduling system as early as April 2016, in an audit of SPD overtime controls. The Auditor recommended that SPD either implement a new scheduling and timekeeping system or enhance existing systems to include automated controls. The full audit report can be found at http://www.seattle.gov/Documents/Departments/CityAuditor/auditreports/PublishedReport-Corrected-04_22_16.pdf.

²⁷ OIG did not find final confirmation of the flight, but found emails indicating this was being considered as the last remaining option.



Appendix A – OIG Memo on Less Lethal Weapons Usage in Protests (6/12/2020)



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.



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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)



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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.



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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 INCLLO 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 INCLO 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.



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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>



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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

¹⁸ Seattle Police Department, “2020 Blast Ball 040620”. Last modified 4/6/2020.



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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.



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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.



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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.



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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.



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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.



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- 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.



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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



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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



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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



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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



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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



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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.



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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



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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.



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- 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.



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- 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](#).

14.090-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

14.090-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

14.090-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



Seattle Office of
Inspector General

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

Appendix B – SPD Report on Use of Less Lethal Weapons

SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: The Office of the Inspector General for Public Safety DATE: 7/24/2020

FROM: Loren T. Atherley, MA
Director of Performance Analytics & Research, Senior Research Scientist

SUBJECT: Less Lethal Force - 2017 to April 30, 2020

Pursuant to your request, made via email on July 22nd, 2020, please find the attached descriptive report of Seattle Police Department (SPD) *less lethal* Use of Force (UoF) events between January 1st 2017 and April 30th 2020 (“the study period”). For the purposes of this report, less lethal force is identified as involving *applications*, use by the officer, of:¹

Balls – Blast	Chemical Agent – Other
Balls – OC	Electronic Control (ECD /
Beanbag / Stunbag	Taser)
Blue Nose Device	NFDD (Noise Flash Distraction
Carotid / Neck Restraint	Device)
Chemical Agent – OC Spray	Sting Ball

These *implements* were identified by Matt Miller in a call preceding the July 22nd request. The Data Analytics Platform (DAP) reports on a total of forty-four (44) specific implements available in BlueTeam for force reports. A complete list is attached (see Attachment A).

In total, 316² Uses of Force (defined by the unique combination of officer, community member on a single incident) were reported across 195 incidents. Less lethal involved force represents approximately 5.4% of all force during the study period ($n=5,827$).

¹ One UoF indicated the use of a Carotid / Neck Restraint and was classified as Type I, in error. The issue was investigated by the Data Governance Manager and with the assistance of the FRU Data Steward, corrected the record. Documentation of the error can be found in the Data Governance Activity Log, reference number 488. The record can be inspected in the IAPro system, file number: 2018UOF-0398.

² While drafting this report, PA&R identified an additional Blue Nose Device (BND) less lethal force report. The implement “other” was selected, in error (see 2018UOF-0215). DGAL 489 was logged to document the correction and future extracts will reflect the correct count. DGAL 491 is related and documents implementation of the change to BlueTeam. Some remediation of the data may occur, retroactively.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

	UoF Count	% of Force	Force Event Count	% of Force Events
Type I	121	38.3%	70	36.1%
Type II	191	60.4%	131	67.5%
Type III	4	1.3%	4	2.1%
Grand Tot..	316	100.0%	194	100.0%

The following descriptive report details the use of less lethal implements by function (e.g. 911 Response, SWAT, etc.), response type (e.g. Dispatched, Onviewed, Call Type, Service Type, etc.), outcomes and their use within interactions involving community members experiencing behavioral crisis.

This report only includes force which has cleared BlueTeam at the time of this writing (the week of July 20th, 2020) and may not include force excluded from DAP for data quality errors³. The Data Governance program has documented these limitations (see DGAL) and is actively managing all open issues. Complete data, at the case level, is always available from the source system.

The Blue Nose Device (BND), also referred to as “40mm launcher”, was used a reported ten (10) times during the study period. While a more comprehensive review should be undertaken to address the efficacy of this device, a summary of each of the deployments (at the case level) is provided at the end of the descriptive section of this report. Some common themes emerge and may be relevant to its consideration:

- 1) In all but one incident involving the use of a BND, the subject was armed. In the case of the one incident where the subject was not armed, his size and apparent altered state (possibly chemically induced), were a consideration for the officers when assessing the threat.
- 2) Three (3) of the events involved a subject who had explicitly stated their desire to commit suicide by cop and / or who had attempted to do so in the past.
- 3) The BND may not be effective at long range or where the subject is in a chemically induced altered state; however, in those cases, the implement can still be effective in disarming the subject.

If you have any questions or would like additional information, please do not hesitate to reach out.

Sincerely,

Loren T. Atherley, MA
Director of Performance Analytics & Research
Senior Research Scientist
Seattle Police Department

³ Functional errors related to the incident number for mutual aid / interagency assistance incidents have been observed to reject some force reports where a SPD Incident / Office (CASENUM) was not pulled. DGAL 294 (1/1/2019) has been logged to identify and track this issue. Data quality reports detail this limitation for the IAPro Data Stewards in the Force Review Unit (FRU). As of the 22nd of July, 61 functional errors are reported under this issue and the DGAL is “parked”, meaning unresolved and in a monitor status.

Descriptive Report

Between 1/1/2017 and 4/30/2020, less lethal applications of force have been reported 316 times, across 195 incidents (see Table 1). Less lethal involved force represents approximately 5.4% of all force during the study period (n=5,827).

Table 1 - Less Lethal Force

	UoF Count	% of Force	Force Event Count	% of Force Events
Type I	121	38.3%	70	36.1%
Type II	191	60.4%	131	67.5%
Type III	4	1.3%	4	2.1%
Grand Tot..	316	100.0%	194	100.0%

When compared to the distribution of all force across force classifications (Type I, II, III and III-OIS), Type I force is underrepresented, and Type II force is overrepresented. (see Table 2).

Table 2 - All Force by Type

	UoF Count	% of Total Force
Type I	121	38.3%
Type II	191	60.4%
Type III	4	1.3%
Total	316	100.0%

Less lethal force applications occurred most frequently in Type II classified force (60.4%), followed by Type I (38.3%) and in just 1.3% (n=4) of Type III force.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

Table 3 - Less Lethal Detail by Type

	UoF Count	% of Force	Force Event Count	% of Force Events
NFDD	131	41.5%	74	38.1%
Electronic Control (ECD / Taser)	110	34.8%	98	50.5%
Chemical Agent – OC Spray	55	17.4%	22	11.3%
Chemical Agent – Other	15	4.7%	8	4.1%
Blue Nose Device	10	3.2%	9	4.6%
Balls - Blast	3	0.9%	1	0.5%
Total	316	100.0%	194	100.0%

The most commonly reported less lethal implement was the Noise Flash Distraction Device (NFDD), reported in 41.5% ($n=131$) of all less lethal force and 38.1% ($n=74$) of all less lethal force events. During the study period, the Blue Nose Device (BND) was reported in 10 UoF⁴ (3.2%), across 9 events. (see Table 3)

Of 316 less lethal UoF, 132 (41.8%) were on a warrant service (by Service Type), 36.6% of force events. Calls for service (classified as either Onviewed or Dispatched) accounted for 37.7% of less lethal force, 49.5% of force events. Demonstrations were indicated as the Service Type in 12% ($n=38$) of less lethal applications. The remaining 8.5% of less lethal force ($n=28$) included bookings, traffic stops, observation, and off-duty involvement types. (see Table 4)

⁴ In the course of reviewing these incidents, it was determined the implement “other” was selected, in error (see 2018UOF-0215). DGAL 489 was logged to document the correction and future extracts will reflect the correct count.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

Table 4 - Less Lethal by Service Type

	UoF Count	% of Force	Force Event Count	% of Force Events
Warrant Service	132	41.8%	71	36.6%
Call for Service	119	37.7%	96	49.5%
Demonstration	38	12.0%	9	4.6%
Booking	12	3.8%	12	6.2%
Observation – Non-traffic Stop	12	3.8%	11	5.7%
Off-duty	2	0.6%	2	1.0%
Observation – Traffic Stop	1	0.3%	1	0.5%
Total	316	100.0%	194	100.0%

A closer examination of the role of particularly less lethal implements further illuminates their application. The NFDD is most commonly represented in Warrant Services (35.4%)⁵ and Calls for Service, generally (6%). In Warrant Service applications, as a particularly high-risk type interaction, the NFDD is often used when approaching or making entry to an enclosed space when the officers intend to take into custody. The percussion and bright flash disorient a subject who might otherwise attempt to harm the contact team. Similarly, Chemical Agents (commonly Oleoresin Capsicum or OC, also known as “pepper spray”) is used to disperse a crowd and is represented most frequently in Demonstration service types. (see Table 5)

⁵ The underlying charge for these warrants is not readily available for this analysis; however, involvement of the SWAT team in all 131 uses of the NFDD device (99% of all Warrant Service related force) can be taken as an indicator of the risk assessment and seriousness of the underlying charge or the threat the subject posed to officer safety.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

Table 5 - Less Lethal / Service Type Detail

		UoF Count	% of Force	Force Event Count	% of Force Events
Warrant Service	NFDD	112	35.4%	62	32.0%
	Chemical Agent - Other	11	3.5%	6	3.1%
	Electronic Control (ECD / Taser)	6	1.9%	6	3.1%
	Chemical Agent - OC Spray	6	1.9%	5	2.6%
	Blue Nose Device	1	0.3%	1	0.5%
Call for Service	Electronic Control (ECD / Taser)	84	26.6%	73	37.6%
	NFDD	19	6.0%	15	7.7%
	Chemical Agent - OC Spray	8	2.5%	5	2.6%
	Blue Nose Device	7	2.2%	7	3.6%
	Chemical Agent - Other	2	0.6%	2	1.0%
Demonstration	Chemical Agent - OC Spray	36	11.4%	9	4.6%
	Balls - Blast	3	0.9%	1	0.5%
	Chemical Agent - Other	2	0.6%	1	0.5%
Booking	Electronic Control (ECD / Taser)	9	2.8%	9	4.6%
	Blue Nose Device	2	0.6%	2	1.0%
	Chemical Agent - OC Spray	1	0.3%	1	0.5%
Observation - Non-traffic Stop	Electronic Control (ECD / Taser)	8	2.5%	8	4.1%
	Chemical Agent - OC Spray	4	1.3%	3	1.5%
Off-duty	Electronic Control (ECD / Taser)	2	0.6%	2	1.0%
Observation - T..	Electronic Control (ECD / Taser)	1	0.3%	1	0.5%
Total		316	100.0%	194	100.0%

Within the context of calls for service, of the 1,315,741 unique CAD events responded to by a sworn employee during the study period, 195 or .015% involved the use of a less lethal implement. The full use of force rate for the period ($n=5,827$), including all application types, was .44%, when measured at the CAD Event level⁶. As a measure of dispatches, unique officers on calls, the rate of less lethal force was

⁶ The Computer Aided Dispatch (CAD) system logs both events and individual dispatched behaviors related to those events. These concepts are referred to as “CAD Events” and “Dispatches”. Dispatches are generally used as a baseline for workload normalization, as they represent the most granular unit of work tracked by the department.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

just .011% of the total 2,890,551 dispatches logged during that time. The full use of force rate was .25% or 25 UoF for every 10,000 dispatches logged.

During the study period, 58.5% of all CAD Events were classified as dispatched, with 41.5% classified as onviewed, the remainder. Table 6 depicts the distribution of less lethal force across the Call Type of the original call. 82.6% of all less lethal force is related to “dispatched” calls.⁷ In 16.1% of less lethal force during the period, the officer “onviewed” the call and initiated action, without a call from the public.⁸ (see Table 6)

Table 6 – Less Lethal by Call Type

		UoF Count	% of Force	Force Event Count	% of Force Events
Null	NFDD	4	1.3%	3	1.5%
	Total	4	1.3%	3	1.5%
DISPATCH	NFDD	109	34.5%	58	29.9%
	Electronic Control (ECD / Taser)	90	28.5%	79	40.7%
	Chemical Agent – OC Spray	42	13.3%	14	7.2%
	Chemical Agent – Other	14	4.4%	7	3.6%
	Blue Nose Device	10	3.2%	9	4.6%
	Balls - Blast	3	0.9%	1	0.5%
	Total	261	82.6%	151	77.8%
ONVIEW	Electronic Control (ECD / Taser)	20	6.3%	19	9.8%
	NFDD	18	5.7%	13	6.7%
	Chemical Agent – OC Spray	13	4.1%	8	4.1%
	Chemical Agent – Other	1	0.3%	1	0.5%
	Total	51	16.1%	40	20.6%
Total		316	100.0%	194	100.0%

Four (4) less lethal UoF were without a relationship to an underlying CAD Event, through the incident / offense report. All involved the use of an NFDD implement and were reported by officers assigned to

⁷ Calls are classified as Onview or Dispatch depending on how they are received. A response to a request from the public is classified as a “dispatched” call. When an officer observes some behavior and initiates the activity, without a call from the public, that call is classified as “onviewed”.

⁸ Calls may have been received separately of these events. The Communication Center merges these related CAD Events under a common parent.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

Special Weapons and Tactics (SWAT). Three (3) of the four (4) UoF were related to a Warrant Service⁹ and one, a “Call for Service” service type. More than ninety (90) distinct initial call types were represented across CAD Event data. No meaningful descriptive patterns were observed across these data.¹⁰

Officers assigned to SWAT reported 48.1% of all less lethal force during the study period. 911 Response units were responsible for the next largest share, 38.9%. 12.3% of less lethal force was reported by officers assigned to Active Crime Teams (ACT) and proactive units (designated as “Beats”), primarily consisting of bicycle units. (see Table 7)

⁹ During the study period, 9,028 CAD Events were classified initially as some form of warrant service, excluding search warrants (although some high risk search warrants may involve a SWAT deployment, the majority of them are classified as type of narcotics warrant call type) and “pickups” from other agencies. Warrant Service involving a NFDD account for just 1.5% of all calls of that type.

¹⁰ The data was observed to be either deterministic or overly defused across the call types to be of use for probable inference. An appropriate inferential method may be able to identify and effect but is not in scope for this report.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

Table 7 - Less Lethal by Function

		UoF Count	% of Force	Force Event Count	% of Force Events
SWAT	NFDD	131	41.5%	74	38.1%
	Chemical Agent – Other	13	4.1%	7	3.6%
	Chemical Agent – OC Spray	8	2.5%	5	2.6%
	Blue Nose Device	3	0.9%	3	1.5%
	Electronic Control (ECD / Taser)	2	0.6%	2	1.0%
	Total	152	48.1%	78	40.2%
911 Response	Electronic Control (ECD / Taser)	98	31.0%	87	44.8%
	Chemical Agent – OC Spray	18	5.7%	9	4.6%
	Blue Nose Device	7	2.2%	6	3.1%
	Total	123	38.9%	100	51.5%
ACT / Proactive	Chemical Agent – OC Spray	28	8.9%	11	5.7%
	Electronic Control (ECD / Taser)	9	2.8%	9	4.6%
	Balls - Blast	3	0.9%	1	0.5%
	Chemical Agent – Other	2	0.6%	1	0.5%
	Total	39	12.3%	20	10.3%
Null	Chemical Agent – OC Spray	1	0.3%	1	0.5%
	Total	1	0.3%	1	0.5%
CANINE - SQUAD C	Electronic Control (ECD / Taser)	1	0.3%	1	0.5%
	Total	1	0.3%	1	0.5%
Total		316	100.0%	194	100.0%

The profile of specific less lethal implements closely aligns with the role of these units across the operation. SWAT more frequently deploys NFDD implements than any other function, 41.5%. This is reflective of their role in apprehending fugitives (Warrant Service). Similarly, ECD's were the most frequently deployed less lethal device among 911 Response Units. Officers assigned to ACT and proactive functions (bicycles and special foot patrols) used OC and Blast Balls more frequently than other functions. This is likely the result of their role in demonstration management. Bicycles are often deployed as a moving fence and so are in close proximity to demonstrators.

Since 2015, the SPD has reported 52,219 behavioral crisis contacts. Of all crisis contacts, 1,456 (2.8%) have resulted in some reportable use of force. During the study period, 504 out of a total 34,755 crisis contacts involved a reportable use of force, 1.5%.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

Of all crisis related force reported during the study period, forty-three (43) involved fifty-one (51) reported less lethal UoF reports. The Taser was the most frequently reported less lethal implement, 76.5%. NFDD was reported in the next largest portion of force, 13.7%. The remaining three implement types accounted for a cumulative 11.8%. The BND was deployed three (3)¹¹ times on events involving a behavioral crisis report.¹²

Table 8 - Crisis Related Less Lethal Force

Implement Type	UoF Count	% of Total
Electronic Control (ECD / Taser)	39	76.5%
NFDD	7	13.7%
Blue Nose Device	3	5.9%
Chemical Agent – OC Spray	2	3.9%
Chemical Agent – Other	1	2.0%
Total	51	100.0%

Of interest to this report is the use of the BND. The BND was reported used in ten (10) of the 316 less lethal UoF during the study period, 3.2%. Attachment B provides reference for all ten (10) applications of a BND. Given the number of observations of BND force during the period, statistical inference is not supported. Instead, a summary of each incident and reference to them is provided for an idiographic analysis of their use.

2018000236935 6/28/2018 HXXXXXR – MXXXXXL

Officers in the Southwest Precinct responded to an apartment when a resident called to report a male in the building threatened their daughter with a knife. When officers arrived, they located the subject, armed with a rifle and a “machete”. The subject barricaded himself and was described in reports as “erratic”, “unstable” and “unpredictable”. SWAT and the Hostage Negotiation Team (HNT) responded to the scene. SWAT took the subject into custody.

¹¹ An additional BND crisis related force event was identified as misclassified in the DAP either due to a technical fault (“bug”) with the ETL code that populates DAP or the source system (Mark 43). DGAL 490 has been logged to track this issue and is in progress. Also see footnote 13.

¹² Systems for the documentation of force and crisis are siloed. As a result, native relationships between the subject of the crisis report and the subject of the UoF, cannot be made. A character to character match between these data sources has been found to omit approximately 30% of reportable force. The analysis to migrate reports has been completed, the test environment has been configured in the Records Management System, in preparation for an order to cutover reporting.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

20180000326490 9/1/2018 GXXXXL A GXXXXXXN

Officers in the South Precinct responded to a Domestic Violence (DV) incident. The subject had barricaded himself in a parked vehicle after confronting the victim with two “10 inch” knives. The subject also told police he was in possession of a firearm. Officers obtained the subject's name from the victim and learned he was also wanted on a “felony DOC” warrant for violating a DV no contact order. SWAT responded and took the subject into custody.

20190000025276 1/19/2019 MXXXXA A CXXXXXXL

Officers in the West Precinct responded to a report of a female, armed with a knife, threatening to suicide. The subject was located in front of a residence making “cutting motions on her arm.” Officers identified the subject as a community member they have contacted frequently, who has been involuntarily committed and who has threatened “suicide by cop”. Officers formed a “contact team” and approach the subject, with a BND as a less lethal option. Officers repeatedly ordered the subject to drop the knife and after multiple attempts to “run at officers”, run into traffic and to access the residence, officers deployed the BND. The subject dropped the knife and was taken into custody.

At the time of this writing, the subject is an involved person in 106 reports.

20190000025444 1/19/2019 TXXXXXY - CXXXXXS¹³

Officers in the West Precinct responded to the precinct building to a report of a male, who called 911, stating he was attempting “suicide by cop”. The male stated he was in possession of an airsoft gun and had covered the orange safety tip. Multiple officers responded to the scene and located the subject. Officers attempted to deescalate the situation but the subject became more agitated. An officer fired the BND at a distance of approximately 300 feet, striking the subject in the thigh, to no effect. A second BND was fired, striking the subject's pelvis. Again, to no effect. A Taser was eventually used to bring the subject into custody.

As of this writing the subject was involved in 49 reports.

20190000098802 3/19/2019 SXXXXL A MXXXXXJ

Officers in the West Precinct responded to reports of a suicidal male, armed with a firearm and threatening suicide by cop. Officers located the subject on the street, still in possession of the firearm. Two contact teams approached the subject. The subject raised the firearm toward the

¹³ A second officer fired a BND but indicated “other” in implements. A DGAL (489) was filed and the data was corrected in cooperation with the FRU Data Steward.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

officers and a BND was fired. Other officers fired on the subject with lethal munitions. The subject was taken into custody and recovered from his injuries.

20190000185820 5/23/2019 PXXL A MXXXXXXXXH

Officers in the East Precinct responded to a call for a male subject, trespassing, “armed with a shovel”. The PR stated when she attempted contact with the subject and asked him to leave, he responded by saying he was “from the military” and didn’t need to leave. Officers located the subject at the residence, in possession of “a small metal shovel”. Officers asked the subject to drop the shovel, but he refused. After several minutes, an officer fired on the subject and struck the shove. A second round cause the subject to drop the shove and the subject was taken into custody.

As of this writing, the subject was involved in 94 reports.

20190000478870 12/28/2019 PXXXXXK R SXXXXXXS

Officers in the East Precinct responded to a Domestic Violence (DV) call. The remarks stated “ROOMMATE IS IN CRISIS, LOCKED COMPL OUT OF HOUSE, MESSING AROUND WITH GAS STOVE, UNK WHAT HE IS DOING WITH IT, SUSP CURRENTLY HAS HAMMER, NO OTHER WEAPNS.” This location had been involved in multiple responses in the last 6 months and multiple officers responded. The subject barricaded himself in the unit. SWAT and HNT responded to the scene. An officer assigned to SWAT attempted to fire the BND but it failed. A canine was used to take the subject into custody.

2020000007733 1/7/2020 KXXXXXXH M PXXXXXXS

Officers in the West Precinct responded to a report of a “lewd disturbance”. Upon arrival they found a nude male in the middle of the street, “yelling incoherently”. A BND was fired at the subject, striking him in the thigh, to no effect. The subject was taken into custody and booked for Property Destruction, Indecent Exposure, Obstructing a Public Officer and Resisting Arrest. The case was referred to the City Attorney’s Office.

20200000055593 2/13/2020 MXXXXXL A BXXXXH

Officers in the South Precinct responded to reports that a man threatened a community member with a knife. When officers arrived, they located the subject, in possession of a fixed blade knife. Officers used lethal cover and ordered the subject to drop the knife but ultimately determined the subject did not intend to ham officers and was in behavioral crisis.¹⁴ Additional resources were requested, including HNT and BND equipped officers. While taking the subject into custody, a BND was fired at the subjects hand, causing him to drop the knife. A second BND was fired,

¹⁴ The Crisis Involved flag was not set in the DAP system, indicating this UoF involved a person in behavioral crisis. A DGAL has been logged (490) and is in process.



From: Performance Analytics & Research
Subject: Less Lethal Force – 2017 to April 30, 2020

striking the subject in the foot. The subject was taken into custody. At this time the incident is under investigation for “Felony Harassment” and is “pending”.



Attachment A

All Implement Types in BlueTeam

Balls - Blast	Firearm – Rifle – Other
Balls - OC	Firearm – Rifle – Point
Baton – Expandable – Impact	Firearm – Shotgun – Fire
Baton – Expandable –Control/Pressure Point	Firearm – Shotgun – Point
Baton – Straight – Impact	Flashlight – Control/Pressure Point
Baton – Straight –Control/Pressure Point	Flashlight – Strike
Beanbag / Stunbag	Handcuffing
Bicycle – Powerslide / Takedown	Hobble Restraint
Bicycle – Push	NFDD
Blue Nose Device	Other Weapon - Other
Canine	Other Weapon – Blunt Object
Carotid/Neck Restraint	Personal Weapons – Feet/Leg Kick/Knee
Chemical Agent – OC Spray	Personal Weapons – Feet/Leg Sweep
Chemical Agent – Other	Personal Weapons – Open Hand Strike
Control Hold – Restraint	Personal Weapons – Pressure Point
Control Hold – Takedown	Personal Weapons – Punch/Elbow
Control Hold – Team Takedown	Personal Weapons – Push
Electronic Control (ECD / Taser)	Shield
Firearm – Pistol – Fire	Sting Ball
Firearm – Pistol – Other	Vehicle – Other
Firearm – Pistol – Point	Vehicle – PIT
Firearm – Rifle – Fire	Verbal Commands

Attachment B
Blue Nose Device Reference Detail

Force ID	File Num	GO Num	Occurred Date	Crisis Ind	Service Type	Incident Type	Function	
2018UOF-1091-44-16152	2018UOF-1091	20180000236935	6/28/2018	N	Call for Service	Level 2 - Use of Force	SWAT	Abc
2018UOF-1600-44-4453	2018UOF-1600	20180000326490	9/1/2018	N	Call for Service	Level 2 - Use of Force	SWAT	Abc
2019UOF-0026-2364-15292	2019UOF-0026	20190000025276	1/19/2019	Y	Booking	Level 3 - Use of Force	911 Response	Abc
2019UOF-0215-1096-3859	2019UOF-0215	20190000025444	1/19/2019	Y	Call for Service	Level 2 - Use of Force	911 Response	Abc
2019UOF-0326-2292-18633	2019UOF-0326	20190000098802	3/19/2019	Y	Call for Service	Level 2 - Use of Force	911 Response	Abc
2019UOF-0804-1134-16670	2019UOF-0804	20190000185820	5/23/2019	N	Call for Service	Level 2 - Use of Force	911 Response	Abc
2019UOF-1281-1167-21188	2019UOF-1281	20190000478870	12/28/2019	N	Warrant Service	Level 2 - Use of Force	SWAT	Abc
2020UOF-0138-1096-21257	2020UOF-0138	20200000007733	1/7/2020	N	Call for Service	Level 2 - Use of Force	911 Response	Abc
2020UOF-0360-2476-21570	2020UOF-0360	20200000055593	2/13/2020	N	Call for Service	Level 2 - Use of Force	911 Response	Abc
2020UOF-0361-2177-21570	2020UOF-0361	20200000055593	2/13/2020	N	Booking	Level 2 - Use of Force	911 Response	Abc



Appendix C – Excerpt from Los Angeles Police Department Directive 11: Crowd Management, Intervention, and Control

**Crowd Management, Intervention, and Control
Concepts and Strategies**

Lawful Assembly	Isolated Unlawful Behavior	Unlawful Assembly	Riot
<p><i>Free Speech and assembly are protected First Amendment activity. The following are examples:</i></p> <ul style="list-style-type: none"> • Speeches • Marches • Demonstrations • Rallies • Picketing • Public assemblies • Protests • Celebratory events 	<p><i>Isolated unlawful activity by individuals or small groups within a crowd should not automatically form the basis for declaring an assembly unlawful.</i></p> <ul style="list-style-type: none"> • Isolated destruction of property • Isolated acts of violence • Isolated rock or bottle throwers • Individual sit down demonstrators 	<p>407 PC Two or more persons assemble</p> <ul style="list-style-type: none"> • To do an unlawful act or • To do a lawful act in a boisterous or tumultuous manner <p><i>Assemblies may be dispersed when they are: Violent, or pose a clear and present danger of violence, or the group is breaking some other law in the process. If a crime is occurring action may be taken to stop it prior to a Dispersal Order being given.</i></p> <ul style="list-style-type: none"> • Civil Disobedience • Sit down demonstration 	<p>404 PC Riot, (a) Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.</p> <ul style="list-style-type: none"> • Group violent behavior • Group acts of property damage
Police Action			
<p>Use Crowd Management strategies:</p> <ul style="list-style-type: none"> • Meet with event organizers and stakeholders • Determine the history and risk of the group • Create a planning team • Check permit limitations • Develop commanders intent • Develop Incident Action Plan and objectives • Identify and assign resources: Video unit, fixed posts, MFF, Bicycle Units, Air Support, TSE, Shadow Teams, Mounted Unit • Monitor and assess crowd behavior • Separate opposing factions • Maintain video log • Provide direction and expectations at roll call • Engender facilitation not confrontation • Ensure the appropriate uniform for the event • Interact with organizers and gain cooperation 	<p>Use Crowd Intervention strategies:</p> <ul style="list-style-type: none"> • Use organizers and monitors to gain voluntary compliance • Isolate, arrest and remove law violators as quickly as possible • Video action of officers and law violators • Use amplified sound (sound trucks or CIUVs) to communicate intent or to gain compliance • Use low profile tactics when possible. Don't become the focus of the demonstration. • Use Passive Arrest Teams, Tangle Teams, Shadow Teams, Cross Bows, Arrest Circles • When it is not possible to make an immediate arrest, identify and track suspects using cameras, observation posts, an air unit or shadow teams • Continue to assess; escalate and deescalate as behavior changes • Don't increase crowd tension or change crowd focus to law enforcement by unnecessary aggressive appearance or behavior 	<p>Use Crowd Control strategies:</p> <ul style="list-style-type: none"> • Obtain voluntary compliance • Video action of officers and law violators • Act quickly • Request resources (MFF) • Put control forces in place • Identify dispersal routes • Put a traffic plan in place • Move media to protected area. Use amplified sound (sound trucks or CIUVs) to communicate intent to declare an unlawful assembly • Disperse unlawful crowd • Track and contain groups involved in illegal behavior using cameras, observation posts, Shadow Teams or Air Unit • Arrest individuals who fail to disperse or who are involved in illegal activity • Use Arrest Links to move arrestees • With appropriate approval, deploy the appropriate less lethal munitions to defend officers or to disperse the crowd • Ensure only reasonable force • Report use of force and munitions • Restore traffic flow 	<p>Use Crowd Control strategies:</p> <ul style="list-style-type: none"> • Video action of officers and law violators • Immediately stop the behavior • Request resources (MFF) • Put control forces in place • Stop the illegal activity • Put a traffic plan in place • Track and contain groups involved in illegal behavior using cameras, observation posts, Shadow Teams or Air Unit. • Arrest law violators • Use Arrest Links to move arrestees • With appropriate approval, deploy the appropriate less lethal munitions to defend officers or to stop violent behavior or property damage • Ensure only reasonable force • Report use of force and munitions • Restore and maintain order • Restore traffic flow • Discourage groups from forming • Protect lives, property, and vital facilities • Establish and patrol divisions • Remain present • Reassess the situation • Return to normalcy • Act quickly



Appendix D – Report Methodology

To complete this review, OIG:

- Researched and tested less lethal weapons available to SPD, including less lethal launchers;
- Analyzed preliminary use of force data for the period under review to identify officers using less lethal weapons and confirmed whether the officers had received training to do so in accordance with SPD requirements;
- Compared the SPD policy to publicly available materials from other jurisdictions;
- Consulted with an industry expert on less lethal weapons;
- Reviewed public timelines published by SPD and internal SPD communications data to identify patterns in dispersal orders and use of less lethal weapons;
- Researched manufacturer regulations, reviewed past audits, and interviewed SPD personnel to confirm whether less lethal weapons were stored and tracked appropriately;
- Interviewed SPD incident commanders and other supervisory staff involved in the 2020 demonstrations;
- Analyzed SPD Incident Action Plans for the recent demonstrations to determine how SPD planned for, and staffed these events, including establishing rules of engagement;
- Reviewed SPD training materials and interviewed SPD specialists concerning crowd management, crowd control, and use of less lethal weapons; and
- Requested feedback from OPA and CPC on any issues of concern or risks OIG should investigate as part of this review.

In accordance with its normal reporting practices, OIG provided SPD with a draft of this report to confirm its factual accuracy, and offered SPD the opportunity to submit a response. SPD declined to do so, citing concerns about discussing events that are still under review by OPA and the Court.



Response to City Council Crowd Control Weapons Ordinance Ban

Director Andrew Myerberg
August 15, 2020



Seattle Office of
Police Accountability

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Background

On May 25, 2020, George Floyd, a Black man, was murdered by a White Minneapolis police officer. Video of Mr. Floyd dying under the knee of this officer was widely circulated, kicking off massive protests for racial justice. Demonstrations began in Seattle on May 29, and thousands of people protested—mostly peacefully. Seattle Police Department (SPD) officers ultimately used force on some demonstrators, including tear gas, pepper spray, 40 mm “Blue Nose” rounds, and blast balls, and the Office of Police Accountability (OPA) was contacted over 18,000 times regarding this and other conduct. Due to grave concern about SPD’s crowd management tactics and uses of force against demonstrators, Seattle City Council passed Ordinance 126102 on June 15, “banning [SPD] ownership, purchase, rent, storage, or use of crowd control weapons.”¹

Purpose

This memorandum is in response to that Ordinance, which requested that OPA provide a “formal recommendation to the City Council on whether the SPD should be reauthorized to use less-lethal weapons for crowd dispersal purposes.” The Council also requested that OPA suggest revisions to the SPD manual sections that govern use of less-lethal weapons for the purpose of crowd dispersal and identify a crowd dispersal authorization process that requires “executive approval” and reflects “best practices in policing to minimize harm to protesters.” The information that follows is organized into four parts.

- Part I addresses ways in which the Ordinance’s ban on less-lethal tools impacts non-crowd control situations. OPA recommends that these tools be reauthorized for non-crowd control situations.
- Part II addresses ways in which the Ordinance’s ban on less-lethal tools impacts crowd or demonstration management. OPA recommends reauthorization of all tools except tear gas, with restrictions on use in crowd control contexts.
- Part III lists OPA’s five primary crowd management policy recommendations.
- Part IV discusses OPA’s conclusions regarding the plausibility of instituting a mandatory executive approval process prior to crowd dispersal. OPA concludes that such a process would be both impractical and legally problematic.

OPA notes that its investigations into complaints about SPD officers’ actions during the recent demonstrations are still ongoing, so the recommendations herein are preliminary. OPA is likely to identify additional policy recommendations as it completes its investigations. These policy recommendations will be issued in the form of Management Action Recommendations, which are a formal tool OPA uses to suggest corrections to SPD policies or practices that have implications beyond the case at hand.

¹ City of Seattle, Ordinance No. 126102, (July 26, 2020).

Ordinance Impact on Non-crowd Control Situations

Although the Ordinance labels the banned tools as “crowd control weapons,” its plain language yields the conclusion that it also bars SPD from owning or using the covered weapons in any other context, regardless of whether they are used or designed for use on multiple individuals.² This prohibition extends to chemical irritants, kinetic impact projectiles, and disorientation devices.³ In order to illustrate how implementation of the Ordinance would impact SPD operations, OPA has summarized below examples of how some of these less-lethal tools are used outside of crowd management situations.

Noise Flash Diversionary Devices

Noise Flash Diversionary Devices (NFDDs) create “a bright flash and loud report designed to temporarily divert the attention of persons in the immediate vicinity, giving tactical teams a window of opportunity to exploit to their advantage.”⁴ Only trained SPD SWAT officers are permitted to deploy NFDDs, which may be used during standoffs with barricaded subjects, hostage rescue operations, or when serving high-risk search warrants. They are more powerful than blast balls and generally are not used during demonstrations.⁵

Example of Use

SPD’s Gang Unit developed probable cause to arrest a known gang member who was prohibited from possessing firearms but seen brandishing them on social media. SPD SWAT assisted the Gang Unit in serving a search warrant at the suspect’s residence.⁶ When they arrived, one person saw police approaching, ignored officers’ orders

² Memorandum from Kerala Cowart, Assistant City Attorney, to Bessie Scott, Interim Executive Director, Community Police Commission, (July 8, 2020).

³ The Ordinance provides that SPD may use oleoresin capsicum (OC) spray outside of demonstrations when it does not land on anyone other than the targeted individual. Due to the difficulty of preventing cross contamination when using OC spray and the creation of a legal cause of action where this occurs, SPD informed OPA on July 29 that it will order officers to cease the use of OC spray if the ordinance goes into effect.

⁴ National Tactical Officers Association, Tactical Response and Operations Standard for Law Enforcement Agencies, (April 2018), last accessed August 3, 2020, <https://ntoa.org/pdf/swatstandards.pdf>, 42.

⁵ SPD SWAT Team Manual, Polices & Procedures 3.050 – NFDD.

⁶ SPD’s SWAT team is typically called upon to serve high-risk search warrants and arrest warrants or called out by patrol officers to respond to armed and barricaded individuals. SWAT tactics in dealing with armed or barricaded suspects rely on the use of time as a de-escalation tool, and often last for hours. If negotiations and time do not convince a subject to surrender, SWAT gradually applies more pressure via less-lethal tools.



to stop, and ran inside the garage. SWAT deployed three NFDDs into the yard outside the residence to encourage the suspect to surrender. Almost immediately, the suspect and other people in the residence did so. The NFDDs did not strike anyone, no other force was used, and no one was injured. Firearms and ammunition were recovered from inside the residence.

Chemical Agents

When negotiation and NFDDs are not effective, SPD SWAT sometimes uses chemical agents, including oleoresin capsicum (OC) and CS gas (tear gas), to compel a suspect to surrender.⁷ SWAT is the only SPD unit authorized to use CS gas.⁸ SPD patrol officers carry OC spray (pepper spray) on duty, but SWAT is the only unit that has regular access to other means of dispersing OC. This includes devices that can disperse OC into a residence, as well as paintball guns that fire pellets of chemical irritants (“pepperball” guns).⁹

Example of Use

East Precinct patrol officers responded to a report of a fire inside an apartment building. When they contacted the occupant of the apartment, he informed officers he had a handgun and would shoot officers who attempted to enter. Officers smelled natural gas and evacuated the building. SWAT and the Hostage Negotiation Team (HNT) responded, resulting in an hours-long standoff. HNT and social workers tried to convince the suspect to surrender, but he refused. Eventually, SWAT detonated an NFDD outside his apartment window. When the suspect still refused to surrender, SWAT fired pepperballs into the suspect’s apartment; he then surrendered with no further use of force.

40 mm Less Lethal “Blue Nose” Launchers

Both specially trained patrol officers and SWAT officers are equipped with 40 mm Less Lethal “Blue Nose” Launchers. These devices fire a sponge-tipped 40 mm round at a range of up to 120 feet. This makes them an ideal less-lethal option for situations where a Taser and/or OC spray are not effective due to their limited maximum range of 20 feet. SPD officers typically use Blue Nose Launchers in situations where subjects are armed with knives or firearms. Since 2016, SPD officers have used 40 mm Blue Nose Launchers on 11 occasions outside the crowd control context.¹⁰

⁷ Under the CCW Ordinance, forms of OC which are not a “spray” appear to be completely banned. Pepperballs are also banned, both as chemical irritants and as kinetic impact projectiles.

⁸ Chief Best temporarily authorized patrol officers to use CS gas during the George Floyd demonstrations. That authorization has subsequently been rescinded.

⁹ According to use of force reports reviewed by OPA, SPD pepperball launchers fire a synthetic capsaicinoid called pelargonic acid vanillylamide.

¹⁰ Some incidents involved multiple deployments of the Blue Nose Launcher against the same suspect. Of the 11 occasions: one ended in an officer-involved shooting; seven involved subjects who had firearms, imitation firearms, or edged weapons; three involved subjects who officers believed were armed; and four involved subjects who were more than twenty feet away, making other less lethal options ineffective.

Example of Use

South Precinct officers responded to a report of an intoxicated subject with a firearm planning to commit suicide. When officers contacted the subject, who was in a vehicle in a park, he pointed a handgun at his own head. After an hour of negotiations, the subject exited the vehicle and began to walk through the park toward other officers and community members, still holding the gun to his head. An officer followed him, took cover, and fired a single Blue Nose round into the subject's hip area. The subject dropped the gun, fell to the ground, and surrendered. He was taken into custody for an involuntary mental health evaluation and suffered only minor injuries.

Recommendation: Reauthorize use of all less-lethal tools for non-crowd control situations

It is possible that the subjects in the above examples would have surrendered even in the absence of the less-lethal tools. However, it is equally plausible that these situations could have ended with a greater use of force or loss of life, particularly if officers were forced to choose between addressing a public safety threat or forcing a confrontation with a potentially armed subject in a confined space. Compelling officers to make such a choice goes against SPD's court-approved de-escalation policy, which dictates that officers should use time, distance, and shielding to stabilize a scene while avoiding a physical confrontation and the use of force until absolutely necessary.¹¹

The above examples illustrate why OPA is opposed to a total prohibition on the use of less-lethal devices. A complete ban risks escalating dangerous situations that SPD officers are called upon to handle outside of the crowd control context. OPA is committed to minimizing the use of force by SPD, but in cases where force is necessary, the use of these tools may help officers avoid using a higher level of force. Furthermore, with anticipated reductions in SPD staffing, it is very likely that officers will no longer be able to respond to calls with the same numbers as under current protocol. The lack of backing officers, which is an element of the de-escalation policy, will make it even more important for officers to have less-lethal tools at their disposal.

¹¹ Seattle Police Department Policy 8.100 – De-Escalation.

Ordinance Impact on Crowd Control Situations

As a starting point, OPA agrees with the Council that the use of CS gas should be banned during demonstrations. OPA is concerned by the sheer amount of force used by SPD over the last two months, which appears to represent a significant departure from previous demonstrations. However, OPA does not support a total ban on the use of other less lethal tools during demonstrations, including OC spray, blast balls, or the 40 mm Blue Nose Launcher, because such a ban leaves SPD with no choice but to use impact weapons at demonstrations if there is an imminent threat of harm to people and using force is necessary.

As the Council recognized and the accountability system partners noted in a June 5, 2020, letter, CS gas is banned in warfare by the Chemical Weapons Convention of 1993, and the use of indiscriminate respiratory irritants also exacerbates the risk of COVID-19 transmission among those exposed. Community members have repeatedly expressed concerns about tear gas seeping into structures and residences near a protest zone, and OPA is aware that CS gas often causes extensive property damage when deployed inside a structure. OPA also believes that the deployment of tear gas cannisters may precipitate other uses of force as officers fire other less-lethal tools at individuals who are attempting to pick up, disable, or throw them back.

However, the Ordinance does not just ban CS gas. As written, it leaves only one authorized crowd control weapon available to SPD: the use of impact weapons such as batons. Without the ability to respond to objects thrown at an intermediate range, SPD will be forced to either order officers to retreat or to disperse the crowd using only impact weapons. There may be scenarios in which it is most appropriate to retreat, but there also may be scenarios in which officers will need to be responsive to public safety needs such as stopping threats of widespread harm. The evidence on use of impact weapons suggests that this approach will be less safe for officers and demonstrators alike.¹² It would also run contrary to the goals of the Consent Decree, which was imposed partly because SPD officers were overly reliant on batons and other impact weapons.¹³ Since the Consent Decree has been in place, SPD has virtually eliminated the use of impact weapons by officers, with only six uses reported over the last two years.¹⁴ While optimally no force would be used, OPA believes that a return to a reliance on impact weapons as a less-lethal tool is not in the best interests of officers or the community and also risks jeopardizing SPD's compliance with the Consent Decree.

In an ideal world, police would be able to isolate individuals engaging in criminal activity and extract them from the crowd while allowing the remainder of the crowd to peacefully exercise their First Amendment rights. Unfortunately, there are limited practical tactics that would

¹² One study found that the use of batons by law enforcement results in minor injury to the suspect in roughly one-third of uses and hospitalization of the suspect in 3.2% of uses. See Derrick E. Jacobous, "Trauma Caused by Law Enforcement Use of Force." JEMS: The Journal of Emergency Medical Services, (June 3, 2020), accessed August 3, 2020, <https://www.jems.com/2015/06/28/trauma-caused-by-law-enforcement-use-of-force/>.

¹³ Department of Justice, Investigation of the Seattle Police Department, (December 16, 2011), 13.

¹⁴ Assistant Chief Lesley Corder, Remarks at SPD Defensive Tactics Training Demonstration on July 29, 2020.

make this approach safe and effective. Even if officers were able to consistently identify people breaking the law who were among a group of thousands, sending a team of officers to push through the crowd and make an arrest may not be safe for either party. Officers should have access to less lethal tools that allow them to respond to assaults from a range and safely disperse a crowd.

Recommendation: Reauthorize use—with new restrictions—of all less-lethal tools except CS gas for crowd control situations

If SPD is expected to address instances of violence that occur during demonstrations, OPA believes that SPD should be reauthorized to use all less-lethal tools except CS gas. In reaching this recommendation, we stand by current policy language that restricts officers from targeting a person's head and/or other sensitive areas with less-lethal tools and are opposed to any indiscriminate usage. OPA intends to fully investigate instances of alleged policy violations and recommend discipline for individual officers where appropriate.

OPA believes the best approach to the use of less-lethal tools in a crowd control context is one that minimizes the use of less-lethal tools by: 1) requiring that SPD incident commanders appropriately plan SPD's response to a demonstration so that confrontations do not occur between officers and demonstrators or are as brief as possible; and 2) ensuring that protesters are given adequate warning whenever less lethal tools are about to be used so that they may leave the area before they are deployed. OPA's recommendations for modifications to SPD's crowd management policies that would help implement these goals are included below.

Crowd Management Policy Recommendations

OPA believes that, even if a particular use of force during a demonstration is justified under SPD's use of force policy, it is possible that it could have been avoided if SPD officers or incident commanders had approached the situation differently. In crowd management scenarios, individual front-line officers are typically not given discretion about where they deploy or what strategies they use to confront a crowd. Those decisions are left to SPD incident commanders.

At times, it appeared to OPA that officers were sent to confront crowds with no clear strategy or plan behind the deployment. This led to a frequent pattern: officers would be assigned to hold a line in a certain area; demonstrators would confront the officers; individuals within the crowd would throw bottles or rocks; SPD officers would respond with force; the crowd would temporarily leave. However, officers would continue to hold the same line, demonstrators would return, and the pattern would begin again. Front-line officers and supervisors sometimes appeared to be improvising their responses to the crowd in the apparent absence of clear directions from an incident commander.¹⁵

These types of uses of force served no clear law enforcement purpose: they did not prevent property damage, effectively disperse the crowd, or allow peaceful demonstrators their right to protest. In the absence of written documentation about how SPD intended to address these demonstrations, OPA is unable to fully evaluate the degree to which SPD's decision making contributed to the need to use force during these demonstrations. OPA's recommendations below are therefore aimed at rectifying that problem by driving accountability for the use of force during demonstrations upward within SPD's chain of command.

OPA is aware of reports that SPD officers targeted journalists and legal observers with less-lethal tools at protests, particularly on July 25, 2020. Although not discussed in this document, OPA acknowledges the concern and intends to evaluate it fully and make supplemental recommendations at a later date as requested by the Executive.

Recommendation: Prohibit officers from using less-lethal tools during a demonstration solely to prevent property destruction

SPD's existing crowd management policy allows officers to use less-lethal tools in two situations: 1) to disperse a crowd when authorized by an incident commander, or 2) when they make an individual decision to do so that is otherwise in compliance with SPD's use of force policy. It

¹⁵ OPA's information about events comes from reviewing media reports, OPA complaints and investigations, SPD use of force data, body-worn video footage, and interviews with SPD officers and supervisors.

further provides that when using OC spray during a demonstration, officers should have a “primary objective” of defending themselves, others, or preventing the destruction of property.¹⁶ This policy stands in contrast to the International Association of Chiefs of Police Model Policy on Crowd Management, which recommends that officers should not be permitted to make arrests or use force without command authorization unless there are exigent circumstances that pose a risk of imminent injury.¹⁷

OPA recommends revising the crowd management policy so that individual officers may only make an independent decision to use blast balls, OC, and other less-lethal tools in order to protect themselves or others. While SPD may at times need to disperse a crowd in order to prevent widespread, significant property destruction, the decision to do so should be made at the incident command level rather than at the line level. This will help avoid situations where innocent parties are affected by blast balls and OC spray as officers try to stop property damage. If property damage committed by a crowd reaches a level that justifies a dispersal, the incident commander should make that decision.

Recommendation: Require incident commanders to create detailed plans prior to deploying officers at demonstrations

An SPD incident commander, working with the Seattle Police Operations Center (SPOC), generally prepares an Incident Action Plan (IAP) prior to every demonstration where SPD intends to deploy officers.¹⁸ IAPs are purposed to lay out SPD’s objectives in responding to a demonstration.

OPA is concerned that IAPs are too vague and do not provide the guidance officers and supervisors need to handle a demonstration. For example, a recent IAP declared the following objective: “Provide for the safety of the first responders, general public, spectators, and participants by maintaining a police presence that will give officers the ability to respond to any gathering that may impact public safety.” Further, objectives often appear to be copied from one day’s IAP into the next, with no differentiation between them. IAPs also include “special instructions” for responding officers, but these, too, are vague. One often-repeated set of “special instructions” states: “Taking enforcement action in any large group requires good judgement to ensure Officer safety and to prevent inciting the crowd. When possible, quickly remove suspects from the area to facilitate the continuation of the demonstration.”

SPOC told OPA that incident commanders do engage in more detailed contingency planning, but that it is not reflected on the IAPs due to security concerns about IAPs being leaked outside the department. While OPA is sensitive to that unease, we are not aware of any instance in which an IAP has been leaked and, regardless, the benefits of creating a detailed plan may outweigh the risks of disclosure.

¹⁶ Seattle Police Department Policy 14.090 (10) Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 – Use-of-Force.

¹⁷ International Association of Chiefs of Police, Model Policy: Crowd Management, (April 2019), 5.

¹⁸ Seattle Police Department Policy 14.090-TSK-1 Responsibilities of the Incident Commander.

The lack of any written contingency plan prevents OPA from evaluating an incident commander's planning for a demonstration and leaves front-line supervisors and officers without clear instructions about what to do if communications with the incident commander break down. OPA recommends that SPD revise policy to require incident commanders to plan for and document the contingencies that predictably arise during a large demonstration. These should include:

- Under what circumstances they will order a crowd to disperse
- How the dispersal order will be given
- Who will give the dispersal order
- In what direction the crowd will be moved
- Where officers will be positioned relative to the crowd
- The justification for these decisions

Including this information in the IAP will allow individual officers and squad leaders to align their decisions with the commander's overall intent. By giving guidance on the circumstances under which crowds will be dispersed and for what purpose, the IAP may help reduce uses of force and ensure that any force used is directed toward a clear, articulated objective.

Recommendation: Avoid confrontation between officers and community members when demonstrations are in response to law enforcement

The recent protests in Seattle have been about police misconduct—not, for example, women's rights or the environment—which has posed a unique challenge for SPD. During protests, the police are generally responsible for protecting the public, preserving property, and mitigating traffic impacts. But when the protests are police-focused, they must also avoid escalating existing tensions with demonstrators unnecessarily.

It appears to OPA that, at times, SPD deployed large groups of officers for reasons that are unclear. Not only does this create the risk of unnecessary escalation, it also forces officers into a situation where they become targets for anyone in the crowd who seeks to engage or harm them. If police presence at a demonstration would not serve any apparent purpose, it may be more appropriate for officers to monitor it from a distance.

OPA recommends that SPD revise the crowd management policy to require incident commanders to plan responses to protests that are about law enforcement in a way that minimizes the likelihood of escalating the situation. For example, incident commanders should not deploy officers to form a line along the edge of such an event in the absence of some specific law enforcement reason for doing so. However, if critical infrastructure must be protected or a crowd dispersed for reasons of public safety, incident commanders should direct officers to take appropriate action to remedy the issue while avoiding harm.

Recommendation: Make portable public address systems available and require that orders to disperse be broadcast to the crowd

It appears from OPA's review of many incidents – especially those in late May and early June – that SPD officers at times did not have access to or bring to demonstrations an appropriate public address system. One SPD commander told OPA that SPD has relied on using vehicle-mounted public address systems to give instructions to demonstrators, despite the fact that many demonstrations are now often policed by officers mounted on bicycles.

The absence of an appropriate public address system at a demonstration is problematic because in the event that commanders need to disperse a crowd, they are left with the choice of either waiting for a patrol vehicle to arrive or dispersing the crowd without giving an appropriate public safety order. It also makes it virtually impossible for SPD to give appropriate warnings to demonstrators when unlawful conduct occurs. Whenever possible, the use of blast balls and OC to disperse a crowd should be avoided until the crowd has been given a dispersal order that is audible. The use of force on community members who have not been given an audible dispersal order has the potential to cause physical harm, escalates tensions and undermines public trust.

OPA recommends that SPD adopt a policy that requires incident commanders to have a public address system available to communicate with demonstrators. To the extent that SPD does not currently own any portable public address systems, the department should take steps to acquire them.

Recommendation: Explore the feasibility of tactics that allow officers to make targeted arrests of people engaging in criminal activity

OPA has received numerous complaints from community members who contend that they or others were subjected to the use of less-lethal weapons despite having done nothing wrong.¹⁹ Although these incidents are still under investigation, they highlight the secondary effects that the use of less-lethal tools can have on peaceful demonstrators and on public trust in SPD. In cases where it is safe and feasible to do so, OPA believes SPD should attempt to arrest people who are causing physical harm to others within a crowd rather than relying upon less-lethal tools or issuing a dispersal order. This would allow people to continue to peacefully protest while preserving the safety of officers and others.

OPA recommends that SPD explore the development of new targeted arrest tactics for crowd control scenarios and evaluate the risks associated with the use of such tactics. Some experts recommend, for example, that officers could be sent in smaller groups to move within a demonstration rather than simply forming a line along the edge of it.²⁰ OPA understands there are scenarios where sending officers into a crowd to make an arrest could result in an escalation of the situation and require a greater use of force. However, OPA believes that SPD's Advanced Training Unit and other subject matter experts in the department should see what options are available.

¹⁹ These cases include: 2020OPA-0322, 2020OPA-0327, 2020OPA-0328, 2020OPA-0334, and 2020OPA-0345. A list of demonstration related OPA cases is available at: <https://www.seattle.gov/opa/case-data/demonstration-complaint-dashboard>.

²⁰ Maxine Bernstein, "Tear Gas, Riot Gear Incite Protesters. Make Targeted Arrests Instead, Experts Say.," (July 12, 2020), accessed August 7, 2020, The Oregonian/OregonLive, <https://www.oregonlive.com/crime/2020/07/tear-gas-riot-gear-incite-protesters-make-targeted-arrests-instead-experts-say.html>.

Executive Approval Process

The Ordinance asks OPA to identify “a crowd dispersal authorization process that requires Executive approval.” While not completely clear, OPA construes this to be a request by the Council for OPA to identify a process by which the Mayor or her staff would become directly involved in the decision-making process when SPD decides whether to disperse a crowd or demonstration. OPA believes that any such process would be both impractical and legally problematic.

Requiring the Mayor’s Office to approve every decision SPD makes to disperse a crowd is not practical. SPD incident commanders make the decision about whether to disperse a crowd based on conditions they are monitoring in real time, either through in-person observation or via police radio. They do so at all hours of the day and night, in a city that has approximately 300 demonstrations every year.²¹ SPD is able to ensure a commander is always available to monitor a demonstration because it employs dozens of captains and lieutenants who take on that responsibility. Requiring that the Mayor or a member of her civilian staff also monitor every demonstration would be overly burdensome and impractical. It would likely require that the Mayor hire new, full-time civilian staff solely to monitor demonstrations across the city.

The existence of such a process would also run counter to the Seattle City Charter, which explicitly delegates responsibility for the management and supervision of SPD to the Chief. “The Chief of Police shall manage the Police Department, and shall prescribe rules and regulations, consistent with law, for its government and control.”²² The Chief must still answer to the Mayor for the manner in which the department is run, but OPA believes that the structure of the Charter clearly places responsibility for the day-to-day operations of the police department with the Chief of Police. Requiring the Mayor’s Office to constantly monitor and approve operational decisions made by the police department’s chain of command would run contrary to that structure.

Conclusion

OPA understands that the Council and the community have serious concerns about how less-lethal tools have been used by SPD over the past two months. In response, OPA has made the investigation of complaints that arose from recent demonstrations a top priority. OPA’s recommendations herein are designed to ensure that the use of force during demonstrations going forward is minimized, and that when force is necessary, it is used in a manner that minimizes injuries to community members and protects public safety. OPA’s recommendations are also intended to ensure that when poor planning results in preventable uses of force, individuals at SPD are held accountable. OPA believes that this approach is preferable to requiring SPD to return to the use of batons alone for crowd control, which will likely result in greater risk of injury to community members, officers, and the public. OPA lastly recognizes that less-lethal tools play a crucial role outside of crowd control, including by patrol and SWAT officers. Eliminating such options for officers may result in more harm to community members, which would run contrary to the goal of the Ordinance.

²¹ Seattle Police Department, “Official Statement on Use of Force During Friday Night Protests.” SPD Blotter, (May 30, 2020), accessed August 3, 2020, <https://spdblotter.seattle.gov/2020/05/30/official-statement-on-use-of-force-during-friday-night-protests/>.

²² Seattle City Charter, Article VI, Section 4.



Seattle Office of
Police Accountability

Report: Crowd Control Weapons

PUBLIC SAFETY & HUMAN SERVICES COMMITTEE | SEPTEMBER 11, 2020

Andrew Myerberg, OPA Director

Presentation Outline

1. Background
2. Process
3. Recommendations: crowd control weapon use
4. Recommendations: crowd management policy
5. Recommendation: executive approval process

Background

1. Council passed ordinance banning SPD use of crowd control weapons (June 15th)
2. Court halted implementation of ordinance so it could evaluate accountability entities' feedback (present)
3. Accountability entities submitted feedback on whether crowd control weapons should be reauthorized (August 15th)

Process

OPA staff interviewed SPD personnel and reviewed relevant documentation, including:

- Studies on impact weapon use
- SPD policies, the SWAT Manual, and Incident Action Plans
- SPD use of force data & body-worn video footage
- Past SPD uses of less-lethal tools in non-crowd control contexts

Recommendations: Crowd Control Weapon Use

1. Reauthorize use of all less-lethal tools for non-crowd control situations
2. Reauthorize use—with new restrictions—of all less-lethal tools except CS gas for crowd control situations

Recommendations: Crowd Management Policy

1. Prevent individual officers from using less-lethal tools during a demonstration solely to prevent property destruction
2. Require incident commanders to circulate detailed plans prior to deploying officers at demonstrations

Recommendations: Crowd Management Policy

3. When safe and feasible, minimize presence when demonstrations are in response to law enforcement
4. Make portable public address systems available and require audible broadcast of orders to disperse
5. Explore the feasibility of tactics allowing targeted arrests of people engaged in criminal activity

Recommendation: **Executive Approval Process**

1. Do not create a crowd dispersal authorization process that requires Executive approval

Questions?



Review of the SPD Crowd Dispersal Policy and Less Lethal Weapons



Seattle Office of
Inspector General

Inspector General Lisa Judge
Public Safety and Human Services Committee, Seattle City Council
September 11, 2020

Introduction and Overview

- The right to peaceably assemble is critical to democracy and must be safeguarded.
- Less lethal weapons should not be used on peaceful protestors.
- Police should have sufficient tools to address specific acts of violence or disperse a declared riot.
- Police need less lethal tools to address high risk calls outside of crowd control contexts.
- OIG supports retaining less lethal weapons for use by SPD, with strict criteria for use, proper training, and strong accountability.

Re-authorization of Less Lethal Weapons

- The ordinance should distinguish patrol functions from crowd management when considering less lethal use.
- Re-authorization with restrictions, increased clarity, and accountability in both contexts is the most sensible course of action.
- When used appropriately, less lethal weapons provide options to resolve safety concerns without using higher levels of force.
- Banning certain weapons that provide alternatives to higher force, especially without replacement strategies, may result in more violence.
- OIG suggests changes in policy and training to reduce the risk of officers using less lethal weapons inappropriately.

The OIG report offers the following proposals for use of less lethal weapons, including:

- Following up on previous external recommendations concerning blast balls;
- Ensuring CS is not used in a general protest setting but rather as a tool of last resort in life safety circumstances, with consideration for the surrounding environment (such as dense residential areas);
- Ensuring officers using CS receive training on proper use, first aid, and decontamination procedures;
- Increasing opportunities for qualified SPD personnel to train with less lethal weapons; and
- Evaluating use of expired munitions and disposing of any unsafe stock.

Review of Crowd Management Policies and Related Training

The current crowd dispersal policy is in line with industry practices.

- OIG found that the major elements of the current policy are consistent with other jurisdictions, such as Los Angeles, Portland, Oakland, and Vancouver (CA).
- For example, all jurisdictions used variations on the Incident Command System to manage events, and all jurisdictions granted control of the event (including dispersal orders) to the designated incident commander.

Even so, SPD policy authorizes force in crowd management situations which may not be clear to the public, creating a cycle of escalation.

Incident commanders can authorize and direct use of force to disperse crowds.

Officers can also use individual discretion to use force to protect life safety or property.

When done without warning or explanation, these uses of force can escalate the crowd and cause individuals to view the police as illegitimate.



SPD should improve policy with clearer criteria and more warning requirements.

- More specific criteria should create consistent expectations for protestors and more uniform decisions by SPD.
- Other jurisdictions use detailed matrices to explain when different levels of force are appropriate for crowd control.
- Requiring warnings to the crowd before attempting to disperse or using less lethal weapons may also help minimize escalation.
 - Emergencies may impact the ability to give a warning. Absent an emergency, SPD policy should require warnings and provide guidance about documentation of warnings and related force.

SPD should strive for better communication with the public before and during protest events.

- In a large crowd, communication is key in de-escalation.
- Public education before a crisis occurs would help demystify why police take certain actions and what the public should expect in terms of officer behavior.
- During a mass demonstration, SPD should be able to clearly communicate with large crowds. Other jurisdictions use dedicated sound trucks and visual boards, like those used for traffic warnings. Visual communication is also more accessible for individuals with hearing difficulties or who are wearing ear protection. Other options include use of social media and other platforms to push out up-to-the-minute information about crowd conditions.

Examples of Visual Communication During Protests in Oakland, CA



(Source: Oakland Police Department Twitter)

Office of Inspector General for Public Safety

September 11, 2020

Officers are trained to use less lethal weapons but have few opportunities to practice.

- OIG verified that officers using less lethal weapons were trained to do so, except for CS, and that SPD training included safe use criteria established by manufacturers (such as minimum safe distance).
- However, OIG found that officers have few opportunities to practice with these weapons. This raises the risk of incorrect or inaccurate use in high pressure situations.
- The cost of ammunition and staff time were cited as limiting factors on the ability to practice.

SPD tactics and training for crowd management are designed for mobile crowds.

- SPD training materials indicate that the department is well versed in crowd management tactics and related research.
- SPD acknowledges in its own materials that fixed riot lines escalate crowds and offer limited opportunities for de-escalation.
- Current tactics and training are therefore designed to keep crowds moving, rather than to deal with static crowds.
- This has led to training that offers little guidance to personnel for dealing with large, volatile crowds that are focused on a fixed location or cannot be easily moved.

SPD was unprepared for the crowd dynamics seen at East Precinct.

- Officers described the events as unprecedented, both in defending a fixed location and in the anger of the crowd at police.
- The inherent infrastructure of East Precinct, as well as the temporary fence solution chosen by the City, did not allow for distance or shielding.
- Officers reported injuries from lasers and thrown objects, such as rocks and fireworks.
- Unable to de-escalate the crowd and facing substantial perceived safety risks, SPD repeatedly resorted to extensive use of less lethal weapons to disperse the crowd. This resulted in multiple reports of injuries to individuals within the crowd as well as complaints from residents in surrounding buildings.

The OIG report offers the following proposals to avoid a repeat of the dynamics observed at East Precinct, including:

- Developing complete policy, tactics, and training for addressing stationary crowds;
- Developing tactics for addressing isolated violent individuals within otherwise peaceful crowds; and
- Improving communication with crowds, as previously discussed.

Mutual aid is needed but creates risks for public trust.

- SPD does not have sufficient staffing to manage protests with thousands of participants, so it requests aid from other departments.
- Other departments cannot be compelled to follow SPD use of force policies without a formal legal agreement, or even to report their use of force to SPD.
- This creates risks that the public may be subjected to force outside normal SPD standards, and may not be able to distinguish the force was used by another department.
- The City should seek a regional solution to at least ensure prompt and transparent reporting of use of force during large-scale events.

As protests continued, SPD could not get assistance from other departments.

- SPD had trouble finding departments willing to send help, especially for staffing the protests (as opposed to back-filling patrol).
- Personnel reported other departments were worried about public scrutiny and shifting rules of engagement.
- Inability to secure additional personnel resources may lead to increased reliance on less lethal weapons to manage a large volatile crowd.

Other Issues and Discussion of External Authorization

Other Issues and Suggestions Raised by OIG

- SPD does not document detailed tactical information and rules of engagement for each event in its Incident Action Plans. Lack of documentation makes it difficult to determine whether individual officers had a clear understanding of objectives and rules of engagement, and to hold senior officials accountable for their strategic decision-making.
- Communications equipment may need to be improved for SPD personnel, especially those involved in giving instruction or providing supervision. Officers reported being unable to hear instructions clearly.

Other Issues and Suggestions Raised by OIG

- Debrief the public about SPD actions. Public outreach and conversation may help to restore public trust.
- Consider less technical language in public communication. OIG cited the candle tweet as an example of language that de-legitimized SPD actions.
- Acknowledge that stress and fatigue experienced by officers can have additional negative impacts on performance and conduct.

OIG could not find an example of external authorization for emergency dispersal.

- In theory, having a non-police executive authorize crowd dispersal adds oversight and an alternate perspective.
- However, this person would be reliant on information provided by the police, which would impact the objectivity of any decisions.
- In a life safety emergency, there may not be enough time to seek and obtain external approval.

On-Going and Future Related Work by OIG

OIG Sentinel Event Review (SER) is underway.

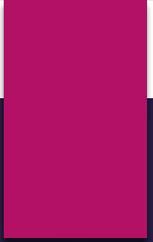
Changing the system requires understanding the root cause of current problems.

The SER will evaluate those systemic flaws through a unique combination of community, outside subject matter experts, and OIG collaboration.



Other Related Future Projects

- Disparity analysis of SPD response to current and past demonstrations
- Audit of command level supervision
- Audit of mutual aid agreements
- Audit of discipline and outcomes
- Audit of overtime and personnel management



Community Police Commission Recommendations on Seattle's Crowd Control Weapons Ban

COMMUNITY POLICE COMMISSION

SEPTEMBER 11TH, 2020

Background

- ▶ Why the CPC made these recommendations
 - ▶ The Crowd Control Ordinance requested the Office of Police Accountability (OPA), Office of Inspector General (OIG), and Community Police Commission (CPC) each submit recommendations that include:
 - ▶ Suggested policy revisions to Seattle Police Department's (SPD) manual for use of less-lethal weapons for the purpose of crowd dispersal; and
 - ▶ Identification of crowd dispersal authorization process that requires Executive approval and reflects best practices in policing to minimize harm to protestors.

Background

- ▶ Some community experiences with Crowd Control Weapons
 - ▶ Dozens of injuries from SPD less-lethal weapons were reported.
 - ▶ Many protestors were seriously burned or maimed by blast balls.
 - ▶ Munitions hit journalists who were reporting on the protests.
 - ▶ There were reports of infants suffering from the effects of tear gas while sleeping in their homes.

Background

- ▶ Prior CPC recommendations were not implemented
 - ▶ CPC repeatedly raised issues regarding SPD's use of Crowd Control Weapons
- ▶ CPC's Crowd Control Weapons Ban report offers nine recommendations

Recommendation 1:

The CPC supports the City's ban on the use of crowd control weapons during First Amendment protected activity and recommends SPD implement it as soon as possible.

Recommendation 2:

SPD should immediately revise, with input from the CPC, OIG, OPA, and Federal Court, crowd control policies and training to comply with the City's elimination of Crowd Control Weapons. Over the coming months, those policies and trainings, along with all other SPD crowd control policies and tactics, should go through a community-centered review process that incorporates input from CPC, OPA, OIG, and Federal Court.

Recommendation 3:

The City should ensure the Crowd Control Weapons Ban allows the use of some appropriate less lethal options, with strong policies and accountability mechanisms, outside of crowd control.

Recommendation 4:

The CPC recommends the City work with CPC, OPA, OIG, and other community stakeholders to set clear, strong, and high standards for when police and city officials are authorized to declare unlawful assemblies, riots, and establish curfews.

Recommendation 5:

The CPC recommends in the event SPD issues orders to disperse or declare a riot, the authorizing officers should thoroughly document and an agency outside of SPD should subsequently review any and all actions taken and resulting outcomes. Additionally, we recommend to make all documentation publicly available within 24 hours of the incident, effective immediately.

Recommendation 6:

The CPC recommends the City prohibit the sale of banned Crowd Control Weapons to other law enforcement agencies.

Recommendation 7:

The CPC recommends SPD investigate and make public the full inventory of the Department's crowd control weapons to determine next steps of disposal.

Recommendation 8:

The CPC recommends the City initiate a community-centered review of SPD's use of force policies in collaboration with key community stakeholders, CPC, SPD, and the Federal Court.

Recommendation 9:

The CPC recommends a review of SPD's strategic plans for disparities in the way officers attend, appear, and use force during demonstrations.

Recommendations

1. The CPC supports the City's ban on the use of crowd control weapons during First Amendment protected activity and recommends SPD implement it as soon as possible.
2. SPD should immediately revise, with input from the CPC, OIG, OPA, and Federal Court, crowd control policies and training to comply with the City's elimination of Crowd Control Weapons. Over the coming months, those policies and trainings, along with all other SPD crowd control policies and tactics, should go through a community-centered review process that incorporates input from CPC, OPA, OIG, and Federal Court.
3. The City should ensure the Crowd Control Weapons Ban allows the use of some appropriate less lethal options, with strong policies and accountability mechanisms, outside of crowd control.
4. The CPC recommends the City work with us, OPA, OIG, and other community stakeholders to set clear strong, and high standards for when police and city officials are able to declare unlawful assemblies, riots, and put curfews in place.
5. The CPC recommends in the event SPD issues orders to disperse or declare a riot, the authorizing officers should thoroughly document and an agency outside of SPD should subsequently review any and all actions taken and resulting outcomes. Additionally, we recommend make all documentation publicly available within 24 hours of the incident, effective immediately.
6. The CPC recommends the City prohibit the sale of banned Crowd Control Weapons to other law enforcement agencies.
7. The CPC recommends SPD investigate and make public the full inventory of the Department's Crowd Control Weapons to determine next steps of disposal.
8. The CPC recommends the City initiate a community-centered review of SPD's use of force policies in collaboration with key community stakeholders, CPC, SPD, and the Federal Court.
9. The CPC recommends a review of SPD's strategic plans for disparities in the way officers attend, appear, and use force during demonstrations.

Questions?

COMMUNITY POLICE COMMISSION

	CS Gas (Tear Gas)			OC Spray (Pepper Spray)			Blast Balls			40mm Launcher			Noise Flash Diversionary Devices (NFDD)			Executive Approval
	Use During First Amendment Protected Activity/Crowd Control	Use on Patrol - Non Crowd Control	SWAT Use - Non Crowd Control	Use During First Amendment Protected Activity/Crowd Control	Use on Patrol - Non Crowd Control	SWAT Use - Non Crowd Control	Use During First Amendment Protected Activity/Crowd Control	Use on Patrol - Non Crowd Control	SWAT Use - Non Crowd Control	Use During First Amendment Protected Activity/Crowd Control	Use on Patrol - Non Crowd Control	SWAT Use - Non Crowd Control	Use During First Amendment Protected Activity/Crowd Control	Use on Patrol - Non Crowd Control	SWAT Use - Non Crowd Control	
CPC	No	N/A - only SWAT authorized to use. Regardless, CPC supports "elimination of indiscriminate, crowd control weapons such as tear gas...regardless of their use."	Not specifically addressed but presume no. CPC supports "elimination of indiscriminate, crowd control weapons such as tear gas...regardless of their use."	No	Not specifically addressed. CPC supports "elimination of indiscriminate, crowd control weapons such as tear gas and blast balls regardless of their use," but OC used in targeted circumstances with strong policies and accountability mechanisms may be acceptable.	Not specifically addressed. CPC supports "elimination of indiscriminate, crowd control weapons such as tear gas and blast balls regardless of their use," but OC used in targeted circumstances with strong policies and accountability mechanisms may be acceptable.	No	No. CPC supports "elimination of indiscriminate, crowd control weapons such as...blast balls regardless of their use."	Not specifically addressed but presume no. CPC supports "elimination of indiscriminate, crowd control weapons such as...blast balls regardless of their use."	Not specifically addressed but presume no. CPC supports the ICW ordinance which bans "lethal impact projectiles" which likely covers 40mm launcher)	Not specifically addressed. May support use if these are seen as more targeted and less "indiscriminate" than CS/blast balls.	Not specifically addressed. May support use if these are seen as more targeted and less "indiscriminate" than CS/blast balls.	Not specifically addressed but presume no. CPC supports the ICW ordinance which bans "disorientation devices" (which probably covers NFDDs)	N/A - only SWAT authorized to use. Regardless, CPC supports "elimination of indiscriminate, crowd control weapons such as tear gas and blast balls regardless of their use." NFDDs seem more similar to blast balls/other indiscriminate weapons.	Not specifically addressed but CPC supports "elimination of indiscriminate, crowd control weapons such as tear gas and blast balls regardless of their use." NFDDs seem more similar to blast balls/other indiscriminate weapons.	Recognizes that ICs determine criteria for dispersal orders/not declarations. Does not take a position on executive input, but raises concern about individual officers declaring riots. Recommends collaborative work between City, CPC, OPA, OIG, and community stakeholders to set "clear, strong, and high standards for when police and city officials are able to declare unlawful assemblies..." and also recommends requiring ICs to document reasons for dispersal orders/riot declarations, with outside agency later to review actions taken/outcomes.
OIG	No for general use in protest settings. Notes that "SPD and Council may wish to consider limiting use of this weapon to full-scale riot situations involving violence. SPD and Council may also wish to consider prohibiting the use of weapons such as CS solely in defense of property." As a general matter, less-lethal weapons should only be used for crowd control in clearly delineated circumstances involving violence or life safety. Recommends that if it is determined that non-SWAT officers will be authorized to deploy CS in future demonstrations, ensure officers receive training regarding the proper use of CS and related first aid and	N/A - only SWAT authorized to use. Regardless, OIG generally supports reauthorizing use of less-lethal tools for non-crowd control situations.	Yes. OIG generally supports reauthorizing use of less-lethal tools for non-crowd control situations.	Yes but with changes in policy and training to reduce risk of indiscriminate or inappropriate use of force: update policies to distinguish levels/types of force, improve communication with protesters and warnings before use of force including use of sound truck/visual display boards, devise better methods of handling large stationary crowds, provide more practice opportunities with less lethal tools, and review how senior level command is held accountable.	Yes. OIG generally supports reauthorizing use of less-lethal tools for non-crowd control situations.	Yes. OIG generally supports reauthorizing use of less-lethal tools for non-crowd control situations.	Yes, but notes "[b]last balls have the potential to inflict serious injury or even death if detonated too close to a person, underscoring the importance of policy, training, and the ability to practice before use in a live setting. Providing warnings to the public before use of these weapons would help mitigate risk." Recommends the Council address previous recommendations issued by CPC, OPA, and external experts on blast balls. Also subject to general OIG recommendations for changes in policy and training to reduce risk of indiscriminate or inappropriate use of force: update policies to distinguish levels/types of force, improve communication with protesters and warnings before use of force including use of sound truck/visual display boards, devise better methods of handling large stationary crowds, provide more practice opportunities with less lethal tools, and review how senior level command is held accountable. As a general matter, less-lethal weapons should only be used for crowd control in clearly delineated circumstances involving violence or life	Yes. OIG generally supports reauthorizing use of less-lethal tools for non-crowd control situations.	Yes. OIG generally supports reauthorizing use of less-lethal tools for non-crowd control situations.	Yes, but notes "less lethal launchers, such as the 40mm, can cause lethal harm if rounds hit the head, neck, or chest, or at too close range. Policy and training should continue to emphasize safe targeting practices for these weapons." Also subject to general OIG recommendations for changes in policy and training to reduce risk of indiscriminate or inappropriate use of force: update policies to distinguish levels/types of force, improve communication with protesters and warnings before use of force including use of sound truck/visual display boards, devise better methods of handling large stationary crowds, provide more practice opportunities with less lethal tools, and review how senior level command is held accountable. As a general matter, less-lethal weapons should only be used for crowd control in clearly delineated circumstances involving violence or life safety.	Yes. OIG generally supports reauthorizing use of less-lethal tools for non-crowd control situations.	Yes. OIG generally supports reauthorizing use of less-lethal tools for non-crowd control situations.	Not specifically addressed. Presume yes, but with changes in policy and training to reduce risk of indiscriminate or inappropriate use of force: update policies to distinguish levels/types of force, improve communication with protesters and warnings before use of force including use of sound truck/visual display boards, devise better methods of handling large stationary crowds, provide more practice opportunities with less lethal tools, and review how senior level command is held accountable.	N/A - only SWAT authorized to use. Regardless, OIG generally supports reauthorizing use of less-lethal tools for non-crowd control situations.	Yes. OIG generally supports reauthorizing use of less-lethal tools for non-crowd control situations.	No. Sufficient time to seek executive approval may not exist, executive lacks tactical expertise and access to sufficient on the ground information, and also lacks independent source of information.
OPA	No. Believes use of CS should be banned during demonstrations.	N/A - only SWAT authorized to use. Regardless, OPA recommends reauthorizing use of all less-lethal tools for non-crowd control situations.	Yes. OPA recommends reauthorizing use of all less-lethal tools for non-crowd control situations.	Yes but with restrictions: individual officers can make independent decision to use only to protect themselves or others and not in defense of property; require ICs to create detailed contingency plans; require ICs to plan responses to protests to avoid escalation; require public address system/dispersal orders be broadcast to crowd before use of less lethal tools; explore targeted arrest tactics	Yes. OPA recommends reauthorizing use of all less-lethal tools for non-crowd control situations.	Yes. OPA recommends reauthorizing use of all less-lethal tools for non-crowd control situations.	Yes but with restrictions: individual officers can make independent decision to use only to protect themselves or others and not in defense of property; require ICs to create detailed contingency plans; require ICs to plan responses to protests to avoid escalation; require public address system/dispersal orders be broadcast to crowd before use of less lethal tools; explore targeted arrest tactics	Yes. OPA recommends reauthorizing use of all less-lethal tools for non-crowd control situations.	Yes. OPA recommends reauthorizing use of all less-lethal tools for non-crowd control situations.	Yes but with restrictions: individual officers can make independent decision to use only to protect themselves or others and not in defense of property; require ICs to create detailed contingency plans; require ICs to plan responses to protests to avoid escalation; require public address system/dispersal orders be broadcast to crowd before use of less lethal tools; explore targeted arrest tactics	Yes. OPA recommends reauthorizing use of all less-lethal tools for non-crowd control situations.	Yes. OPA recommends reauthorizing use of all less-lethal tools for non-crowd control situations.	Yes but with restrictions: individual officers can make independent decision to use only to protect themselves or others and not in defense of property; require ICs to create detailed contingency plans; require ICs to plan responses to protests to avoid escalation; require public address system/dispersal orders be broadcast to crowd before use of less lethal tools; explore targeted arrest tactics	N/A - only SWAT authorized to use. Regardless, OPA recommends reauthorizing use of all less-lethal tools for non-crowd control situations.	Yes. OPA recommends reauthorizing use of all less-lethal tools for non-crowd control situations.	No. Requiring executive approval of crowd dispersal orders would be impractical and contrary to City Charter which places management and supervision responsibility with Chief of Police.



Legislation Text

File #: CB 119879, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the operation and maintenance of a new regional 800 MHz emergency public safety radio communication system; authorizing the Chief Technology Officer of the Seattle Information Technology Department to execute for and on behalf of The City of Seattle an interlocal agreement between The City of Seattle, King County, and the Cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, and Tukwila for the purpose of creating a non-profit corporation, as provided under RCW 39.34.030, to own, operate, and maintain the regional emergency radio communication system that is being installed and developed under a separate interlocal agreement authorized by Ordinance 124685.

WHEREAS, The City of Seattle owns, operates, and maintains its existing emergency radio communication system in cooperation with other jurisdictions within King County under the Emergency Radio Communication System Interlocal Cooperation Agreement authorized by Ordinance 116797; and

WHEREAS, the existing countywide radio system is more than 20 years old and unsupported by the supplier of the system's equipment, software, and repairs; and

WHEREAS, elected officials and representatives from The City of Seattle, King County, and the Cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, and Tukwila (the "Parties") have been working collaboratively since 2012 to procure and implement a new emergency radio communication system, referred to as the "Puget Sound Emergency Radio Network System" or "PSERN System;" and

WHEREAS, the Parties entered into the Puget Sound Emergency Radio Network Implementation Period Interlocal Cooperation Agreement, authorized by Ordinance 124685, that designates King County as the lead agency for planning, financing, procuring, and implementing the PSERN System and establishes a

Joint Board to oversee implementation; and

WHEREAS, the Parties also entered into a Memorandum of Agreement Regarding Future Operation of the Puget Sound Emergency Radio Network, authorized by Ordinance 124687, that formalized commitment to negotiating an agreement to create a non-profit corporation under RCW 39.34.030 that will operate and maintain the future regional emergency radio communication system; and

WHEREAS, the electorate of King County approved a measure to fund implementation of the PSERN System in April 2015; and

WHEREAS, implementation of the PSERN System is progressing, with full system acceptance expected in 2023; and

WHEREAS, the Parties have negotiated a separate agreement titled the Puget Sound Emergency Radio Network Operator Interlocal Cooperation Agreement (“Agreement”) that creates a new separate government agency (the “PSERN Operator”) under RCW 39.34.030(3)(b) that is organized as a non-profit corporation under chapter 24.06 RCW; and

WHEREAS, the Agreement provides that the PSERN Operator will assume ownership and control of the PSERN System following full system acceptance, establishes a Board of Directors and governance for the PSERN Operator, and establishes terms by which the PSERN Operator will own, manage, operate, and maintain the PSERN System throughout its useful life; and

WHEREAS, pursuant to chapter 39.34 RCW, the Interlocal Corporation Act, any two or more public agencies may enter into agreements with one another for joint or cooperative action, provided that the agreements are authorized by their governing bodies; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Chief Technology Officer of the Seattle Information Technology Department (CTO), or the CTO’s designee, is authorized to execute for and on behalf of The City of Seattle an interlocal agreement substantially in the form of the Puget Sound Emergency Radio Network Operator Interlocal Cooperation

Agreement by and among King County and the Cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle, and Tukwila, attached to this ordinance as Attachment 1, with such minor additions, deletions, or modifications as the CTO deems necessary or advisable in order to carry out the intent of this ordinance.

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)

Attachments:

Attachment 1 - Puget Sound Emergency Radio Network Operator Interlocal Cooperation Agreement

PUGET SOUND EMERGENCY RADIO NETWORK OPERATOR INTERLOCAL COOPERATION AGREEMENT

This Puget Sound Emergency Radio Network Operator Interlocal Cooperation Agreement (“Agreement”) is entered into pursuant to chapter 39.34 RCW (the “Interlocal Cooperation Act”) by and among King County and the cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, Seattle, and Tukwila, each a political subdivision or municipal corporation of the State of Washington (individually, a "Party" and collectively, the "Parties").

RECITALS

A. The Parties, under various interlocal agreements, have been responsible for the ownership, operation and maintenance of various elements in the current King County Emergency Radio Communications System (KCERCS), a voice radio system that is nearly twenty years old and is increasingly unsupported by the supplier of the system’s equipment, software and related repairs.

B. The Parties determined that it is in the public interest that a new public safety radio system be implemented that will provide public safety agencies and other user groups in the region with improved coverage and capacity, as well as uniformly high-quality emergency radio communications. Said new system is referred to herein as the “Puget Sound Emergency Radio Network System” or “PSERN System.”

C. The costs of implementing the PSERN System are financed through a funding measure approved by voters at the April 2015 election.

D. The Parties executed a separate agreement (“Implementation Period ILA”) that designates King County to act as the lead agency for planning, procurement, financing and implementation of the PSERN System with the oversight of a Joint Board established pursuant to the Implementation Period ILA.

E. The Implementation Period ILA contemplates that the Parties will create a new separate governmental agency under RCW 39.34.030(3)(b) that is organized as a non-profit corporation under Chapter 24.06 RCW as authorized by the Interlocal Cooperation Act to assume the ownership and control of the PSERN System following Full System Acceptance and be responsible for the ownership, operations, maintenance, management and on-going upgrading/replacing of the PSERN System during its useful life.

F. The purpose of this Agreement is to create the new governmental agency to be known as the “PSERN Operator” and establish the terms for governance of the PSERN Operator and the terms under which the PSERN Operator will undertake the ownership, operations, maintenance, management and on-going upgrading/replacing of the PSERN System. NOW, THEREFORE, in consideration of the mutual promises, benefits and

covenants contained herein and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree to the above Recitals and the following:

1.0 RULES OF CONSTRUCTION AND DEFINITIONS

1.1 Rules of Construction

1.1.1 Unless the context requires otherwise, the singular form of a word shall also mean and include the plural (and vice versa), and the masculine gender shall also mean and include the feminine and neutral genders (and vice versa).

1.1.2 References to statutes or regulations include all current and future statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to.

1.1.3 References to sections, exhibits, attachments or appendices to this Agreement and references to articles or sections followed by a number shall be deemed to include all subarticles, subsections, subclauses, subparagraphs and other divisions bearing the same number as a prefix.

1.1.4 The words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation.”

1.1.5 The words “shall” or “will” shall be deemed to require mandatory action.

1.1.6 Words such as “herein,” “hereof” and “hereunder” are not limited to the specific provision within which such words appear but shall refer to the entire Agreement taken as a whole.

1.1.7 Words such as “person” or “party” shall be deemed to include individuals, political subdivisions, governmental agencies, associations, firms, companies, corporations, partnerships, and joint ventures.

1.1.8 References to “days” shall mean calendar days unless expressly stated to be “Business Days.” If the due date for a task, payment, or any other requirement falls on a Saturday, Sunday or holiday observed by King County, the due date shall be deemed to be the next Business Day.

1.1.9 The headings and captions inserted into this Agreement are for convenience of reference only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

1.1.10 This Agreement was negotiated and prepared by the Parties and their respective attorneys. The Parties acknowledge and agree that the rule of construction that an ambiguous contract should be construed against the drafter shall not be applied in any construction or interpretation of this Agreement.

1.2 Definitions

Words and terms used in this Agreement and not otherwise defined herein (including in the recitals which are hereby incorporated into this Agreement by this reference) shall be given their ordinary and usual meanings or their well-known technical industry meanings except that the following terms are defined for this Agreement as follows:

1.2.1 Board of Directors or Board means the board described in Section 4.0 of this Agreement and shall be the governing body of the PSERN Operator.

1.2.2 Agreement means this Puget Sound Emergency Radio Network Operator Interlocal Cooperation Agreement, as it may hereafter be amended or modified from time to time, together with all exhibits and appendices hereto, as they may hereafter be amended or modified.

1.2.3 Consolidated Service Area means those geographic areas of King County, Pierce County and Snohomish County, Washington, previously served by the emergency radio networks of King County, the City of Seattle, EPSCA and Valley Com, and which areas are to be prospectively served by the PSERN System. The Consolidated Service Area shall also include those other geographic areas that are added to the area served by the PSERN System as expanded in accordance with action of the Board of Directors.

1.2.4 Director means a person designated as a member of the Board of Directors pursuant to Section 4.2 of this Agreement.

1.2.5 Dispatch Center means an organization that has entered into an agreement with King County or the PSERN Operator for console service on the PSERN System.

1.2.6 EPSCA means the Eastside Public Safety Communications Agency, formed pursuant to chapters 39.34 and 24.06 RCW, created by the cities of Bellevue, Issaquah, Kirkland, Mercer Island and Redmond, or its successor agency.

1.2.7 Executive Director means the chief executive officer for the PSERN Operator appointed by and serving at the pleasure of the Board of Directors.

1.2.8 Full System Acceptance or FSA means the determination issued to the PSERN System Contractor upon the Contractor satisfactorily completing the final system development phase milestone pursuant to King County Contract No. 5729347 (Contract for the Design, Development, Implementation, Testing and On-Going Support, Maintenance and Upgrade of the Puget Sound Emergency Radio System, executed on December 17, 2014).

1.2.9 KCERS means the King County Emergency Radio Communication System.

1.2.10 Operations Period means the period that commences with the first full month after FSA and continuing through the life of the PSERN System.

1.2.11 PSERN Transitional Employee means an individual: (1) who, at the time of FSA, is employed by King County, the City of Seattle, EPSCA, or ValleyCom in a management, administration, finance, operations, and/or maintenance position for a subregion of KCERCS; (2) whose employment with King County, the City of Seattle, EPSCA, or ValleyCom will be eliminated as a direct result of the PSERN project; and (3) who will not be hired by the PSERN Operator in a comparable capacity because the PSERN Operator has no or fewer comparable positions.

1.2.12 Puget Sound Emergency Radio Network Operator or PSERN Operator means the governmental agency formed under this Agreement and RCW 39.34.030(3)(b) that is organized as a nonprofit corporation under chapter 24.06 RCW as authorized by the Interlocal Cooperation Act for the purpose of owning, operating, maintaining, managing and ongoing upgrading/replacing of the PSERN System during the Operations Period.

1.2.13 Puget Sound Emergency Radio Network System or PSERN System means the land mobile radio system constructed under the Implementation Period ILA. It also means all equipment, software, and other work deployed during the Operations Period to provide public safety communication service(s) or an addition to an existing infrastructure during the Operations Period to provide new or additional public safety communication service(s).

1.2.14 System means an infrastructure that is deployed to provide public safety communication service(s) or an addition to an existing infrastructure to provide new or additional public safety communication service(s).

1.2.15 Service Rate means the rate or rates charged to User Agencies in accordance with the Rate Model at Exhibit A, or as it may be amended by action of the Board of Directors.

1.2.16 Services means voice, data, video, or other communication services provided to User Agencies and Dispatch Centers through an agreement with King County or the PSERN Operator.

1.2.17 User Agency means an entity that is authorized under an agreement with King County or the PSERN Operator to register and use a radio or other device on the PSERN System.

1.2.18 Valley Communications Center or Valley Com means the Governmental Administrative Agency formed by interlocal agreement under Chapter 39.34 RCW, created by the cities of Auburn, Federal Way, Kent, Renton, and Tukwila.

2.0 DURATION OF AGREEMENT

This Agreement shall be effective on the date it is last signed by an authorized representative of each the Parties and is filed and/or posted as provided in Section 15.2 ("Effective Date"). This Agreement shall remain in effect until terminated as provided in Section 12.0.

3.0 PURPOSE OF THE AGREEMENT; FINANCING; SERVICES

The purpose of this Agreement is to provide communication Services throughout the Operations Period to User Agencies and any other agencies permitted to be licensed in the 800 MHz Public Safety Radio Spectrum pursuant to 47 C.F.R. Part 90 that are within the boundaries of the Consolidated Service Area. To effectuate this purpose, the Parties hereby create a governmental administrative agency called the "Puget Sound Emergency Radio Network Operator". The Parties each assign to the PSERN Operator the responsibility of owning, operating, maintaining, managing and ongoing upgrading/replacing of the PSERN System during the Operations Period as permitted by the Interlocal Cooperation Act. The PSERN Operator shall be formed pursuant to RCW 39.34.030(3)(b) and shall be organized as a nonprofit corporation under chapter 24.06 RCW.

The Parties hereto acknowledge and agree that each is executing this Agreement in order to facilitate the creation of the PSERN Operator as a separate governmental administrative agency pursuant to the Interlocal Cooperation Act and not a "joint board" within the meaning of RCW 39.34.030(4)(a). All debts, obligations and liabilities incurred by the PSERN Operator shall be satisfied exclusively from the assets and properties of the PSERN Operator and no creditor or other person shall have any right of action against the Parties hereto, the User Agencies or any other public or private entity or agency on account of any debts, obligations, or liabilities of the PSERN Operator unless explicitly agreed to in writing by the Party hereto, the User Agency, or such entity or agency.

The expenses of the PSERN Operator shall be financed through a funding measure approved by voters at the April 2015 election and with user fees (Service Rates) to be assessed against and paid by all User Agencies. It is the intent of the Parties that Service Rates be computed as provided in Exhibit A and be set to cover all operating expenses of the PSERN Operator, unless otherwise directed by the Board of Directors.

This Agreement shall not obligate the Parties to incur debt on behalf of the PSERN Operator. Each Party's financial obligations to PSERN shall be limited to payment of Service Rates unless otherwise agreed upon in writing.

The PSERN Operator shall have the responsibility and authority for providing communication Services as provided in this Agreement, including but not limited to owning, operating, maintaining, managing and ongoing upgrading/replacing of the

PSERN System during the Operations Period and all related incidental radio communications functions.

4.0 BOARD OF DIRECTORS

4.1 Creation of Board of Directors

The PSERN Operator shall be governed by a Board of Directors that is hereby created pursuant to the Interlocal Cooperation Act and chapter 24.06 RCW that shall act in the best interests of PSERN and in furtherance of the purpose of this Agreement. The Board's composition, powers, responsibilities, quorum and meeting requirements shall be included in the PSERN Operator's articles of incorporation or bylaws.

4.2 Composition of the Board of Directors

4.2.1 The Board of Directors shall be composed of the four following voting members:

4.2.1.1 the King County executive, or a designee of the executive approved by the King County council;

4.2.1.2 the City of Seattle mayor, or his/her designee;

4.2.1.3 one mayor or city manager or his/her designee representing the Cities of Bellevue, Issaquah, Kirkland, Mercer Island and Redmond (the "EPSCA Cities"); and

4.2.1.4 one mayor or city manager or his/her designee representing the Cities of Auburn, Federal Way, Kent, Renton and Tukwila (the "Valley Com Cities").

4.2.2 The Board of Directors shall also include two nonvoting members to comment and participate in discussions but who are not entitled to vote on any matter. One nonvoting member shall be appointed by the King County Police Chiefs Association and one member selected jointly by the King County Fire Commissioners Association and the King County Fire Chiefs Association.

4.2.3 An authorized representative of King County, the City of Seattle, the Valley Com Cities and the EPSCA Cities shall provide written notice of its initial Board of Directors member and alternate member to the Chair of the Joint Board established under the Implementation Period ILA. Thereafter, notice of a change to a Party's Board of Directors member or alternate shall be effective upon delivery of written notice to the Chair of the Board of Directors. The notice shall include the name and contact information for the new member or alternate.

4.2.4 An authorized representative of King County, the City of Seattle, the Valley Com Cities and the EPSCA Cities shall promptly replace any vacancy in its Board

of Directors member or alternate and may, at any time, replace its Board of Directors member or alternate by giving notice as provided in Section 4.2.3. If the County or the City of Seattle fails to fill a vacancy for its Board of Directors member and alternate, its chief executive officer or his/her designee shall attend all meetings until one of the vacancies is filled. If one of the groups of cities listed in Sections 4.2.1.3 or 4.2.1.4 fails to fill a vacancy for its Board of Directors member and alternate, then the chief executive officer or his/her designee of one of the cities in that group shall attend all meetings until one of the vacancies is filled.

4.2.5 The officers of the PSERN Operator shall consist of a Chair, Vice Chair, a Secretary, a Treasurer and such other officers and assistant officers as may be deemed necessary and set forth in the bylaws. Any two or more offices may be held by the same person, except the offices of Chair and Secretary. The officers shall be elected from among the voting members of the Board. The Chair shall preside at the meetings of the Board of Directors. The Vice Chair shall serve in the absence of the Chair.

4.3 Quorum and Meeting Procedures

4.3.1 A quorum for a meeting of the Board of Directors shall be all four of the Board members who have voting authority. Action by the Board of Directors shall require the affirmative vote of all four voting Board members, except as provided otherwise in this Agreement.

4.3.2 Any Board of Directors member who has voting authority may request that a vote on a measure be deferred until the next meeting. The measure shall then be deferred for one meeting unless the other three voting members find either that there is an emergency requiring that the vote be taken at the originally scheduled meeting or that a delay would likely result in harm to the public, User Agencies or the PSERN Operator. A vote on the same measure shall not be deferred a second time without the concurrence of the majority of the Board of Directors' voting members.

4.3.3 The Board of Directors shall establish bylaws and procedures for its operations and meetings including setting a regular meeting schedule and location, providing for the scheduling of special and emergency meetings, and providing for attendance by telephone or other electronic voice communication.

4.3.4 The regular meeting schedule shall be established by the Board of Directors, with a minimum of two meetings being held each calendar year. Special or emergency meetings may be called by the Chair or by at least two voting members of the Board.

4.3.5 The first meeting of the Board of Directors will be held as soon as practicable and necessary to begin operations of the PSERN Operator. The members described in Section 4.2.3 shall attend the meeting and shall elect a Chair and Vice Chair to serve a term that will begin upon election and extend

through the remainder of that calendar year and the calendar year immediately following. Thereafter, the Board of Directors shall elect a Chair and Vice Chair at the final meeting of each year to allow each to serve a two-year term that will begin on January 1 of the following year.

4.3.6 The Board of Directors shall hold an annual meeting to coincide with the first regular meeting each year. During the annual meeting, the Executive Director shall report on the state of the PSERN Operator.

4.3.7 The Board of Directors shall take actions by vote and each voting Board member shall be entitled to one vote. All votes shall have equal weight in the decision-making process. Any voting Board member may call for a vote on an issue. Meetings shall be conducted according to the most recent edition of Robert's Revised Rules of Order unless otherwise directed by the Board of Directors.

4.3.8 Board members must be present at a meeting to vote and may not vote by proxy, provided that, if provided for in the bylaws, a member may participate in Board meetings and may vote on Board issues via telephone or other electronic voice communication.

4.3.9 The Board of Directors shall comply with applicable requirements of the Washington State Open Public Meetings Act, Chapter 42.30 RCW.

4.3.10 An alternate attending Board of Directors meetings on behalf of a regular member of the Board shall be considered to be a member for purposes of that meeting and entitled to exercise all rights of the member to participate in such meetings, including participating in discussion, making motions, and voting on matters coming before the Board.

4.3.11 Notwithstanding any other provision in this Agreement, the Board of Directors may take action by three affirmative votes when each of the following conditions is met: (1) a matter has been identified for action in the notice or proposed agenda for at least two meetings in a row, and (2) both meetings were regularly scheduled meetings or properly notified and scheduled special meetings in accordance with the bylaws and RCW 42.30, and (3) the same voting member failed to attend both meetings and failed to send an alternate. In this event, for this one action item only, a quorum of the Board of Directors will consist of three members.

4.4 Board of Directors Actions

The PSERN Operator, through its Board of Directors, shall have all powers allowed by law for interlocal agencies created under RCW 39.34.030 and chapter 24.06 RCW, as they now exist or may hereafter be amended, and as authorized, amended, or removed by the Board of Directors, as provided for in this Agreement, and including but not limited to the following:

- a. Amend this Agreement, subject to Section 15.13;
- b. Establish committees and advisory groups to perform activities related to the PSERN System;
- c. Adopt and amend budgets and approve expenditures;
- d. Adopt and amend policies and bylaws for the administration and regulation of the PSERN Operator;
- e. Adopt and amend purchasing and contracting policies consistent with state law;
- f. Direct and supervise the activities of the Operating Board;
- g. Direct the activities of the Executive Director;
- h. If the Board determines that the Executive Director will be directly hired as an employee of the PSERN Operator, then the Board shall hire, set the compensation for, and be authorized to terminate the employment of the Executive Director.
- i. If the Board determines that the Executive Director will be a contracted employee from another governmental agency, the Board will contract for an “at will” employee approved by the Board and who may be terminated from the position by a unanimous vote by the Board.
- j. Evaluate the Executive Director's performance and give the Executive Director a written evaluation of his or her performance at least annually;
- k. Establish a fund or special fund or funds as authorized by RCW 39.34.030;
- l. Establish Service Rates in accordance with Exhibit A or any amendments thereto;
- m. Review and amend terms of use for User Agencies, as necessary;
- n. Conduct regular and special meetings;
- o. Approve PSERN operation and maintenance standards;
- p. Determine the Services the PSERN Operator shall offer and the terms under which they will be offered;
- q. Approve agreements with third parties;

- r. Incur financial obligations in the name of the PSERN Operator to make purchases or contracts for Services to implement the purposes of this Agreement; provided, however, nothing in this Agreement shall authorize the PSERN Operator to issue bonds or incur indebtedness in the name of any Party hereto or that shall be considered a debt or a guarantee of any Party hereto without its express written consent;
- s. Purchase, take, receive, lease, take by gift, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, in the name of the PSERN Operator;
- t. Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all of its real or personal property, or any interest therein, and assets;
- u. Sue and be sued, complain and defend, in all courts of competent jurisdiction;
- v. Hold licenses for radio frequencies;
- w. Recommend action to the legislative bodies of the Parties and User Agencies;
- w. Delegate the Board of Directors' authority under this Agreement subject to any applicable law and to such limitations and conditions as the Board of Directors may establish;
- x. Enter into agreements with other agencies to accomplish tasks for the PSERN Operator such as agreements for services such as procurement and property leasing;
- y. Contract for staff through agreements with other agencies that specify the employment policies, compensations amounts, and supervisory structure that will apply to such staff;
- z. Exercise any powers necessary to further the goals and purposes of this Agreement that are consistent with the powers of the Parties;
- aa. Add parties to this Agreement and concurrently amend the membership of the Board of Directors, subject to the limitations of Section 15.13;
- bb. Take necessary actions to prepare and plan for a public safety radio system(s) to succeed the PSERN System;
- cc. To the extent permitted by law, accept loans or grants of funds from any federal, state, local or private agencies and receive and distribute funds; and
- dd. The PSERN Operator shall have no power to levy taxes.

4.5 Impasse Resolution Procedure

4.5.1 If a matter requiring Board action is moved at a Board of Directors meeting but fails for lack of a unanimous vote by all four (4) Directors, a voting Director may submit written notice of an impasse to the other Directors and the Executive Director. The notice shall include a statement of the action being sought and the history of any Board deliberation or vote(s) on the matter.

4.5.2 Within seven (7) days of receipt of a notice of impasse, the Board Chair shall designate a mediator to assist the Board in resolving the impasse. The mediator shall be experienced in resolving disputes among public sector and/or nonprofit agencies and may not be an employee or consultant of any of the Parties, unless otherwise agreed to by the Parties.

4.5.3 The Parties agree that it is essential to the success of the PSERN System that any impasse be resolved as quickly as possible and accordingly agree to instruct their respective Directors to cooperate with the mediator in good faith, including expediting responses to any mediator requests for information and discussion.

4.5.4 The mediator shall promptly investigate the impasse and the respective positions of the voting Directors. The mediator may recommend one or more non-binding alternatives for resolving the impasse. Regardless of the outcome of the mediation, the cost of the mediator's fees and expenses shall be divided into four equal parts to be paid by (1) the County, (2) the City, (3) the EPSCA Cities and the (4) Valley Com Cities. The EPSCA Cities and Valley Com Cities shall each be responsible for apportioning their one quarter share of the costs among their members and for informing the PSERN Operator of the apportionment. The PSERN Operator shall pay the mediator and invoice each Party for its share. Each Party shall pay the PSERN Operator within thirty (30) days of the Party's receipt of the invoice.

4.5.5 If the impasse is not resolved within ten (10) days of the mediator providing his/her recommendation(s), the Elected Executives Committee (EEC) shall meet with the Board of Directors to attempt to resolve the impasse. The EEC shall be composed of the King County Executive; the Mayor of the City of Seattle; one elected official designated by the EPSCA Cities; and one elected office designated by the Valley Com Cities. The Board of Directors and the EEC shall convene to consider the matter and attempt to reach a resolution, which may include re-submitting the matter for a Board of Directors vote, not later than twenty (20) days after the date the mediator provided his/her recommendation(s).

5.0 OPERATING BOARD

The Board of Directors will create an Operating Board of PSERN System User Agencies, which will include at least one fire commissioner as a member, to provide advice and perform other duties as deemed appropriate by the Board of Directors. The obligation to

create and maintain an Operating Board shall be included in the PSERN Operator's articles of incorporation or bylaws.

6.0 EXECUTIVE DIRECTOR

If the Executive Director is directly hired as an employee of the PSERN Operator, the Board shall be responsible for the appointment and termination of the Executive Director. If the Board enters into an agreement with another governmental agency to contract for an Executive Director, the agreement shall give the Board the authority to appoint the Executive Director and to terminate the Executive Director from his/her position.

The Executive Director shall report to the Board of Directors and shall regularly advise the Board on matters related to the operation and functions of the PSERN System and the PSERN Operator, including proposed budgets, financial and liability issues, and all other appropriate matters related to the PSERN System and the PSERN Operator. The Executive Director may also request assistance from the Operating Board to address tasks calling for technical and user-related expertise.

6.1 Executive Director Duties

The Executive Director shall:

- a. Manage the PSERN Operator's day-to-day activities consistent with applicable policies, procedures, and standards;
- b. Retain appropriate PSERN Operator staff either through the direct hire of such staff or through an agreement with an agency to provide such staff;
- c. Hire, evaluate, supervise, discipline, and terminate staff in compliance with applicable budget, policies, procedures, agreements and standards;
- d. Propose and administer Annual Budgets including a contingency;
- e. Consistent with applicable budget and procurement policies adopted by the Board, approve expenditures and sign contracts in amounts as established by the Board of Directors without additional approval of the Board of Directors;
- f. Track the performance of PSERN systems and Services;
- g. Provide support to the Board of Directors;
- h. Recommend policies, procedures, and standards, and changes thereto, including without limitation policies governing the procurement of goods, services, public works and improvements, staffing and emergency responses;

- i. Provide written monthly reports to the Board of Directors describing the PSERN Operator’s budget status, PSERN System performance against targets, partial or full PSERN System outages, purchases equal to or greater than \$10,000, and usage statistics;
- j. Maintain and manage records in accordance with applicable state and federal laws and regulations;
- k. Prepare an annual report for the PSERN Operator as required by RCW 23.95.255; and
- l. Perform other duties as assigned by the Board of Directors.

6.2 Qualifications and Status of the Executive Director

The Executive Director shall have experience or comparable equivalent skills in the technical, financial and administrative fields of public safety radio and his or her appointment shall be on the basis of merit only. If the Executive Director is directly hired by the PSERN Operator, he/she will serve in an “at will” position that may not be modified by any PSERN Agency policy, rule, or regulation regarding discipline or termination of PSERN Agency employees, and accordingly, the Executive Director may only be terminated from his or her position by the Board of Directors.

7.0 EMERGENCY PROCEDURES

In the case of an emergency, the Executive Director shall have the authority to issue a determination of emergency under applicable law. The Executive Director shall communicate to the Board of Directors each decision made pursuant to any emergency determination as soon as reasonably possible and shall issue a written finding of the existence of the emergency no later than two weeks following the award of any contract executed pursuant to the emergency determination.

8.0 PSERN OPERATOR EMPLOYMENT

8.1 Employees Generally

The Board of Directors shall require the PSERN Operator to comply with all applicable federal, state and local laws, ordinances and regulations pertaining to all current and future employees. In addition, the PSERN Operator shall be an equal opportunity employer and make reasonable efforts to maintain a diverse work force.

8.2. Employment of Current Regular Employees

8.2.1 Offer of Employment

8.2.1.1 As of the Effective Date of this Agreement, there are 3.0 FTE City of Seattle employees and 8.0 FTE King County employees who are employed to primarily work on KCERCS infrastructure and whose job duties will be assumed by the PSERN Operator after FSA (“Qualified Employees”). It is the intention of the Parties that each of those Qualified Employees have the option of working for the PSERN Operator and that the PSERN Operator and the County and City of Seattle will work cooperatively to transition the employees who accept such option to work for the PSERN Operator on a schedule that does not adversely impact public safety functions prior to FSA.

8.2.1.2 Directly Hired Employees

If the Board of Directors determines that PSERN Operator staff shall be directly hired by the PSERN Operator and to implement the intent of Section 8.2.1., then no later than the date to be set by the Board of Directors, the PSERN Operator will offer employment to each of the Qualified Employees for similar employment with the PSERN Operator. The offer shall remain open for no more than thirty (30) days unless otherwise determined by the Board of Directors. Each Qualified Employee who accepts the offer shall become a “Transferring Employee.” The PSERN Executive Director shall use best efforts to ensure each Transferring Employee a smooth and prompt transition to employment with the PSERN Operator.

The Board of Directors shall require the PSERN Operator to use its best efforts to offer the Transferring Employees opportunities for professional advancement and a package of employee benefits that are similar to the opportunities and benefits available to the Transferring Employees at their current agency at the time of transition to PSERN employment.

8.2.1.3 Agency-Provided Employees

If the Board of Directors determines that PSERN Operator staff will be contracted for through an agreement with another governmental agency, then no later than the date set by the Board of Directors, the agency providing such staff will offer employment to each of the Qualified Employees for similar employment with the agency for PSERN Operator work. The offer shall remain open for no more than thirty (30) days unless otherwise determined by the agency providing the PSERN Operator staff. Each Qualified Employee who accepts the offer shall become an “Agency Employee.” The agency providing PSERN Operator staff shall use best efforts to ensure each Agency Employee a smooth and prompt transition to employment with the agency and work for the PSERN Operator.

8.2.2 Retirement Benefits

If the Board of Directors determines that PSERN Operator staff shall be directly hired, then the PSERN Operator will participate in the Public Employees' Retirement System (PERS) and will offer PERS retirement benefits through the Washington State Department of Retirement Systems to Transferring Employees and Transitional Employees.

8.3 Temporary Employment of PSERN Transitional Employees

8.3.1 Any PSERN Transitional Employee who requests temporary employment with the PSERN Operator shall be employed as a temporary employee by the PSERN Operator or if the PSERN Operator does not directly hire its employees, then by the agency providing staff for the PSERN Operator.. The period of temporary employment shall not exceed eighteen (18) months from the time of transition to such employment or a shorter duration if requested by the PSERN Transitional Employee. The time of transition shall be within 60 days after FSA unless another date is agreed to by the PSERN Operator and the PSERN Transitional Employee.

8.3.2 While employed as temporary employees performing work for the PSERN Operator, PSERN Transitional Employees shall be entitled to a salary and package of benefits similar to what the Transitional Employee received prior to his or her transition to PSERN Operator work. The full cost of compensation, including salary and benefits, provided to PSERN Transitional Employees shall be paid by the PSERN Operator, either directly or pursuant to an agreement with another agency for the provision of staff.

8.3.3 While employed as temporary employees performing work for the PSERN Operator, PSERN Transitional Employees must meet all employment requirements applicable to permanent PSERN Operator employees or employees of the applicable employing agency. Nothing in this Agreement shall preclude the PSERN Operator's or applicable employing agency's ability to take employment action, up to and including termination of employment, regarding a PSERN Transitional Employee who fails to meet any requirement of his/her employment.

8.3.4 Nothing in this section shall preclude the PSERN Operator or an applicable employing agency from hiring a PSERN Transitional Employee serving as a temporary employee to a permanent position.

8.4 No Third-Party Beneficiaries.

Employees affected by this Agreement are not intended to be third-party beneficiaries to this Agreement and cannot sue to enforce its terms.

9.0 Service Level Requirements

9.1 Contractor Services

The PSERN Operator shall ensure the following services are provided by the Contractor throughout the expected service life of the PSERN System:

- (i) technical support;
- (ii) infrastructure repair;
- (iii) System updates; and
- (iv) System upgrades.

9.2 Minimum Performance

The PSERN Operator shall ensure the following minimum performance requirements for the PSERN System:

- (i) DAQ 3.4;
- (ii) 97% reliability;
- (iii) 97% portable on-street coverage in the Primary Bounded Area;
- (iv) 95% portable on-street coverage in the Highway Buffer Covered Areas;
- (v) grade of service of 1.0;
- (vi) 99.999% availability of backhaul;
- (vii) at least 17db added signal above the baseline PSERN design within the three (3) polygon coverage areas shown in Exhibit B; and
- (viii) provide 97% portable on-street coverage with 97% SAR (service area reliability) in the three (3) polygon coverage areas shown in Exhibit B.

10.0 RESERVED

11.0 WITHDRAWAL AND REMOVAL

11.1 Withdrawal of a Party

11.1.1 A Party may withdraw from this Agreement effective on the last day of a calendar year by giving written notice to the Board at least two years prior to the proposed effective date for withdrawal.

11.1.2 Any Party that has given notice of its intent to withdraw must meet with the Executive Director or his or her designee to develop a departure plan that is intended to ensure an orderly separation of the Party from the PSERN Operator in a manner that is consistent with this Agreement. The departure plan may include the transfer of funds and equipment or other assets and such plan must be approved by unanimous vote of the Board of Directors.

11.1.3 Costs of Withdrawal

11.1.3.1 A Party that withdraws shall remain responsible for any obligations that arose prior to the effective date of the withdrawal and for any that are specified under Section 15.17 as surviving a withdrawal.

11.1.3.2 As a condition of withdrawal, the withdrawing Party must pay any direct costs resulting from the withdrawal. The Board of Directors may also set a different withdrawal date as it deems appropriate; however, the withdrawal date shall not be later than one year after the withdrawing Party's proposed withdrawal date.

11.1.3.3 Any costs or other amounts owed by a withdrawing Party under this Agreement or any other agreement between the withdrawing Party and the PSERN Operator shall be paid prior to the effective date of the withdrawal or, if such amounts are not then known or established, then within thirty (30) days after the amount is known or established. However, the withdrawing Party shall not be responsible for amounts not known or established within one hundred (100) days of the date of withdrawal.

11.1.4 A member of the Board of Directors representing a Party that has given notice of withdrawal which is effective at a future date, shall be authorized to cast votes with the Board of Directors only on budgets and other items to be implemented prior to the withdrawal date unless permission to vote on a matter is granted by all remaining Board members.

11.1.5 A Party that has given its notice of withdrawal may revoke its notice of withdrawal by delivering a written notice of such revocation to the Board of Directors. The Board, in its sole discretion, may by unanimous vote of the remaining members of the Board, determine to accept or deny the revocation and under what conditions any acceptance shall be permitted.

11.1.6 If a Party withdraws from this Agreement, the withdrawing Party will forfeit any and all rights it may have to PSERN System real, personal, or intellectual property and any rights to participate in the PSERN Operator, unless otherwise provided by the Board of Directors.

11.2 Removal of a Board Member.

The Board of Directors may, by majority vote and for cause, remove a Board member from the Board of Directors and terminate the Board member's right to participate in governance of the PSERN Operator. Immediately after the vote removing a Board member, the Party's alternate shall become its Board of Directors member. If the Party has not designated an alternate, the vacancy provisions in Section 4.2.4 shall apply. Cause for removal may include failure to act in good faith in participating in the Board of Directors and willful, arbitrary failure to perform the Board member's obligations as set forth in this Agreement.

12.0 DISSOLUTION AND TERMINATION

12.1 Three (3) or more Directors may, at any one time, call for a vote on the complete dissolution of the PSERN Operator and termination of this Agreement. Upon both: (a) the

affirmative vote of a majority of the full Board for dissolution and termination; and (b) the affirmative vote of a majority of the Parties' legislative bodies for dissolution and termination, the Board shall establish a task force to determine how the PSERN System assets and liabilities will be divided upon such dissolution and termination. For purposes of this section, each Party shall determine what constitutes an affirmative vote of its legislative body.

12.2 Approval of the plan for disposition of the PSERN System assets and liabilities (the "Disposition Plan") shall require a unanimous affirmative vote of the full Board. If the Board fails to approve the Disposition Plan within one (1) year of the last legislative body vote under Section 12.1.b, the Parties shall proceed with the impasse resolution procedures in Section 4.5.

12.3 Following the approval of the Disposition Plan, the PSERN Operator shall wind up business in accordance with the Disposition Plan and any other terms set by the Board. The Board shall set the date for termination of this Agreement by affirmative majority vote of the full Board.

13.0 LEGAL RELATIONS

13.1 Employees and No Third Party Beneficiaries

13.1.1 Nothing in this Agreement shall make any employee of one Party an employee of another Party for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded by virtue of their employment. No Party assumes any responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of any other Party's employees. No employees or agents of one Party shall be deemed, or represent themselves to be, employees of another Party.

13.1.2 It is understood and agreed that this Agreement is solely for the benefit of the Parties and gives no right to any other person or entity.

13.2 Indemnification.

Each Party to this Agreement shall protect, defend, indemnify, and save harmless the other Parties and their respective officials and employees, from any and all claims, arising out of, or in any way resulting from, the indemnifying Party's willful or negligent acts or omissions arising out of this Agreement. No Party will be required to indemnify, defend, or save harmless any other Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of that other Party. Where such claims, suits, or actions result from concurrent negligence of two or more Parties, these indemnity provisions shall be valid and enforceable only to the extent of each Party's own negligence. Each of the Parties agrees that its obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to each

of the other Parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. Any loss or liability resulting from the negligent acts, errors, or omissions of the Board of Directors, Operating Board, Executive Director and/or staff, while acting within the scope of their authority under this Agreement, shall be borne by the PSERN Operator exclusively.

13.3 Insurance

The Board of Directors, Executive Director, and PSERN Operator shall take such steps as are reasonably practicable to minimize the liability of the Parties, including but not limited to the utilization of sound business practices. The Board of Directors shall determine which, if any, insurance policies or self-insurance programs for governmental entities authorized in the State of Washington may be reasonably and practicably acquired to cover liability exposures and other potential losses arising from the operations of the PSERN Operator and the activities of the Parties pursuant to this Agreement (which may include Directors and Officers, Commercial General Liability, Auto, Workers' Compensation, Stop Gap/Employer's Liability, errors and omissions, crime/ fidelity insurance, CyberRisk, property damage or loss), and shall direct the acquisition of same.

14.0 PUBLIC RECORDS

14.1 The Executive Director shall keep records related to the PSERN System and PSERN Operator as required by law and in accordance with the policies, procedures and retention schedules as may be established by the Board of Directors.

14.2 Each Party shall keep records related to the PSERN System and PSERN Operator as required by law and in accordance with such the policies, procedures and retention schedules as may be established by the Party, and each Party shall be responsible for responding to public disclosure requests addressed to it in accordance with the Washington Public Records Act, Chapter 42.56 RCW, and such procedures as may be established by the Party.

14.3 The Executive Director shall be responsible for responding to public disclosure requests addressed to the PSERN Operator in accordance with the Washington Public Records Act, Chapter 42.56 RCW, and such procedures as may be established by the Board of Directors.

15.0 GENERAL

15.1 RESERVED

15.2 Filing of Agreement

Pursuant to RCW 39.34.040, prior to its entry into force, this Agreement shall be filed with the King County Recorder's Office or, alternatively, listed by subject on a Party's web site or other electronically retrievable public source.

15.3 Time of the Essence

The Parties recognize that time is of the essence in the performance of the provisions of this Agreement.

15.4 Compliance with Laws

During the term of this Agreement, the Parties hereto agree to comply with all federal, state, and local laws as necessary to carry out the terms of this Agreement. Further, to the extent that any emergency communication Services involve the retention, security, confidentiality or other handling of certain “protected” health information under the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations thereunder by the U.S. Department of Health and Human Services and other applicable laws including chapter 70.02 RCW, the Washington Uniform Health Care Information Act, as amended, the Parties agree to comply with such laws and execute documents as necessary to implement the requirements under such laws.

15.5 Specific Performance

In the event a Party fails to perform an obligation under this Agreement, the other Parties or any one of them shall have the right to bring an action for specific performance, damages and any other remedies available under this Agreement, at law or in equity.

15.6 No Waiver

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver, excuse, or consent shall be in writing and signed by the Party or Parties claimed to have waived or consented. If the waiving or consenting Party is the PSERN Operator, then the writing must be signed by all of the voting members of the Board of Directors. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all Parties.

15.7 Parties Not Relieved of Statutory Obligation

Pursuant to RCW 39.34.030(5), this Agreement shall not relieve any Party of any obligation or responsibility imposed upon it by law except that, to the extent of actual and timely performance thereof by the Board of Directors, the performance may be offered in satisfaction of the obligation or responsibility.

15.8 Nondiscrimination

The Parties shall comply with the nondiscrimination requirements of applicable federal, state and local statutes and regulations.

15.9 No Assignment

No Party shall transfer or assign a portion or all of its responsibilities or rights under this Agreement, except with the prior authorization of the Board of Directors.

15.10 Merger, Consolidation or Sale of All or Substantially All Assets

Approval of the merger or consolidation of the PSERN Operator with another entity, or the sale of all or substantially all assets of the PSERN Operator, shall require a unanimous vote of the Board of Directors.

15.11 Dispute Resolution

If one or more Parties believe another Party has failed to comply with the terms of this Agreement, the affected Parties shall attempt to resolve the matter informally. If the Parties are unable to resolve the matter informally, any Party may submit the matter to mediation under Section 4.5. In any event, if the matter is not resolved, then any Party shall be entitled to pursue any legal remedy available.

15.12 Entire Agreement

The Parties agree that this Agreement, including any attached exhibits, constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties. No other agreement, written or oral, expressed or implied, exists between the Parties with respect to the subject matter of this Agreement, and the Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

15.13 Amendments

15.13.1 Except as provided in this Section, the Agreement may be amended by the Board of Directors from time to time in order to carry out the corporate purposes of the PSERN Operator. Any such modification shall be in writing and executed by the Chair of the Board of Directors after providing not less than thirty (30) days' advance written notice to all Parties of such proposed modification, and upon unanimous approval of the Board of Directors. However, the following terms of this Agreement may only be amended in writing after approval of each of the legislative bodies of Seattle, King County, EPSCA, and Valley Com; however, for purposes of this legislative determination, EPSCA and Valley Com will each be responsible to determine what constitutes legislative approval or disapproval from their member cities, before tendering their single vote on amendment:

- a. Expansion of the PSERN Operator's scope of services or Party funding obligations described in Section 3.0.
- b. The composition of the Board of Directors.
- c. Addition of new Parties.

- d. Voting rights of members of the Board of Directors.
- e. Powers of the Board of Directors.
- f. Hold harmless and indemnification requirements.
- g. Provisions regarding duration, dissolution, termination or withdrawal.
- h. The conditions of this Section.

15.13.2 Nothing in this Section 15.13 shall be construed to require legislative authority consent for the agreement to serve an additional User Agency.

15.14 Notices

15.14.1 Any notice under this Agreement shall be in writing and shall be addressed to the Parties as listed below. Any notice may be given by certified mail, courier delivery, or personal delivery. Notice is deemed given when delivered. Email, acknowledgement requested, may be used for notice that does not allege a breach or dispute under this Agreement. Email notice is deemed given when the recipient acknowledges receipt.

15.14.2 The names and contact information set forth in this Agreement shall apply until amended in writing by a Party providing new contact information to each other Party and the date the amendment is effective.

15.15 Conflicts

15.15.1 In the event that any conflict exists between this Agreement and any exhibits hereto, the Agreement shall control.

15.15.2 In the event of a conflict between any provision of this Agreement and a provision of the Implementation Period ILA, the Implementation Period ILA shall control unless otherwise determined by the Board of Directors pursuant to vote under Section 4.3.1.

15.16 Choice of Law; Venue

This Agreement and any rights, remedies, and/or obligations provided for in this Agreement shall be governed, construed, and enforced in accordance with the substantive and procedural laws of the State of Washington. The Parties agree that the Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

15.17 Severability

The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated by a court of competent jurisdiction to be

invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement and the remaining provisions shall remain in full force and effect.

15.18 Survival Provisions

The following provisions shall survive and remain applicable to each of the Parties notwithstanding any termination or expiration of this Agreement and notwithstanding a Party's withdrawal or removal from this Agreement.

- Section 13 Legal Relations
- Section 14 Public Records
- Section 15.16 Choice of Law; Venue

15.19 Counterparts

This Agreement shall be executed in counterparts, any one of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

15.20 Execution

This Agreement shall be executed on behalf of each Party by its duly authorized representative, pursuant to an appropriate motion, resolution, or ordinance of such Party.

IN WITNESS WHEREOF, authorized representatives of the Parties have signed their names and indicated the date of signing in the spaces provided below.

KING COUNTY

CITY OF AUBURN

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Attest:

City Clerk

Approved as to Form:

Approved as to Form:

Deputy Prosecuting Attorney

City Attorney

CITY OF BELLEVUE

CITY OF FEDERAL WAY

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Attest:

Attest:

City Clerk

City Clerk

Approved as to Form:

Approved as to Form:

City Attorney

City Attorney

CITY OF ISSAQUAH

CITY OF KENT

Name _____
Title _____

Date _____

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF KIRKLAND

Name _____
Title _____

Date _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Name _____
Title _____

Date _____

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF MERCER ISLAND

Name _____
Title _____

Date _____

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF REDMOND

Name _____
Title _____

Date _____

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF RENTON

Name _____
Title _____

Date _____

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF SEATTLE

Name _____
Title _____

Date _____

Approved as to Form:

City Attorney

CITY OF TUKWILA

Name _____
Title _____

Date _____

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit A

Cost Allocation Model

For the first year of PSERN System operation, rates to be paid by each User Agency and Dispatch Center will be computed as provided in this Exhibit A. The PSERN System annual operating budget and the number of public safety radios, other radios, and consoles will be known quantities at the time the rates are computed.

Division of Budget Between Radios and Consoles

Percentage of annual budget to be paid with radio user fees = X.
Percentage of annual budget to be paid with console user fees = Y.

$X = \frac{[83\% \text{ of employee-related costs in the PSERN System annual operating budget} + \text{annual vendor costs for radio-related equipment}]}{\text{PSERN System annual operating budget}} \times 100.$

$Y = \frac{[17\% \text{ of employee-related costs in the PSERN System annual operating budget} + \text{annual vendor costs for console-related equipment}]}{\text{PSERN System annual operating budget}} \times 100.$

Public Safety and Other Radio Rates

X% of the PSERN System annual operating budget will be paid with public safety radio rates and other radio rates combined.

The other radio rate shall be 78% of the public safety radio rate.

$X\% \text{ of PSERN System annual operating budget} = [12 \times \text{the monthly public safety radio rate} \times \text{the number of public safety radios}] + [12 \times \text{the monthly other radio rate} \times \text{the number of other radios}].$

Console Rates

Y% of the PSERN System annual operating budget will be paid with console rates.

$Y\% \text{ of PSERN System annual operating budget} = 12 \times \text{the monthly console rate} \times \text{the number of consoles}.$

END OF EXHIBIT A.

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Seattle Fire Department	Karen Grove/206-386-1451	William Chen/206-233-7274

** 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 operation and maintenance of a new regional 800 MHz emergency public safety radio communication system; authorizing the Chief Technology Officer of the Seattle Information Technology Department to execute for and on behalf of The City of Seattle an interlocal agreement between The City of Seattle, King County, and the Cities of Auburn, Bellevue, Federal Way, Issaquah, Kent, Kirkland, Mercer Island, Redmond, Renton, and Tukwila for the purpose of creating a non-profit corporation, as provided under RCW 39.34.030, to own, operate, and maintain the regional emergency radio communication system that is being installed and developed under a separate interlocal agreement authorized by Ordinance 124685.

Summary and background of the Legislation:

The King County 800 MHz radio system used by police, fire, and general government agencies is more than 20 years old and is unsupported by the manufacturer. It is jointly owned by four agencies: Seattle, King County, Eastside Public Safety Communications Agency (EPSCA, a consortium of five eastside cities) and Valley Communications Center (ValleyCom, a consortium of five south county cities).

The Puget Sound Emergency Radio Network (PSERN) project is implementing a new 800 MHz radio system to replace the legacy system. The PSERN system will include 60 radio transmitter sites and approximately 18,000 end user radios, and it will serve all major populated areas and highways in King County. The \$283M project is funded by a property tax levy approved by King County voters in April 2015. Implementation is expected to be complete in 2023.

Project governance is defined in an interlocal agreement, referred to as the “PSERN Implementation ILA,” between Seattle, King County, the EPSCA cities, and the ValleyCom cities. King County is the lead agency for implementation and manages the contract with the prime contractor. Seattle has one of four voting seats on the Joint Board governing the project and is represented by Seattle Fire Chief Scoggins.

When implementation is complete (in 2023), all assets and responsibility for operating and maintaining the PSERN system will transfer to a new government agency organized as a non-profit corporation that will own and manage the system going forward. The project partners developed a second interlocal agreement, referred to as the “PSERN Operator ILA,” to create this new non-profit corporation (the “PSERN Operator”) and establish terms for

governance and operations. The purpose of this legislation is to authorize execution of the PSERN Operator ILA.

2. CAPITAL IMPROVEMENT PROGRAM

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

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes 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?

After implementation is complete (in 2023), Seattle will be able to decommission its portion of the legacy King County 800 MHz radio system. Seattle IT will make budget adjustments as part of the 2023-2024 budget process to reflect that change.

Starting at that same time, Seattle IT will no longer determine radio rates for City departments. Instead, radio rates will be set by the PSERN Operator (the formula for computing first-year rates is included in the PSERN Operator ILA). Initial PSERN radio rates are expected to be comparable to Seattle IT radio rates. Seattle IT will make budget adjustments as part of the 2023-2024 budget process to reflect this change.

Going forward, Seattle will have one of four voting seats on the Board of Directors and be able to influence PSERN Operator budget and rates.

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

Not implementing this legislation could create conflict with partner agencies and/or result in the loss of a voting seat on the Board of Directors.

All parties to the PSERN Implementation ILA committed, via a Memorandum of Agreement, to negotiating an agreement to create a non-profit corporation to operate and maintain the PSERN system. The PSERN Operator ILA is the result of that commitment. The current PSERN Operator ILA gives Seattle a voting seat on the Board of Directors and it is in the City's interest to retain that.

4. OTHER IMPLICATIONS

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

Seattle IT will be lead for execution of the PSERN Operator ILA after approval.

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?

Not applicable

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)?

Not applicable

List attachments/exhibits below: