

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to the Seattle Police Department; banning the ownership, purchase, rent, storage, or use of less lethal weapons; and amending Section 3.28.146 of the Seattle Municipal Code.

..body

WHEREAS, in 2020, tens of thousands of community members joined mass demonstrations in Seattle in support of black lives and against police violence; and

WHEREAS, the Seattle Police Department (SPD) responded to these protests against police violence with devices designed to cause severe discomfort and/or pain, including tear gas, pepper spray and explosive devices such as blast balls and stun grenades; and

WHEREAS, Seattle’s Office of Professional Accountability reported on June 3, 2020 that it had received 15,000 complaints of police misconduct related to SPD’s response to these protests; and

WHEREAS, studies into the impacts of policing at protests have determined that escalating force by police at protests leads to increasing violence; and

WHEREAS, on June 15, 2020, the City Council adopted Ordinance 126102 banning the ownership, purchase, rent, storage, or use of crowd control weapons, defined as kinetic impact projectiles, chemical irritants, acoustic weapons, directed energy weapons, water cannons, disorientation devices, ultrasonic cannons, or any other device that is designed to be used on multiple individuals for crowd control and is designed to cause pain or discomfort; and

WHEREAS, on July 24, 2020, the Honorable Judge James L. Robart of the U.S. District Court for the Western District of Washington imposed a temporary restraining order against

1 enactment of Ordinance 126102, expressing concern that “by removing all forms of less
2 lethal crowd control weapons from virtually all police encounters, the Directive and the
3 CCW Ordinance will not increase public safety,” and asked the Office of Police
4 Accountability, the Community Police Commission, and the Office of the Inspector
5 General to review its possible impact on court-mandated police reforms; and

6 WHEREAS, on August 10, 2020, the Honorable Judge Richard Jones of the U.S. District Court
7 for the Western District of Washington issued a preliminary injunction extending a ban
8 on SPD’s use of less lethal chemical and projectile weapons against peaceful protesters;
9 and

10 WHEREAS, on September 11, 2020, as requested in Ordinance 126102 and consistent with the
11 advisory roles established in the Accountability Ordinance (Ordinance 125315),
12 subsection 3.29.030.B, the Office of Police Accountability, the Community Police
13 Commission, and the Office of the Inspector General reported their findings with respect
14 to the impact of banning less lethal weapons to the Council’s Public Safety and Human
15 Services Committee. The findings showed consensus among the three reports to allow
16 specific non-crowd control uses of pepper spray, 40-millimeter launchers and noise flash
17 diversionary devices, and to ban patrol officers’ use of tear gas; and

18 WHEREAS, on October 1, 2020, the Honorable Judge James L. Robart converted the Court’s
19 temporary restraining order regarding Ordinance 126102 into a preliminary injunction in
20 order to facilitate review under the process set forth in paragraphs 177 to 181 of the
21 Consent Decree (“Policy Review Process”); and

22 WHEREAS, on December 7, 2020, the Honorable Judge Richard Jones found the Seattle Police
23 Department in contempt of court for the indiscriminate use of blast balls and noted that

1 “Of the less lethal weapons, the Court is most concerned about SPD’s use of blast balls”
2 and;

3 WHEREAS, the City Council recognizes the role of the Chief of Police to prescribe rules and
4 regulations for the government and control of the police department; and

5 WHEREAS, at the time of passing this ordinance, pursuant to a federal consent decree, the
6 United States Department of Justice, the Honorable James L. Robart of the U.S. District
7 Court for the Western District of Washington, and the court-appointed Seattle Police
8 Monitor exercise oversight of SPD’s policies related to the use of force;

9 NOW, THEREFORE,

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

11 Section 1. Section 3.28.146 of the Seattle Municipal Code, enacted by Ordinance 126102,
12 is amended as follows:

13 **3.28.146 Prohibition of the use of ~~((crowd control))~~ less lethal weapons**

14 A. Unless exempted or excepted, no City department shall own, purchase, rent, store or
15 use ~~((crowd control))~~ less lethal weapons.

16 B. Law enforcement agencies operating under mutual aid agreements are prohibited from
17 using ~~((crowd control))~~ less lethal weapons while rendering aid to the Seattle Police Department.

18 Seattle Police Department mutual aid agreements for crowd control must prohibit other law
19 enforcement agencies from using ~~((crowd control))~~ less lethal weapons for the purpose of crowd
20 dispersal.

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

22 “~~((crowd control))~~ Less lethal weapons” means kinetic impact ~~((projectiles))~~
23 launchers used to deploy chemical irritants, chemical irritants, including but not limited to

1 pepper spray and tear gas, acoustic weapons, directed energy weapons, water cannons,
2 disorientation devices, including but not limited to blast balls and noise flash diversionary
3 devices, ultrasonic cannons, or any other device that is primarily designed to be used on multiple
4 individuals for crowd control and is designed to cause pain or discomfort.

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

9 ~~D. ((Oleoresin capsicum (OC) spray is not a crowd control weapon for purposes of~~
10 ~~owning, purchasing, renting, or storing under subsection 3.28.146.A. Use of OC spray is~~
11 ~~prohibited under subsection 3.28.146.A if~~

12 ~~1. It is used in a demonstration, rally, or other First Amendment-protected event;~~
13 ~~or~~
14 ~~2. When used to subdue an individual in the process of committing a criminal act~~
15 ~~or presenting an imminent danger to others, it lands on anyone other than that individual.))~~

16 Neither 40-millimeter launchers to deploy chemical irritants nor noise flash diversionary devices
17 are banned as less lethal weapons for purposes of subsection 3.28.146.A, with the exception that
18 they may not be used for crowd control in a demonstration or rally. Only Special Weapons and
19 Tactics (SWAT) officers may deploy such 40-millimeter launchers to deploy chemical irritants
20 and noise flash diversionary devices and only for purposes other than crowd control in a
21 demonstration or rally.

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

1 violent public disturbance, and b) it may be used only in circumstances in which the risk of
2 serious injury from violent actions outweighs the risk of harm to bystanders.

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

5 1. Deployed under direction of or by officers who have received training for its
6 use within the previous 12 months; and

7 2. Used with a detailed tactical plan developed prior to deployment; and

8 3. Use is reasonably necessary to prevent threat of imminent loss of life or serious
9 bodily injury.

10 ~~((E))~~G. A person shall have a right of action against the City for physical or emotional
11 injuries proximately caused by the use of ~~((crowd control))~~ less lethal weapons ~~((for crowd~~
12 ~~dispersal))~~ that occur in a gathering that is not a violent public disturbance after this ordinance
13 takes effect. A person who, in the judgment of a reasonable person, commits a criminal offense
14 at or immediately prior to the use of less lethal force may not recover under this Section
15 3.28.146.

16 ~~((F))~~H. Absent evidence establishing a greater amount of damages, the damages payable
17 to an individual for injuries proximately caused in violation of this Section 3.28.146 shall be
18 \$10,000, added to attorney fees and court fees. This does not preclude any other legal recovery
19 or process available to a person under federal and state law.

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

1 Section 2. In accordance with *United States of America v. City of Seattle*, 12 Civ. 1282
2 (JLR), during the pendency of the consent decree Council requests that notice of this action be
3 submitted by the City Attorney to the Department of Justice and the Monitor.

4 Section 3. Council will engage with the Labor Relations Director and staff as they work
5 with the City's labor partners in the implementation of this ordinance.

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1 Section 4. This ordinance shall take effect and be in force on the later of: 30 days after it
2 has been reviewed and approved by the Court; or 30 days after it has been approved by the
3 Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall
4 take effect as provided by Seattle Municipal Code Section 1.04.020.

5 Passed by the City Council the _____ day of _____, 2021,
6 and signed by me in open session in authentication of its passage this _____ day of
7 _____, 2021.

8 _____
9 President _____ of the City Council

10 Approved / returned unsigned / vetoed this _____ day of _____, 2021.

11 _____
12 Jenny A. Durkan, Mayor

13 Filed by me this _____ day of _____, 2021.

14 _____
15 Monica Martinez Simmons, City Clerk

16 (Seal)