



City of Seattle
Mayor Jenny A. Durkan

August 27, 2021

Monica Martinez Simmons
Seattle City Clerk
600 4th Avenue, 3rd Floor
Seattle, WA 98124

Dear Ms. Martinez Simmons,

I am returning, unsigned, Council Bill 120105, which is the Council's second attempt to dictate by ordinance the operational methods and tactics for crowd management by the Seattle Police Department. Chief Diaz and I have consistently stated that systemic improvements are needed in Seattle Police Department's crowd management policies and practices following the civil unrest and unprecedented tactics and challenges of the protests last summer and fall. SPD has adapted and has made significant changes to its crowd management tactics and I agree with Council that these are important issues, where SPD must continue to improve, and I do appreciate Committee Chair Herbold reaching out to the U.S. Department of Justice and the Monitoring team. I also appreciate the work she and other Council members did with me (and independently) to support important changes on policing at the state level. In addition to these state efforts, the Chief and I are working hard to help lead changes at the national level.

Still, this ordinance undermines reform efforts and constitutional policing as it conflicts with the process for policy changes as required under the Consent Decree. It is counter to the ongoing work to ensure changes in this critical area are based on broad community input, a systematic review of events, the actual dynamics of policing and the best national experts. The ordinance also improperly impinges on the Charter authority of the Chief of Police to manage the SPD and the obligation to provide public safety in every part of the city. Finally, parts of the ordinance conflict with recently passed state laws, that I, Council, and the city supported.

Council has made the law "conditional" on Court approval. This is of doubtful legality. But as important, Council knows that significant parts of the bill will never go into effect for the reasons cited in this letter. Thus, the law unfairly sets community expectations that all provisions will be enacted when they will not. This will undermine public trust, create confusion, and could hasten more departures from SPD.

In contrast, SPD has worked to get this right. Reflecting the commitment to critical review and iterative reform cemented by the Consent Decree, SPD itself recognized this point, made tactical adjustments in the field, consulted with national and international experts, and with guidance from the Office of Police

Accountability, the Office of the Inspector General, and the Community Police Commission, put forth new policies and training, now court-approved, that have resulted in marked changes to crowd management practices. And, over the next few months, SPD will continue to evaluate its policies and training through the lens of the recommendations in place and forthcoming from the Sentinel Event Review and, where revisions are needed, will follow that practice.

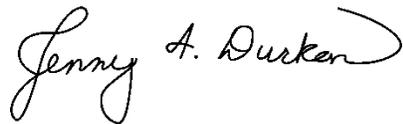
In summary, this legislation is misguided for a myriad of reasons.

1. Enshrining operational policy in the city code undermines a core purpose and requirement of the Consent Decree – to cement in place within the department systems for ongoing critical analysis that can inform iterative, agile, and reflective policy changes on an ongoing basis. Codifying provisions such as these essentially paralyzes this process.
2. Council’s action undercuts and interrupts the processes envisioned under the Accountability Ordinance for working collaboratively with the department to ensure ongoing development of policy. It is particularly notable that this ordinance continues to be rushed through without allowing for the OIG to finish the Sentinel Event Review and evaluate the recommendations that may be forthcoming out of that process. (The very type of “kneejerk reaction” Judge Robart has warned against.)
3. The Council’s policy as written contravenes the current SPD policies that were developed by nationally renowned experts and approved by the U.S. Department of Justice and Federal Judge overseeing the Consent Decree.
4. The ordinance is a gift to plaintiff lawyers and needlessly expands the city’s legal and financial liability in a manner that will have untold consequences, is ripe for abuse, and significantly hampers our ability to receive mutual aid from neighboring jurisdictions.
5. The ordinance does not appear to take into consideration potential inconsistencies with recent state legislation (HBs 1310 and 1054), thus exacerbating the potential that the DOJ/Court noted in enjoining the first bill that, by eliminating a swath of tools at intermediate points along the force spectrum, the bill creates greater opportunity for situations to escalate to the point where, by the time force may be authorized, the level of force reasonable, necessary, and proportional under the circumstances may be higher.
6. The mandate that SPD incorporate into policy the bill’s provisions, in order for the bill to achieve DOJ, Monitoring Team, and Court approval, places SPD in the unfair and untenable position of proposing, and defending, to the DOJ and the Court, now-codified provisions of City law that it cannot support as best practice.
7. It will be impractical, and a poor use of resources to even attempt to rewrite policy to conform with this flawed legislation within 60 days, it likely could invite unfair labor practice

claims, does not comport with best practices, and will be indefensible in court. This is to say nothing of the resource issues and near impossibility of responsibly re-training officers on what is likely an ill-fated policy within the subsequent 30-day limit proscribed.

For the above reasons, and consistent with provisions of the Consent Decree relating to technical assistance, I will be directing SPD to outline its concerns and formally request technical assistance from the DOJ and the Monitor to ensure the next steps of implementation will improve policing and reform efforts and to ensure any revisions remain consistent with both state law and the city's commitments under the Consent Decree.

Sincerely,

A handwritten signature in black ink that reads "Jenny A. Durkan". The signature is written in a cursive, flowing style.

Jenny A. Durkan
Mayor of Seattle