

**Seattle Community Police Commission**  
**August 14, 2020**



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

**Ordinance 126102**

# Introduction

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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

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### **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

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#### **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

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## **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?

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### **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

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#### **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

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### **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

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**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.

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