SEATTLE POLICE DEPARTMENT MEMORANDUM

TO: Pete Holmes, City Attorney DATE: July 15, 2020

FROM: Carmen Best, Chief of Police

SUBJECT: Council Bill 119805, an Ordinance relating to the Seattle Police Department; banning the ownership, purchase, rent, storage, or use of crowd control weapons

On June 15, 2020, without any engagement of the Seattle Police Department, Seattle City Council unanimously passed a short but sweeping bill that places an unconditional prohibition on the purchase, ownership, storage, and – with limited exception – use of certain less-lethal tools. Falling under this prohibition, and of particular impact on SPD policies and training developed under the Consent Decree, are chemical tools such as oleoresin capsicum (OC, or pepper spray), blast balls, and kinetic impact tools such as SPD's recently acquired 40 mm launchers (blue-nose foam rounds). While by its title the Ordinance suggests applicability only to crowd management situations, the actual text – through its blanket ban on the purchase or ownership of these tools – effectively strips from SPD's court-approved "toolkit," across the spectrum of SPD operations, less-lethal options that at their core are designed and intended to facilitate safe, effective, and constitutional policing. They do so not only by affording opportunity to create greater time, distance, and cover – the foundational tenets of our de-escalation policy and training – but by providing officers, in those empirically rare instances where some force is necessary to achieve a law enforcement objective, with a continuum of options to ensure that force used is both objectively reasonable and proportional to the threat or urgency of the situation. Simply put, while no use of force is ever desired, and certainly no use of force is pretty, the reality is that the availability of these tools – as can be empirically demonstrated – leads to less risk of injury and fewer applications of greater levels of force.

SPD acknowledges and understands the raw emotion around events of the past two months and the force of these events in driving Council's sense of urgency. This memo is in no way intended to minimize vocal and valid community concerns around the tools in question – indeed, the concerns we've heard are ones that were likewise raised, well-researched, and well-debated at the time that policies and training specific to these tools were painstakingly developed. Nor is this memo intended to suggest that policies around the use of these tools should not now be revisited; as with any significant event, lessons learned will and should serve to guide policy, training, and next best practices. Strengthening SPD's capacity as a learning organization, capable of critically assessing its operations and driving towards iterative and continuing reform, was after all a central purpose of the Consent Decree.

But there is a process in place by which such policies are to be examined, which SPD honors, and by which SPD remains bound. We have shared our serious concerns that Council's haste to act not only completely undermines the accountability processes that Council itself codified, but stands in stark contrast to the City's overall obligations under the Consent Decree. This latter concern is one that is best addressed by those who represent the parties to that action, but that should not preclude us from highlighting our own

concern as the organization that has worked under the Consent Decree for nearly a decade. It is because we know too well the serious downstream implications of poorly-thought through policy on training, investigation, review, and ultimately processes underlying individual and systemic accountability that we know that good policy cannot be decided in an echo chamber; meaningful reform takes time, research, authentic engagement, and importantly, a commitment to intellectual honesty above political gain.[1] For these reasons, I am compelled to note the following overarching concerns with Council Bill 119805.

- First, by acting in haste, sidestepping obligations that are binding on the City under the Consent Decree for the development and implementation of policies in areas that remain under federal oversight, Council has placed SPD officers, foreseeably, in the Gordian knot of either violating city law, backsliding on their commitments under the Consent Decree, or simply abandoning legitimate law enforcement objectives and service to the community for lack of appropriate, and previously approved, tools. While as a pure matter of law our obligations under the Consent Decree take primacy over City code, I submit it is fundamentally unfair to put officers in the position where, in order to hold true to one set of obligations, they may foreseeably violate another.

- Second, no one policy stands in a vacuum. SPD policies, especially those developed under the Consent Decree, are intended to be read, construed, and trained in conjunction with other sections. Banning the procurement, ownership, or use of less-lethal tools requires not only substantial revision of the crowd management policy (in form that, as the legislation itself acknowledges, may call upon on best practices not yet identified or developed) and training to that policy, but substantive deletions or revisions to other court-approved policies as well. By way of example, I have attached to this memo – as indicative of the work that will lie ahead – highlighted sections of the crowd management policy (14.090), the use of force policies, collectively (8.000-8.500), and the crisis intervention policy (16.110) that will need to be deconflicted with the legislation, should it become effective, yet revised in form that remains consistent with the foundational principles and core requirements of the Consent Decree. Particularly when we are facing the dire budget cuts that Council has signaled, our ability to dedicate significant time to such revisions, let alone the training that would be required, may for all intents and purposes be an impossibility.

- Finally, it should be noted that the vast majority of uses of less-lethal tools are not in crowd management situations, but rather in the (fortunately) relatively few, but not unusual, volatile

[1] Contrast, for example, this legislative action with the process articulated by the Monitor in submitting SPD's Use of Force policies – those now substantively impacted through the Council bill at issue – and certifying that the policies meet the requirements of the Consent Decree:

> After 15 or more marathon negotiating sessions facilitated by the Monitor between the parties to this litigation— the United States, represented by the Department of Justice (DOJ), and the City of Seattle, represented by the City Attorney (Parties); after the exchange of 10 or more drafts and partial drafts; after many conference calls, telephone conversations, and meetings between and among the Parties and with the Monitor; after the Parties reached consensus in August 2013 and the Monitor published the use of force policies for comment; and after nearly four months in which the Monitor and the Monitoring Team performed independent research and received and considered recommendations, including those of the community, the Community Police Commission, the two police unions, and others, the Monitor hereby submits the consensus Seattle Police Department (SPD) Use of Force policies[.]

situations that officers may encounter (that SWAT, for example, may predictably encounter). Consistent with use of force training, officers often depend on the *availability* of these tools – much less frequently their actual use – to increase distance, affording greater opportunity to attempt to de-escalate volatile and dynamic situations, with the goal of encouraging voluntary compliance. Whereas the baton (an impact tool still authorized, but rarely used) allows for an effective distance of only three feet, for example, OC spray (now banned) allows for a distance of upwards of twelve feet, and the 40-mm launcher (also banned) allows for distance of upwards of 100 feet. Left only with the options of a baton, a Taser (effective distance of approximately 7-12 feet), and an officer's body, the likelihood of greater injury – to both officer and subject in those (again) empirically rare but foreseeable situations where some level of force is necessary – should be patent and concerning. And the notion that, somehow, persons will not act in volatile or violent manner but for the response of police is, simply, naïve.

I offer this memo simply to highlight the untenable position that this legislation places SPD in with respect to its obligations under the Consent Decree. Again, that is not to suggest that there are not revisions that are warranted, but an honest effort at those revisions will take time, commitment, and thought that is informed by the thorough reviews set in place through the Consent Decree, the Accountability Ordinance, and the community-based sentinel event review the IG has proposed, and which we support. I note also the work of the Center for Policing Equity, which upon my request has provided its independent assessment of SPD's policy and offered good recommendations. In short, there will be ample opportunity to meaningfully advance SPD policies, training, and practices around crowd management, use of force, and less-lethal tools, but legislation issued without diverse stakeholder input, research, or engagement is anathema to every foundational principle of reform.

I understand that you intend to provide notice of this legislation to the Court this week. I also understand that the Department of Justice has advised of potential conflicts with the Consent Decree (around the implementation if not the substance). I do not believe, however, that there is a formal request of the Court to enjoin the legislation until such time as the protocols for policy development and approval have gone through the mandated process. If City Council is not willing, on its own initiative, to honor the commitments the City is bound to under the Consent Decree and amend the legislation to condition the effective date of the ordinance on Court approval, I am writing to express my own position that the legislation should be enjoined until such time as these obligations under the Consent Decree have been satisfied. Where the legislation itself calls upon OPA, the OIG, and the CPC to examine SPD's crowd management policies and training, and suggests that the Ordinance may be subject to amendment following such review, rushing into place a law that is admittedly poorly informed seems counter to principles of good governance.

It is with no small twinge of sadness that those of us who have worked so hard over the past eight years to not only achieve, but sustain, compliance with all core requirements of the Consent Decree note the irony we now face: while SPD has done all it can to ensure through policy, training, and structural systems for review and accountability that the reforms achieved remain "baked in" to the Department's DNA – such that like an egg, as the Monitor has analogized, they cannot, be unscrambled – it is Council action and budget narrative alone over the past few weeks that demonstrates how quickly reforms and progress lauded only weeks ago can be undone by legislation driven by politics and raw emotion. Wherever any of us find ourselves in future days, this should serve as a stark caution of how fragile a City's commitment to police reform can be, even with the best efforts of the police behind it.