

Date: 1/9/2021

To: Members, Public Safety and Human Services Committee

From: Councilmember Lisa Herbold

Re: Public Safety and Human Services Committee discussion of less lethal weapons legislation on January 12th

As next steps to the Public Safety and Human Services Committee meetings held on September 11 and on December 17, at Tuesday's PSHS Committee meeting we will move forward in discussing draft legislation that, if approved, would make changes to the Council's ban on less lethal crowd control weapons ([Ordinance 126102](#)). I hope to use the discussion to solicit your input on the kind of changes that might be made to the ordinance. Toward that end, I am sending you some information to help you prepare for the discussion.

As a reminder, in accordance with the Consent Decree process, Ordinance 126102 was submitted to the U.S. Department of Justice, District Court, and the Monitor. In response to a motion brought by the DOJ, District Court Judge Robart issued a Temporary Restraining Order on both the ordinance and Chief Best's directive to officers to implement the ordinance.

Judge Robart's July 24 ruling noted, "...the court agrees that by removing all forms of less lethal crowd control weapons from virtually all police encounters, the Directive and the CCW Ordinance will not increase public safety. This is so particularly because neither the CCW Ordinance nor the Directive provide time for police training in alternative mechanisms to de-escalate and resolve dangerous situations if the crowd control implements with which the officers have been trained are abruptly removed."

The discussion and consideration of a decision agenda are designed to inform legislation to be considered at the January 26th meeting of the Committee. Additional materials should be available on Monday.

Below are the agenda items I hope to cover:

1. Background: Accountability partners' recommendations on banning less lethal crowd control weapons. At the Committee's December 17 meeting, Central Staff presented the following table that showed how each agency would change the ban enacted in Ordinance 126102:

Use Category	Ban CS Gas (Tear Gas)			Ban OC Spray (Pepper Spray)			Ban Blast Balls			Ban 40mm Launcher			Ban Noise Flash Diversionary Devices (NFDD)		
	CPC	OPA	OIG	CPC	OPA	OIG	CPC	OPA	OIG	CPC	OPA	OIG	CPC	OPA	OIG
Patrol	Yes	Yes	Yes	No	No	No	Yes	No	No, but see note at end of presentation	No	No	No	No	N/A *	N/A *
Tactical/SWAT	Yes	No	No, but see report: limited to life safety of SWAT non-crowd situations like barricaded people	No	No	No	Yes	No	No	No	No	No	No	No	No
Crowd Dispersal	Yes	Yes	No, but see report: limited to life safety.	Yes	No	No	Yes	No	No	Yes	No	No, but see note at end of presentation	Yes	No	No

Here are links to the 3 presentations heard in PSHS committee on September 11th; [CPC recommendations](#), [OIG Review](#), [OPA Response](#).

Here's a [link to the presentation](#) heard in PSHS on December 17th.

2. Draft legislation: Specific exemptions from the ban. As instructed in PSHS committee on December 17, Central staff has prepared draft legislation reflecting the consensus shared by the accountability agencies on three particular kinds of less lethal weapons:

- OC spray (pepper spray)
- 40 MM launcher
- Noise flash diversionary devices

Specifically, the legislation would exempt these devices from the ban on owning, storing and using the device, as long as the devices were not used for crowd control purposes. The draft legislation need not make a distinction between Patrol or SWAT/tactical use of the weapons, but such a differentiation could be made at the recommendation of the Committee and with the assistance of the accountability agencies.

The draft bill would also, as it relates to tear gas, represent the police accountability stakeholder consensus of banning tear gas use by patrol, with the understanding that Council may want to ban tear gas in additional situations, as discussed more below.

3. Policy options for additional exemptions from the ban. The Committee will discuss policy options for the five less lethal crowd control weapons noted in the table above. For each weapon, I hope that you will provide your input on (1) whether to affirm the ban; or (2) whether an exemption should be enacted; or (3) whether an exemption should be enacted under specific policy conditions. At this stage, it won't be necessary to determine all the policy conditions that might guide use of the weapons. Rather, it is my hope that the Committee will determine whether policy conditions should be included in the ordinance or left for SPD to develop in conjunction with the accountability agencies and the Court. As discussed at our December 17 committee meeting, several of the high-level policy themes coming out of the accountability agencies' recommendations include:

- restrict use of tear gas to life safety circumstances or non-crowd situations such as barricaded people;
- develop tactical plans prior to deployment of any less lethal weapons in a crowd;
- allow use of less lethal weapons outside of crowd control only with strong operational policies and accountability mechanisms
- improve communication with the public and with crowds (messages and technology);
- Improve training; and
- Increase accountability.

The agencies also offer a range of potential guidance throughout their reports, in addition to their formal recommendations.

Policy Options

- A. Tear Gas (also known as CS, the abbreviation for 2-chlorobenzalmalononitril) is designed to cause coughing and physical distress. Under normal circumstances, only SWAT is authorized to use tear gas, but Patrol was given special authorization to use it during events last summer.

Option 1: Retain total ban per Ordinance 126102

Option 2: Approve ban for patrol (consensus position, base bill)

Option 3: Approve ban for patrol and specify exceptions to ban in SWAT and/or Crowd Control situations

Option 4: Specify exceptions to ban with conditions

- a. Include conditions in legislation; or
- b. SPD, with Court-approval, establishes operational policies

- B. Pepper Spray (also known as "OC" which stands for Oleoresin capsicum, the active ingredient in pepper spray) causes an intense burning sensation of the skin, eyes, and mucous membranes.

Option 1: Retain total ban, per Ordinance 126102

Option 2: Approve exemptions to ban for Patrol and SWAT (consensus position, base bill)

Option 3: Approve exemption to ban for Patrol and SWAT (Option 2) and specify additional exceptions to ban in Crowd Control situations

Option 4: Specify exceptions to ban with conditions

- a. Include conditions in legislation; or
- b. SPD, with Court-approval, establishes operational policies

- C. Blast balls are round, rubber devices designed to create diversionary light and sound. According to OIG, SPD reports it only uses "inert" blast balls (only produce light and sound) or those that contain a small amount of OC.

Option 1: Retain total ban, per Ordinance 126102

Option 2: Specify exceptions to ban in Patrol, SWAT, and/or Crowd Control situations

Option 3: Specify exceptions to ban with conditions

- a. Include conditions in legislation; or
- b. SPD, with Court-approval, establishes operational policies

- D. 40 mm Launchers propel projectiles. SPD patrol officers only have access to a single shot launcher that can fire a sponge round and a crushable foam round that contains OC up to 120 feet; SWAT officers have access to a multi-shot launcher, longer-range projectiles and aerial burst rounds designed to dissipate OC into the air.

Option 1: Retain total ban, per Ordinance 126102

Option 2: Approve exemptions to ban for Patrol and SWAT (consensus position, base bill)

Option 3: Approve exemptions to ban for Patrol and SWAT (option 2) and specify additional exceptions to ban in Crowd Control situations

Option 4: Specify exceptions to ban with conditions

- a. Include conditions in legislation; or
- b. SPD, with Court-approval, establishes operational policies

- E. Noise Flash Diversionary Devices are cylindrical, metal devices, sometimes called “flash bangs” that create a bright flash and a loud report. According to OIG, SPD reports that only SWAT teams are authorized to use these.

Option 1: Retain total ban, per Ordinance 12602

Option 2: Approve exemptions to ban for Patrol and SWAT (consensus position, base bill)

Option 3: Approve exemptions to ban for Patrol and SWAT (option 2) and specify additional exceptions to ban in Crowd Control situations

Option 4: Specify exceptions to ban with conditions

- a. Include conditions in legislation; or
- b. SPD, with Court-approval, establishes operational policies