

December 6, 2023

MEMORANDUM

TO: Antonio Oftelie, Monitor
Tim Mygatt, Department of Justice
James Waldrop, United States Attorney's Office

FROM: Seattle Police Department

SUBJECT: Memorandum regarding Crowd Management Policy

I. INTRODUCTION

On September 7, 2023, the Court entered an order granting in part and denying in part the City's and United States' joint motion to approve a proposed agreement on sustained compliance, terminating in full all but discrete obligations of SPD under the Consent Decree. With respect to SPD's remaining tasks, the Court ordered, in relevant part:

1. That SPD shall revise its crowd management policy to address feedback from the ongoing Sentinel Event Review ("SER") process and ensure that officers are trained on the updated policy.
2. SPD shall develop an alternative reporting and review process for force used in crowd settings to address the Monitor's findings regarding breakdowns in reporting and review that occurred in 2020. This alternative process shall be designed to ensure timely reporting and review in the event that significant, sustained protests arise again.
3. Consistent with City law, within 90 days of the filing date of this order, the City shall provide the draft crowd management policy and alternative reporting and review process discussed in Paragraphs 1 and 2 to the DOJ and the Monitor.

Relevant to this memo is the third obligation. This memo accompanies City-proposed policies around Crowd Management to provide the Seattle Police Department's perspective concerning the propriety and efficacy of these policies, which have been drafted in accordance with Ordinance 126422 and that, as discussed below, restrict the acquisition and use of multiple categories of less-lethal tools by the Seattle Police Department.

The terms of Ordinance 126422 require SPD to develop policies consistent with the ordinance and the City to transmit those policies to the Monitoring Team and Department of Justice. SPD drafted the policies as required, and the City is transmitting these policies by the Court-mandated deadline.

In doing so, SPD complied in full with City law; however, the department is compelled to raise its significant concerns with Ordinance 126422 and the resultant policy. In summary, SPD believes that this ordinance policy

is not grounded in best practices, would compromise public safety, and would unnecessarily endanger SPD employees.

Our specific concerns with the ordinance policy include:

- Provides no less-lethal option to intervene in property destruction by crowds.
- Provides no effective method to disperse violent crowds, even when that violence is directed towards people.
- Provides no viable means of rescuing victims in a crowd or creating space for a targeted arrest.
- Restricts the use of 40mm chemical launchers and OC spray to SWAT, which is contradicted by crowd management experts and impractical given current staffing levels.
- Restricts the use of OC spray, even outside of crowd management, to instances where the subject's "violent actions" pose a risk of "serious bodily injury" to others.
- Creates the necessity for SPD to disengage in circumstances where a violent crowd has not yet become a violent public disturbance ("12 or more persons who are present together use or threaten to use unlawful violence towards another person or group of people and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his [sic] personal safety," as there are no available tools to disperse that crowd or practically intervene.
- Would effectively end mutual aid for crowd management events, as neighboring jurisdictions would decline to participate.

At this juncture, it is necessary to note that SPD, in conjunction with the Department of Justice, the Monitoring Team, and the Office of the Inspector General, has *already completely overhauled its crowd management policies and these policies have been approved by the Court*. The concerns raised in this memo do not stem from any resistance by the department to improving its policies, but from the position that the department has already done so, those revisions have proven effective in practice, because SPD continually refines crowd management policies and practices, and because the revisions mandated by the ordinance are impractical and dangerous. SPD has further updated its policy based on the recommendations stemming from the Sentinel Event Review (SER) and has drafted modifications to SPD 8.40 in collaboration with the Office of the Inspector General to provide an "alternative process [] designed to ensure timely reporting and review in the event that significant, sustained protests arise again."

As such, SPD looks forward to discussing these serious concerns with the Monitoring Team and the Department of Justice, as well as explaining the already-implemented changes to SPD's Crowd Management Policies, based on the SER process and thoughtful iterative review, and that have already been proven in practice as an Interim Policy.

II. BACKGROUND

Based on the above, a reasonable person might ask why the City is submitting a crowd management policy that the police department objects to, instead of internally reconciling divergent viewpoints within the City.

As such, it is necessary to delve into the procedural history of the policy development for context, although much of the story will be familiar to the Monitoring Team and the Department of Justice.

A. Policy Revisions – 2020/2021

On February 11, 2021, in the aftermath of the unprecedented wave of sustained protests following the death of George Floyd at the hands of Minneapolis police officers, the Seattle Police Department submitted for court approval revisions to Section 14.090 (Crowd Management, Intervention, and Control) and Title 8 (Use of Force) of its policy manual.¹ As the City detailed in its motion seeking court approval, these policy revisions – developed with the helpful guidance of two national experts – built upon previously approved policies in four critical respects:

- (1) Reflecting tactical adaptations developed in the field over the summer of 2020, modifying the tactical response responsive to community concerns and internal discussions around lessons learned, to include:
 - More robust emphasis on crowd intervention tactics that focus on isolating and arresting law violators within an otherwise peaceable assembly;
 - Reducing the SPD visible footprint around these events in order to avoid escalation that may result from an SPD presence;
 - Formalizing in matrix form considerations around principles of crowd management, intervention, and control;
 - Emphasizing de-escalation and force modulation responsive to changes in crowd behavior following an order to disperse.
- (2) Providing additional guidance to the officers and the community, specifically with respect to the role of legal observers/First Amendment monitors, volunteer medics, and media.
- (3) Incorporating recommendations issued by the Office of the Inspector General (OIG), the Office of Police Accountability (OPA), and the Community Police Commission (CPC).²
- (4) Aligned with the preliminary injunction issued in the matter of *BLM v. City of Seattle*.

Two weeks later, on February 26, 2021, the Court approved these policy revisions. Since then – indeed, since October 2020 – use of force in crowd management situations has been effectively non-existent, SPD has

¹ See Dkt. 658.

² SPD has integrated the vast majority of the policy recommendations stemming from the SER into both the ordinance policy and its Interim Policy. SPD has further provided an explanation for any recommendations that were not integrated. See Sentinel Event Review – Comprehensive Response, July 28, 2023. Dkt. No. 773-1.

facilitated First Amendment demonstrations/counterdemonstrations with minimal incident,³ and no SPD member has been the subject of a sustained OPA complaint arising out of a crowd management response.

B. Ordinance 126422

Notwithstanding these substantive revisions, on August 16, 2021, the Seattle City Council adopted Ordinance 126422, restricting the acquisition and use by the Seattle Police Department of multiple classifications of less lethal tools that were authorized and regulated under policies developed over the past eight years in collaboration with the Department of Justice and Monitoring Team (including the iteration approved by the Court six months earlier)⁴. Ordinance 126422 amended SMC 3.28.146, which was enacted pursuant to Ordinance 126102, which was in turn enjoined by Court order until such time as its mandated policy terms either conformed with paragraphs 177-181⁵ of the Consent Decree or were rendered moot.⁶

³ For an overview, see *Matthew Meinecke v. City of Seattle*, 23-cv-352 (June 22, 2023) (denying street preacher's motion for preliminary injunction following his arrests at a demonstration following the Supreme Court's decision overturning *Roe v. Wade* and during PrideFest).

⁴ In addition to reviewing recommendations from both OPA and the OIG, SPD conducted a comprehensive review of assorted after action and independent reviews of protest events from 22 other departments and from professional organizations including the Police Executive Research Forum and the Major Cities Chiefs Association. None of the recommendations provided in these reports contemplated or conscripted such specific, static prohibitions on less lethal weapons within a crowd. SPD also surveyed other laws that have passed that address these issues. Similar to the conclusions made in the after action and independent reviews, none of the laws passed in these cities and states after the summer of 2020 subvert the use of less lethal weapons, best practices in crowd management, and officer discretion and authority, with such sweeping prohibitions. States and DC: California ([AB 48](#)); Colorado ([SB 20-217](#) 2020); Massachusetts ([S 2963](#) 2020); Nevada ([SB 212](#)); Oregon ([HB 2928](#) 2021); Virginia ([HB 5049](#) 2020); Washington DC ([B23-0825](#) 2020). Municipalities: Boston ([11-1.10](#) 2021); Iowa City, IA ([20-159](#) 2020); New Orleans, LA (new police department [policy](#)); Philadelphia, PA ([200538](#) 2020); San Jose, CA (police department [policy](#)); Springfield, IL (police department [policy](#)); Somerville, MA ([Ordinance](#) 2021).

⁵ Paragraphs 177-181 are specific to SPD policy; they do not provide a direct mechanism for Court review of City legislation. To achieve congruence and avoid further litigation as to whether the Ordinance is consistent with the Court's previous injunction, Ordinance 126422 thus did not take immediate effect. Instead, it directed SPD to incorporate the prescribed Ordinance terms into policy and submit the policy for review and approval under paragraphs 177-181 of the Consent Decree. Assuming the Court determined that such policy meets the purpose and terms of the Consent Decree, this exercise of transmitting the Ordinance in the form of policy seemed intended to result in the injunction being lifted and SMC 3.28.146 as amended coming into effect.

⁶ See Dkt. #447.

C. Mayor and SPD Response to Ordinance

In a letter transmitting the unsigned Ordinance back to the Council, then-Mayor Durkan outlined numerous issues with the legislation, including concerns that the Ordinance essentially paralyzes, by enshrining operational policy in city code, the Consent Decree-driven process for iterative review and reform of policies over time; contravenes current SPD policies and best practice; and is inconsistent with both the language and intent of recently passed state legislation, including provisions that promote the expansion and availability of less lethal tools. SPD echoed those concerns and others in a November 4, 2021, letter to the DOJ and the Monitoring Team requesting technical assistance in reconciling conflicting obligations under the Consent Decree and now, by way of this legislation, to the Council. In addition to highlighting its concerns, SPD emphasized the foreseeable consequences of the Ordinance restrictions:

By sanctioning some level of violence in crowds until such point as Council's newly-defined standard of "violent public disturbance" is met (a threshold of violence far exceeding that which would establish, under state and federal law, a "riot"); by allowing (by omission) for destruction of property absent circumstances otherwise rising to the level of physical harm within the definition of "violent public disturbance"; and by stripping from officers tools or authority to intervene before circumstances escalate to this heightened level of violence against persons, this Ordinance not only leaves property owners unprotected, it leaves SPD with no objectively reasonable or viable means of intervening in such circumstances without increasing the likelihood that higher levels of force will be needed in order to meet, proportionally, the escalated level of violence, thereby subjecting both citizens and officers to greater risk of more serious injury.

Citing the former Monitor's admonition that policy revisions should be "informed by real-world experience, actual SPD trends, and objective data, not hypotheticals or unsubstantiated claims,"⁷ SPD explained its dilemma:

SPD, which was not meaningfully engaged during the drafting of either Ordinance, now finds itself caught between competing policies and obligations. To SPD, this intermediate step of drafting policy is not a mere technical exercise of transmitting for court approval the terms prescribed by Council; it is a complex process that includes practical, procedural, legal, safety, and labor considerations. It must also be done with an eye towards the training needed to implement the policies and an assessment of their impact on policing and the safety of officers and the public.

Both DOJ and the Monitoring Team declined to offer technical assistance. In a December 13, 2021, response, the DOJ wrote:

⁷ See Dkt. 388, concerning "limited, tailored, and sharply focused on evidence-based enhancements" to the Use of Force policy.

The United States appreciates the challenges SPD faces in crafting the policy required by City Ordinance 126422. It is not DOJ's role under the Consent Decree, however, to create and propose new policies for SPD. ... We also note that it is the City's obligation to reconcile the views of City Council, the Mayor, and SPD leadership on Ordinance 126422. Once such a policy is crafted, and before the policy is submitted to the Court, DOJ and the Monitor may provide technical assistance on whether the policy complies with the Consent Decree and federal law.

The Monitor, in a December 13, 2021, filing,⁸ responded similarly:

[T]he Monitoring Team also declined to provide the requested technical assistance for the following reasons. First, at this point, there appears to be limited meaningful opportunity for the Monitor's engagement. The process of drafting policy is not a "technical exercise" of memorializing terms, but an iterative process whereby terms are typically memorialized after discussion and resolution of practical and legal considerations, among others. It is at that discussion state in the process where the Monitoring Team has, in past practice, provided SPD with technical assistance. In this case, where fixed terms have been legislatively prescribed, the Monitoring Team sees little avenue to provide technical assistance in a manner that would not require changes to the Ordinance itself.

Second, it is a grounding principle of the Consent Decree that policy be based upon, and evolve with, best practices. In approving SPD's Crowd Management and Use of Force policies earlier this year, the Monitoring Team agreed that the interim policy revisions – many of which reflected lessons learned over the course of 2020 and as informed through discussion with national and international experts – were current and consistent with best practices....

It is the Monitor's hope that the new year may bring a new chapter in the ability of core City stakeholders to connect multiple work streams and collaborate on developing optimal policy and process for crowd and protest management⁹.

D. Subsequent Discussions and Drafts

1. Ordinance-Based Revisions

Ultimately, SPD did its best to incorporate ordinance terms in a manner that balanced the legislation with officer safety considerations. Working from the court-approved 2021 revisions to the Crowd Management and Use of Force policies, the following are summary points to that effort:

⁸ See Dkt. #695 at p. 8.

⁹ Responsive to the Monitor's urging, on March 18, 2022, SPD attended a meeting with City stakeholders seeking to collaborate on the language of the policy. However, that meeting did not result in any agreed-upon modifications to the ordinance that would address SPD's stated concerns.

- The Ordinance created several new definitions that are at odds with existing SPD policy, requiring certain interpretations and deletions. For example, the Ordinance’s definition of “Less Lethal Weapons” does not appear to contemplate more common less lethal tools used outside of crowd management purposes, including tasers and canines. SPD also interprets this definition to effectively ban the use of the long batons (used in crowd management not as impact weapons, but to allow for separation between protestors and police, such as to push against a protestor seeking to advance on police). Policy definitions were also changed to incorporate the terms “crowd,” “crowd control,” “violent public disturbance,” “reasonable firmness” and “serious bodily injury.”
- Blast balls (which were incorporated into practice after the Mardi Gras riots of 2001 as an intermediate tool to create distance with substantially less impact than CS gas) have been banned in their entirety and the section covering their use and deployment was accordingly removed from policy. This now leaves officers with no practical alternative to move crowds short of CS gas, which is somewhat freely authorized under the Ordinance in the event of a “violent public disturbance” but impractical (1) in the midst of highly chaotic circumstances given the Ordinance requirement for a “detailed tactical plan” prior to its use and (2) significantly, restrictions under state law that prohibit the use of CS absent authorization by the highest elected official of the jurisdiction (i.e., in Seattle, the Mayor).
- A distinction was made in policy between the types of batons used by SPD. While the definition of “less lethal weapons” is interpreted by SPD to ban the long baton (the tool most traditionally used in crowd control, again, to form a barrier and to press on crowds as “primarily designed to be used on multiple individuals for crowd control and is designed to cause pain or discomfort.”), the legislation still seems to allow for individual use of the short batons (carried by some, but not all, officers), which is not a tool of value for purposes of crowd management. In fact, SPD has worked hard to reduce the use of short batons as a use of force tool, which has been praised by the Monitoring Team and the Court.
- The draft policy reflects a now higher standard required of officers for the use of OC spray both in and outside of a crowd management setting. Whereas current policy authorizes its use (and the use of less lethal tools in general) when reasonable and necessary to interrupt a subject’s threatening behavior so that officers may take physical control of the subject with less risk of injury to the subject or officer than posed by greater force applications, OC may now only be used in instances where the subject’s “violent actions” pose a risk of “serious bodily injury” to others.
- 40mm and Pepperball launchers remain available to SWAT¹⁰ officers to deploy chemical irritants in and outside of crowd management settings, but again – as with OC – only where

¹⁰ It is generally best practice NOT to rely on SWAT for crowd control purposes, and SPD – in standing up a separate unit based in Patrol to manage crowd events – has sought to limit its reliance on SWAT. Not only is

subjects' "violent actions" pose a risk of "serious bodily injury" to others. (In other words, the Ordinance does not allow for the use of any less lethal tool to interrupt property damage, regardless of its extent.)

- Numerous sections of policy have been revised to reflect provisions regarding CS gas, consistent with both the Ordinance and RCW 10.116.030.
- The Use of Force Reporting and Investigation Matrix of Manual Section 8.400 was updated to reflect the higher standard of "serious bodily injury" required by the Ordinance. A new section was created in SPD's policy governing Noise Flash Distraction Devices (NFDDs) by SWAT officers.
- The Crowd Management, Intervention, and Control Concepts Strategies (CMIC) Matrix in 14.090 was revised to include separate considerations for what SPD has termed an "Uncontrolled Civil Disturbance," intended to reflect the conditions during which previously approved crowd control tactics are now restricted and where conditions have not yet escalated to the point of what the Ordinance considers a "Violent Public Disturbance." Examples of an Uncontrolled Civil Disturbance are provided.
- For purposes of balancing the restrictions under the Ordinance with officer safety considerations, options are provided to guide the police response. Specifically, if under the totality of the circumstances, including available staffing, equipment, and other resources, and where officers are unable to safely manage the crowd, considerations include establishing a safe distance to observe the crowd and monitor for escalation to the point of a "Violent Public Disturbance"; if practicable under the circumstances, document criminal activity for later investigation; or if, safe and feasible and considering the risk to officer safety and members of the crowd, physical force (hands, short batons, bicycles, or 40mm impact rounds) may be used to attempt to disrupt the crowd or address the acts of violence. We note that none of these options are effective to disperse crowds or create ingress into crowds to rescue victims or take offenders into custody, and if used, will result in significantly more blunt force trauma than necessary under current policy.
- Sections guiding the authorization of less lethal tools include amplified voice warnings to the crowd dispersing a Violent Public Disturbance were also added. This section generally mirrors existing policy on dispersing unlawful assemblies, albeit with several additional considerations.

a SWAT presence recognized as an optic to be avoided, but it is not good practice to tie up SWAT/Hostage Negotiation resources that may need to be deployed to other incidents. That said, the Ordinance is very specific in creating provisions that are limited to SWAT.

- A new section was created that governs the use of CS to disperse a crowd. The section governing the responsibilities of an incident commander has also been updated to reflect that detailed plans for the deployment of CS gas are required to be included in event planning.
- Finally, sections regarding mutual aid were created and modified to reflect that any law enforcement agencies providing mutual aid law enforcement agencies would be required to abide by these terms. Given the foreseeable risks created by this Ordinance, SPD understands it is unlikely that other agencies will be amenable to providing mutual aid, thus likely rendering this section moot.

2. SPD Revisions

Parallel to this effort around incorporating the ordinance terms into policy, and mindful of its obligations to the Court (as stated in its earlier request for technical assistance) and newly enacted requirements of state law,¹¹ SPD also worked on updating its existing crowd management policy. To explain the procedural irregularity around this iteration of policy submissions and to put on record its concerns regarding the policy directed under Ordinance 126422, SPD also prepared a previous memo that stated in part:

[I]n adherence to the iterative practice of evidence-based policy review and revision, SPD is also providing at this time a separate version of revisions to its Crowd Management policy, building off of what was previously approved by the Court in February 2021, and reflecting additional lessons learned through the Sentinel Event Review, from best practices that have emerged nationally since the events of 2020, and through engagement with national and international experts in the field of crowd psychology and crowd management. While not verbatim to, these revisions are in line with the State's Best Practices for Use of Force in Crowd Management Incidents, issued July 1 (attached). This draft also retains all provisions of the 2021 policy that incorporated the terms of the preliminary injunction in the matter of *Black Lives Matter v. City of Seattle*.

¹¹ On July 1, 2022, and as directed by RCW 10.120.030, the Washington Attorney General's Office released its Model Use of Force Policy, along with a document entitled Best Practices for Use of Force in Crowd Management Incidents. RCW 10.120.030(2) further provided that:

By December 1, 2022, all law enforcement agencies shall: Adopt policies consistent with the model policies and submit copies of the applicable policies to the attorney general; or, if the agency did not adopt policies consistent with the model policies, provide notice to the attorney general stating the reasons for any departures from the model policies and an explanation of how the agency's policies are consistent with RCW 10.120.020, including a copy of the agency's relevant policies.

SPD's policies, as had been most recently approved by the Court in April 2021, were confirmed to be consistent with both the model state policy and best practices in crowd management and were timely submitted to the state.

That said, this version of policy (DRAFT 14.090_SPD) does deviate substantially from the version that seeks to incorporate the terms of Ordinance 126422. **In submitting the latter as directed, SPD wishes to make clear that it does not believe these terms to be consistent with best practice or the evidence-based approach the Consent Decree contemplates, with any policy guidance that has come out post-2020 from the many after-action reports of jurisdictions nationwide, or with the recommendations that have emerged from the Inspector General’s Sentinel Event reviews.** Further, while the nature of crowd events that prompted this Ordinance are fortunately rare, and while the vast majority of crowd events in Seattle resolve with minimal officer presence and little to no active engagement, ***in those infrequent events where riot ensues,¹² serious injury to members of the public and officers alike are foreseeable consequences of this Ordinance.***

This is not hyperbole. The City of Seattle has very real experience, rooted in the injuries and loss of life that occurred during the Mardis Gras riots of 2001, of the “calamitous” consequences that can come with taking a more “passive” approach to crowd violence, such as would now be required under this Ordinance.¹³

[Emphases in original.] Since this memo was written, Seattle – like jurisdictions across the country – has experienced new iterations of crowd gatherings posing significant threats of public harm that only highlight the foreseeably harmful consequences of limiting available means and tactics of intervention.¹⁴

E. Policy Submissions and DOJ Response

On November 7, 2022, the City submitted both versions of the crowd management policy, along with the memo explaining its position, to the Monitoring Team and the DOJ for review, consistent with paragraphs 177-181 of the Consent Decree and as directed by Ordinance 126422.

¹² Note: While SPD appreciates that much of the protest activity of 2020 fell under the umbrella of protected speech and expression, SPD must also be mindful of the evolving nature of crowd events, to which this policy would apply equally. See, e.g., <https://www.seattletimes.com/seattle-news/law-justice/viral-videos-on-tiktok-lead-to-alki-beach-closure/>.

¹³ A good overview of the facts of that event is presented in the decision of the Ninth Circuit Court of Appeals in *Johnson v. City of Seattle*, 474 F.3d 634 (2007). The legal merits of the *Johnson* case aside, it is worthwhile to remember this point: The City subsequently settled a claim by the family of Kristopher Kime, who was beaten to death by a crowd member in the midst of that event, for \$1,750,000; that claim was based on an allegation of deliberate indifference by the City in allowing conditions to escalate to the point of unbridled violence. Vowing that the City would learn from this sad chapter in its history, Mayor Greg Nickels, who took office the following year, maintained a photograph of Kris Kime on a wall of his office for the duration of his tenure.

¹⁴ See, e.g., <https://www.king5.com/article/news/crime/crowd-interferes-police-response-illegal-street-racing-capitol-hill/281-f5f3d13e-1f46-48bb-8568-6c0ef211c258>.

In an email dated February 3, 2023, Assistant United States Attorney Matt Waldrop responded on behalf of the United States:

On November 2, 2022, the City submitted the two versions of revisions to SPD's crowd management policies to the Department for review and comment under Paragraph 177 of the Consent Decree. The first set of policy revisions reflected SPD's efforts to incorporate the Crowd Control Weapons Ordinance into actionable policy. The second set of policy revisions were produced by SPD through its annual policy review process.

As you know, historically the practice under Paragraph 177 had been for the City to submit one set of policy revisions for review and comment by the DOJ. Here, however, the City is asking DOJ to weigh in on competing policies. The Department is not going to provide feedback on multiple sets of revisions to the crowd management policies. Whenever the City is able to submit one version of policy revisions addressing crowd management under Paragraph 177, the Department remains ready to provide feedback and review.

As of February 3, 2023, SPD was continuing to operate under the version of policy that had been approved by the Court in February 2021. With both May Day (a historically active day) and the anniversary of George Floyd's death approaching, SPD updated this policy in "interim" form to incorporate additional requirements, including recommendations from the nearly-completed SER panels, alternative processes around reporting and investigation of force in large scale events, additional communications, the addition of and the deployment of the Public Outreach and Engagement Team (POET) – a dialogue/liaison unit that SPD stood up in 2021 in collaboration with the OIG, responsive to early SER conversations, and informed by international best practices in crowd psychology. All sworn members of the department received training on those policies prior to May Day 2023.

III. Current Status

The long history of competing Crowd Management policies set forth above has brought us to this current juncture. SPD has drafted the ordinance policy, which is attached to this submission, but completely disavows that policy.

SPD understands the City's separate obligation under Ordinance 126422 to transmit to the DOJ and Monitoring Team for their approval policy versions that align with the codified terms of City law, notwithstanding SPD's previously stated concerns. The policies submitted reflect, as described above in Section D, SPD's best efforts to reconcile the objectives and demands of City law vis-à-vis its obligations under the Consent Decree, and SPD appreciates the opportunity to provide this memo as well, for context around its considerations.

At the same time, following established Consent Decree-based protocols around iterative policy development¹⁵ and, working from the interim policies of 2023 that in turn iterated from the most recently Court-approved policies (February 2021), SPD has made further “limited, tailored, and sharply focused on evidence-based enhancement” tweaks around force investigation and review and SER recommendations. While these revisions do not align with ordinance terms, SPD believes these versions do meet the requirement of Paragraphs 1 and 2 of the relevant Court order if read in the context of the Consent Decree overall and is prepared to submit those versions should they be requested.

Importantly, in accordance with the Court’s Order, both versions of the Crowd Management policy include updates based on recommendations set forth in the SER. SPD responded previously, setting forth its comprehensive response to the SER process. Sentinel Event Review – Comprehensive Response. Dkt. No. 773-1.

Additionally, the attached version of SPD 8.400 includes revised processes by which a FIT supervisor/Administrative Lieutenant is assigned to all crowd management events where there is credible evidence that violence may occur and that said supervisor will respond to “monitor and track all use of force, including type, time, and a summary of the scope of the deployment” so that the Force Review Unit and the Office of Police Accountability (as appropriate) can review those uses of force. This force logging, accompanied by new requirements to utilize BWC in crowd management events, will prevent the issue of trying to reconstruct events after the fact.

In addition to this real-time Use of Force logging, the FIT supervisor/Administrative Lieutenant, in collaboration with the Assistant Chief of Professional Standards, the Director of the Office of Police Accountability and the Inspector General for Public Safety, to determine what additional modifications, if any, should be made to force reporting requirements based on the intensity and/or duration of the crowd management event.

Again, SPD respectfully requests that its concerns regarding ordinance policy be fully considered by the Monitor and the Department of Justice and, ultimately, submits that a review of the SPD’s existing Interim Policy would be more consistent with the Court’s intent – “That SPD shall revise *its* crowd management policy to address feedback from the ongoing Sentinel Event Review (“SER”) process and ensure that officers are trained on the updated policy.” (emphasis supplied). SPD has exactly that and looks forward to presenting that work to the Monitor and the Department of Justice.

BGM:lt

cc: Tim Burgess, Deputy Mayor
Andrew Myerberg, Chief Innovation Officer

¹⁵ Again, as “informed by real-world experience, actual SPD trends, and objective data[.]” Dkt. 388.