



# Seattle Office of Inspector General

## Review of Systemic Non-Compliance with COVID-19 Masking Requirements Among SPD Personnel

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In Response to a Community Member Complaint

April 15, 2022

Office of Inspector General  
City of Seattle  
PO Box 94764  
Seattle, WA 98124-7064  
[oig@seattle.gov](mailto:oig@seattle.gov)  
(206) 684-3663

## SUMMARY

OIG conducted this review to determine why the Seattle Police Department, as an organization, did not enforce public health directives concerning facial coverings (“masks”) during the COVID-19 pandemic. After reviewing internal department emails, investigation files from the Office of Police Accountability (OPA), and payroll information, as well as interviewing relevant personnel, it appears that organizational culture and lack of accountability for individual officers may have created an environment of continual and repeated non-compliance.

## WHY WE DID THIS REVIEW

This review was generated from a complaint originally made to OPA by a community member about pervasive non-compliance with mask mandates by SPD officers. Because of the widespread nature of the allegations, OIG engaged in this review of the systemic aspects of the complaint. The community member provided OIG with extensive documentation of officers not wearing masks in settings where they were ostensibly required.<sup>1</sup> The community member had previously shared this information with the relevant precinct commander but continued to observe potential violations. OIG did not assess individual compliance as a part of this project, as OPA has jurisdiction over investigations of alleged misconduct.

## STATE INSPECTIONS CONFIRMED NON-COMPLIANCE

Lack of enforcement of mask compliance among SPD personnel is not debated by this report, given the results of state inspections finding non-compliance. As of August 2021, the SPD had received two notices of serious violation of Washington Administrative Code (WAC) after two separate health and safety inspections by the Washington State Department of Labor and Industries (L&I).

The first citation, received February 25, 2021, focused on activities at the East Precinct. The citation states that the SPD,

*“did not provide a workplace free from recognized hazards that are causing, or are likely to cause, serious injury or death, as required by this standard. In that, employees did not always wear facial coverings when necessary or safe to do so.”<sup>2</sup>*

The state inspector observed seven employees not wearing masks properly or maintaining social distancing. This included employees inside police vehicles, a staff member walking inside the East Precinct without a mask, and an SPD officer interacting with a member of the public while wearing their mask around their neck. L&I assessed a fine of \$5,400 and prescribed additional corrective action through OPA. Initial complaints of mask non-compliance were to be addressed through rapid adjudication, while second complaints were to be fully

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<sup>1</sup> The documents included multiple photos of SPD officers not wearing masks, copies of inspection reports from the Washington State Department of Labor and Industries, and email threads between the community member and senior SPD officials.

<sup>2</sup> Washington State Department of Labor & Industries Inspection 317961983

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*Per OPA, officers were refusing rapid adjudication and requiring OPA to complete full investigations*

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investigated and addressed with progressive discipline. L&I personnel later informed OIG that the corrective action section of the violation was administratively closed because, per OPA, officers were refusing rapid adjudication and requiring OPA to complete a lengthy full investigation for each initial complaint. Additionally, the mask mandate set by the Washington governor had been lifted at that point in time.

The second L&I citation, issued on July 13, 2021, focused on the West Precinct following allegations that officers were not observing social distancing and not wearing masks while responding to public demonstrations.<sup>3</sup> According to the inspection report, the L&I team made multiple attempts to schedule interviews with personnel involved in the specific incidents under review, but the requested employees were either on furlough or declined to be interviewed. After repeated declinations, L&I decided to close the inspection without conducting employee interviews.

L&I inspectors nonetheless concluded that SPD was again in violation of the WAC and “did not provide a workplace free from recognized hazards that are causing, or are likely to cause, serious injury or death”, noting that the COVID-19 virus is “widely recognized and publicized as a very serious workplace hazard.” Because this was a repeat violation, L&I assessed a penalty of \$12,000. L&I also required the SPD to complete a Certification of Abatement and provide a “demonstrable process to verify vaccination status for allowing unmasked workers.” L&I noted in the citation that the employer is not required to verify vaccination status if masking and physical distancing are maintained.<sup>4</sup>

## **SPD PERSONNEL RECEIVED CLEAR ORDERS ON MASK-WEARING AND HAD ACCESS TO AN ADEQUATE SUPPLY OF MASKS**

In November 2020, SPD assessed that it had remaining stock of approximately 65,000 N95 masks, which was down from approximately 75,000 in March 2020. It appears that SPD’s stock of masks remained stable over that period, and that a shortage of available masks was not a cause of non-compliance. Further, SPD personnel received clear direction about mask-wearing and social distancing. A sample of directives issued to SPD personnel includes:

- 3/17/2020: The Chief of Police issued a revised Special Order 20-010 that required all officers to shave facial hair to ensure an effective fit for N95 masks. This order rescinded any prior exemptions for medical, religious, or operational reasons.
- 4/25/2020: The Department issued a revised Special Order 20-015 for May Day 2020 and required all personnel to deploy with personal protective equipment, to include N95 masks, gloves, and eye protection.

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<sup>3</sup> Washington State Department of Labor & Industries Inspection 317963417

<sup>4</sup> Since this citation was issued, the City of Seattle has changed its policies to require mandatory vaccination of all employees, unless an employee has a medical or religious exemption.

- 5/14/2020: The Mayor issued a mandatory city-wide policy requiring cloth face coverings. SPD personnel were informed they were required to wear a cloth face covering that covers their nose and mouth in situations where social distancing of at least six feet could not be maintained at all times. This included any indoor or outdoor space where members of the public were present or likely to be.
- 5/23/2020: The Chief of Police issued Special Order 20-018, which reiterated the Mayor's face covering policy and warned that non-compliance would result in entries to the Performance Appraisal System (PAS) and possible referral to OPA.
- 6/25/2020: An Assistant Chief ordered personnel to wear face masks covering their mouth and nose in all public indoor spaces, as well as outdoor spaces where six feet of distance could not be maintained. The email conveyed wording from the Washington Secretary of State and relayed that violation of the mask mandate would be a misdemeanor.
- 1/17/2021: The Chief of Police emailed personnel and wrote, "as of today, any violation of the mask mandate will be referred to OPA as a policy violation. You are ordered to follow the City's face covering policy. Officers as always will have an opportunity to explain any operational or medical necessity."

These explicit orders were accompanied by many email reminders from supervisors sent throughout the year. However, as discussed below, these communications were not generally successful in obtaining compliance.

**DESPITE CLEAR ORDERS, SUPERVISORS STRUGGLED TO GAIN COMPLIANCE FROM PERSONNEL**

OIG reviewed internal emails containing the key word "mask" sent by supervisors assigned to the North Precinct and East Precinct,<sup>5</sup> as well as the Chief of Police.<sup>6</sup> These emails were sent between March 2020 and January 2021. The emails demonstrate that command staff and supervisors struggled to gain widespread compliance with orders pertaining to masking:

- April 2020: An Assistant Chief addressed Precinct Captains about apparent non-compliance with Special Order 20-010. The email went on to say, "the fact that three weeks after this order was given we still have officers with beards working in your precincts is, frankly, incredibly disappointing."

<sup>5</sup> The East and North Precincts were selected for review prior to OIG being notified of the L&I inspection at the West Precinct.

<sup>6</sup> Emails provided by SPD legal counsel. By 'supervisors', OIG refers to personnel of rank sergeant and above. Because of the nature of how Outlook aggregates email conversations, the requested documentation included communications from other SPD personnel, including administrative staff, officers below the rank of sergeant, and officers assigned to different precincts or units than originally requested.

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*“We continue to have officers not wearing their masks per the Governor’s Order and Chief Diaz’s Directive”*

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- July 2020: A high-risk SPD employee requested not to return to work in person because they were “not comfortable being around as many people that are in our building. Especially since no one appears to wear a mask.”
- September 2020: A Captain forwarded photographs of officers not wearing masks to precinct supervisors, stating “Please, please, please...I know these are a pain in [the] butt but can we remind our officers to wear their masks in public? [...] Remember, the mask wearing did come as an order from the Chief.”
- January 2021: The same Captain noted he was “just stunned at the non-compliance” and “[...] we continue to have officers not wearing their masks per the Governor’s Order and Chief Diaz’s Directive.”
- January 2021: an SPD officer did not wear a facemask into a hospital and refused after being asked to do so by hospital staff. The incident was highly publicized and resulted in widespread public concern.<sup>7</sup> In the days that followed, the chain of command issued several communications reiterating the need for compliance with facemask requirements. In his 1/17/2021 communication to supervisors and commanders, Chief Diaz stated “The Seattle Police Department has relied on voluntary compliance and supervisor action regarding the mask mandate. It is now apparent this is not sufficient internally.”
- January 2021: Following the Chief’s communication, a Lieutenant emailed personnel at their precinct, “[...] Precinct Personnel will be clean shaven. Supervisors will be responsible for ensuring their subordinates have complied with the Chief’s Special Order to be clean shaven. [...] To be clear this is an **order** to comply with the Special Order.”
- January 2021: A Captain emailed staff, “I get Cc’d on every OPA Complaint involving our personnel and the other day I received one [alleging that 3-4 unknown employees had violated mask policy]. PLEASE remind your respective personnel to wear their masks not only for physical safety reasons but to avoid these types of complaints.”

Further, OIG notes that reviewed communications were often focused on compliance with orders and avoidance of complaints from the public. Few supervisors appeared to emphasize the potential health hazards for vulnerable employees and members of the public.

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<sup>7</sup> See <https://www.king5.com/article/news/local/seattle-police-officer-refuses-to-wear-mask-in-hospital/281-45701d33-eb16-44ea-901a-e0c8adfadedf> and <https://komonews.com/news/local/investigation-underway-after-spd-officer-allegedly-refused-to-wear-mask-inside-er>.

## OFFICERS WERE NOT HELD ACCOUNTABLE FOR VIOLATING MASK DIRECTIVES

Non-compliance with masking orders may have constituted insubordination and failure to obey policy and laws. It also presented a significant potential threat to the safety of officers and the public alike. For example, if an unmasked officer had a member of the public in custody, that individual could not choose to physically distance themselves. An individual in this situation might fear involuntarily exposure to COVID-19.

Despite the significant hazards constituted by mask non-compliance, available information indicates it was regularly treated as a minor non-disciplinary issue by both the Department and OPA. No allegations of mask non-compliance were sustained as of the time of this review.<sup>8</sup>

### SPD Did Not Consistently Self-Refer Violations

OIG requested a spreadsheet of all OPA allegations concerning mask or protective equipment issues and the outcomes.<sup>9</sup> The dataset viewed by OIG included 98 allegations contained within 30 distinct cases.<sup>10</sup> Of those 30 cases, only one was initiated by SPD. All others were initiated by members of the public or OPA, including the well-publicized incident involving an officer who refused to wear a mask in a hospital.<sup>11</sup>

### OIG Did Not Observe Progressive Discipline, Despite Multiple Infractions

As described in the first L&I report, individuals with repeated instances of mask non-compliance were supposed to receive progressive discipline. OIG noted 18 instances which were second, third, or fourth allegations for individual officers. However, 11 (61%) of these were handled as supervisor actions.

A supervisor action is not considered to be formal discipline by the applicable labor unions. Instead, it is issued if:

*“The complaint generally involves a minor policy violation or performance issue that is best addressed through training, communication, or coaching by the employee’s supervisor. In these instances, OPA sends a memo requesting that the employee’s supervisor take specific, relevant action with the employee. The supervisor has 15 days to complete the action and return the case to OPA for review.”<sup>12</sup>*

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*61% of repeat allegations were referred to SPD as Supervisor Actions*

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<sup>8</sup> 25 of the 98 allegations (26%) did not have a listed outcome at the time of review.

<sup>9</sup> Case data was sent on 2/14/2022. Additional allegations may have been received since this date but are not part of this analysis.

<sup>10</sup> One case can involve multiple officers, and in at least one instance OPA appears to have aggregated multiple incidents under one case number

<sup>11</sup> OPA investigated the incident 2021OPA-0024 and found fault with the Department’s evaluation of medical exemptions from the facemask mandate and issued a MAR. No sustained finding was issued for violation of the facemask mandate; however, the officer was suspended one day for lack of professionalism in his handling of the incident.

<sup>12</sup> See <https://www.seattle.gov/opa/complaints/complaint-process#2.classification> accessed 4/12/2021.

It appears that in at least one case, progressive discipline was not implemented due to lengthy delays in implementing prior supervisor actions.

The complaint in Case 2021OPA-0015 was received by OPA on 1/9/2021. The supervisor action was sent to chain of command on 2/22/2021. A letter from OPA in the file notes that three of the named employees had pending supervisor actions for prior violations of the mask wearing policy, but none had yet been processed by chain of command. OPA wrote "I am going to give SAs to them one more time, noting this one isn't an investigation only because they had not yet received counseling on the other one."

### **OPA Informed OIG That It Viewed Mask Non-Compliance as a Cultural Problem Rather than Insubordination**

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*The OPA Director noted an insubordination finding would be unjust if the chain of command is also not wearing masks*

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OIG interviewed then-OPA Director Andrew Myerberg regarding the decision not to review mask non-compliance through the lens of insubordination, as the Chief of Police and other commanders and supervisors had issued multiple orders to wear face coverings. Director Myerberg related that OPA struggled with the extent of non-compliance in the Department. He noted that it seemed procedurally unjust to sustain an insubordination allegation against an individual officer when others higher in the chain of command might also not be wearing masks. Director Myerberg stated that no one in headquarters wore masks and related that someone had sent OPA a photo of multiple lieutenants, captains, and chiefs celebrating an event at headquarters without any masks. Director Myerberg explained that he perceived the mask non-compliance as indicative of a serious culture issue within SPD and stated that it was not sustainable for OPA to be the "thought police" of the Department.

OIG acknowledges that OPA issued a MAR in August 2021, requesting that SPD refine its procedures for approving and documenting medical exemptions for mask-wearing. In the same MAR, OPA also requested that SPD refrain from assigning officers who had mask-related exemptions to patrol duty.<sup>13</sup>

## **SPD PERSONNEL DID NOT ADOPT WIDESPREAD USE OF N95 MASKS**

OIG interviewed the physician who had been contracted by SPD to help triage and manage potential exposures and return to work issues. According to the physician, SPD struggled with competing state and national guidelines on mask wearing, as well as how those guidelines intersected with the collective bargaining agreement (CBA). His perspective was that this uncertainty led the Department to not

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<sup>13</sup> See MAR issued 8/3/2021, at [https://www.seattle.gov/Documents/Departments/OPA/ManagementAction/2021OPA-0024\\_2021COMP-0036\\_MAR\\_080321.pdf](https://www.seattle.gov/Documents/Departments/OPA/ManagementAction/2021OPA-0024_2021COMP-0036_MAR_080321.pdf)



mandate the use of an N95 or define what type of protective mask should be worn.<sup>14</sup>

The physician noted that the Department sent multiple communications to personnel in which officers were informed wearing an N95 with proper eye protection would protect them and the public from many exposure events. However, per the physician, some personnel resisted due to concerns of comfort, fogged glasses, communication difficulties, and a belief that the COVID-19 virus was not real.

OIG conducted a review of emails which indicated that absent clear requirements, the Department and medical staff struggled to convince personnel that they should use N95 masks instead of cloth face coverings:

- July 2020: The physician contracted by SPD informed the Department that approximately 50 personnel reported exposure to COVID-19 in the past 48 hours. They stated that they were seeing a resurgence due to “a combination of increased prevalence and complacency regarding physical distancing and using proper PPE. At least three of officers [sic] told me that their supervisors indicated that cloth masks were adequate when contacting suspects.”
- August 2020: North precinct staff discussed that three officers were potentially exposed to COVID-19 the previous day. All three were wearing cloth masks.
- November 2020: SPD’s contracted physician again raised the high rate of exposure, noting that 21 officers were screened for on-duty exposure in one day and wrote that wearing N95 masks “may be needed for the Department to sustain operations at current levels”. The physician explained that wearing N95s would dramatically reduce exposure risk and thus the number of officers in quarantine.
- December 2020: A lieutenant asked sergeants to remind their officers that they need to wear an N95 when in close contact with the public and noted that if an officer is potentially exposed while not wearing an N95, it would be considered a failure to use proper PPE.<sup>15</sup>
- January 2021: An officer noted in an email that they recently learned neck gaiters were “worthless” at preventing COVID-19.

Lastly, the interviewed physician expressed their opinion that the lack of departmentwide adoption of the N95 and eye protection was a

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<sup>14</sup> Illustrative of this, OIG notes that Chief Best issued Special Order 20-018 – “Cloth Face Coverings”, effective 5/25/2020, which specifies that “The City will be providing three (3) washable cloth face coverings to all employees. Employees may use personally owned face coverings so long as they are of a single solid color.”

<sup>15</sup> OIG notes that the Lieutenant did not refer to any additional resources or departmentwide directive mandating the use of N95. It is unclear what the Lieutenant used as a basis for this distinction.



substantial contributing factor to the amount of time officers spent in quarantine.

Following this assertion, OIG attempted to identify the cost to the City of SPD officers being quarantined for COVID-19. However, SPD did not code payroll data with sufficient detail to distinguish between quarantine and absences due to confirmed COVID-19, time off caring for a family member with COVID-19, etc.<sup>16</sup>

From the available data, OIG did determine that SPD spent \$5,642,087 on payroll costs coded as related to COVID-19 in general from March 1, 2020, to June 8, 2020. SPD spent \$343,029 on overtime related to COVID-19 from November 2020 to early June 2021. Earlier data was not available as SPD did not institute the relevant code until November 2020.

## CONCLUSION

OIG conducted this review to identify systemic factors of mask non-compliance and releases this report to provide information to City leadership and the public to better understand the phenomena of SPD mask non-compliance.

The degree of mask order violations appears related to a combination of organizational culture and discretionary decisions concerning how to respond to clear violations of masking orders on the part of SPD and OPA. However, the challenge is larger than just mitigating the spread of COVID-19. SPD management should reframe how the department views matters of public health including COVID-19. Further, compliance – and public safety – may improve if all staff are held accountable for not following orders. Setting the precedent that mask orders do not need to be followed establishes a culture in which future, unrelated orders may be ignored as well.

## NON-AUDIT STATEMENT

This review was not conducted under Generally Accepted Government Auditing Standards (GAGAS); however, OIG has followed GAGAS standards regarding the sufficiency and appropriateness of evidence.

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<sup>16</sup> The payroll supervisor explained that this coding structure was created in alignment with guidance from the City Budget Office, who told departments to use “COVID-19” as a code for anything related to the virus.