



Office of the Mayor

City of Seattle

Bruce A. Harrell, Mayor

Executive Order 2023-06: Providing Direction to City Departments Regarding Implementation of Public Drug Use and Possession Laws

An Executive Order providing direction to City Departments on the implementation of Ordinance 126896, which makes the knowing possession or use of controlled substances in public places a gross misdemeanor crime in the Seattle Municipal Code.

WHEREAS, on September 19, 2023, the Seattle City Council passed Ordinance 126896, which classifies the knowing possession or use of controlled substances as a gross misdemeanor in the Seattle Municipal Code; and

WHEREAS, the passage of Ordinance 126896 anticipated the issuance of an Executive Order to give direction to City department and employees on how to effectively, safely, and professionally implement that law;

NOW, THEREFORE, I, Bruce A. Harrell, Mayor of Seattle, hereby direct City departments as follows:

Section I: Purpose

Following the passage of Ordinance 126896, which codified the knowing possession or use of controlled substances in public places as a gross misdemeanor crime in the Seattle Municipal Code on September 19, 2023, this Executive Order 2023-006 provides direction and clarity to City departments and personnel in how Seattle will implement this law. The Executive recognizes that the alarming potency and toxicity of synthetic street drugs, which also can be accompanied by the rapid onset of symptoms such as paranoia, hallucinations, and other forms of mental illness, presents not only significant harm to the user but can also lead to harm to innocent passersby.

Ordinance 126896 declared that “the use of controlled substances in public places creates a public health and safety threat to the peace and welfare of the City, and all available resources and tools should be used to address this crisis.”

This Executive Order (EO) instructs the Seattle Police Department (SPD) to formally adopt policies that govern arrests for public use and possession of a controlled substance and to provide direction for officers on circumstances that do not warrant arrest but where officers can still play a constructive role. As part of implementing Ordinance 126896, SPD employees will further seek to minimize the use of force and incorporate de-escalation and crisis intervention in accordance with current SPD policies.

Under both State law (RCW 69.50.4013) and Ordinance 126896 it is a gross misdemeanor for an individual to:

- Knowingly possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice...; or

- Use a controlled substance in a public place, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice.

Section II: Probable Cause and Other Considerations.

An officer must have probable cause to believe that an individual knowingly possesses a controlled substance or is knowingly using a controlled substance in a public place before an officer may make an arrest under Ordinance 126896.

Considering the social costs of what has been historically known as the “war on drugs,” and acknowledging that Seattle developed the nation’s leading diversion approach for drug offenses so as to move decisively away from “war on drugs” harms, SPD arrest guidance will emphasize diversion. SPD training will also remind officers to be cognizant that many of their contacts occurring under Ordinance 126896 will be directed toward individuals with diminished mental capacity or other health challenges.

Section III: Knowing Possession.

SPD policy will contain specific guidance on the circumstances in which knowing possession is established. This may include but does not need to be limited to the following: (1) an observed sale or purchase of narcotics; (2) an admission by the individual; (3) open possession of narcotics or paraphernalia with narcotics residue; (4) narcotics in plain view; or (5) open use.

Section IV: Threat of Harm. Threat to Others.

When considering making an arrest for knowing possession or public use and after probable cause has been established, officers will determine whether the individual presents a threat of harm to others through their actions and conduct. This determination should be based on the totality of the circumstances and the officer’s training and experience. SPD should include factors in the policy for officer consideration. These factors should include but do not need to be limited to the following: (1) the location of public use and whether there are other people, commercial entities and businesses, or other organizational activities occurring in close proximity; (2) the type of narcotic(s) used; and (3) the apparent physical condition of the individual. SPD may identify other factors in its policy.

With regard to the location of public use factor, SPD policy should direct officers that harm pertains to the impact on the ability of others to use shared public space. SPD policy should also identify those areas that have a high likelihood of the presence of other community members and where the use of controlled substances may present an inherent impact on public safety and security. These locations may include, but do not need to be limited to, the following: (1) upon or within close proximity to the grounds of any childcare facility, education facility, or park; or (2) in or within close proximity to a transit stop, rail station, or other transportation structure or facility.

Section V: Threat of Harm. Threat to Self Only.

The Executive recognizes that illicit fentanyl kills users more quickly than any other drug to ever appear on American streets. Modern synthetic narcotics now include an ever-evolving lineup of toxic industrial chemicals that, by virtue of their use, are considered a threat of harm to the user.

When an officer determines that there is probable cause to believe public use or possession of a controlled substance has occurred, but the user does not pose a threat to other individuals as described

above, the officer will make a reasonable attempt to contact and coordinate efforts for diversion, outreach, and other forms of alternatives to custodial arrest. Where circumstances warrant, officers will use overdose reversal medications and/or summon paramedic resources or Designated Crisis Responders to respond to acute situations, consistent with officers' obligation to attempt to preserve human life. Officers are also encouraged to utilize information to which they have access to identify existing service providers and provide useful context about the location and situation of the parties.

The Executive believes that a health and outreach strategy in threat-to-self situations will be more effective for the user and the public and is preferred over an arrest strategy. SPD policy will accordingly instruct officers that, in these situations, a custodial arrest will not be effectuated absent articulable facts and circumstances warranting such action, which may include the need to transport an individual to a location where they can receive care. The policy will state that the lack of diversion opportunities itself shall not be a reason for jail booking and referral for prosecution.

Nothing in this EO is intended to prevent or dissuade officers from engaging in social contacts with individuals who are engaged in public use or possession of controlled substances, or to otherwise exercise their discretion.

Section VI: Officer Reporting.

Should an officer decide, based on the totality of circumstances and pursuant to SPD guidance, to arrest an individual engaged in public use or possession of a controlled substance, an arrest report shall be completed documenting, at a minimum, the facts establishing probable cause, an assessment of the threat presented by the individual, whether, and in what manner, diversion was considered and utilized, and any other factors the officer considered prior to arrest that were pertinent to the arrest decision. The City, consistent with its data-based approach described in Section VII, will use such information to improve its strategies contained in this Executive Order.

Section VII: Data-Based Approach.

The City of Seattle shall do the following:

1. Within ninety (90) days of this order, outreach providers will develop a by-name list to provide an estimate of how many people are significantly affected by the Health Crisis as described in this EO. The assessment will help determine how many individuals the City is trying to assist and to provide a better understanding of the underlying issues and facts addressed by this EO. This assessment may also measure other significant factors associated with the use of narcotics, including the number of overdoses, overdose deaths, and drug-related emergency medical responses in the Geographic Area.¹ The methodology should also identify the budget impacts of the assessment and whether this assessment can be performed under existing contracts between the City and service providers or as part of other ongoing City partnerships.
2. Twelve (12) months after gathering this baseline data, the City shall conduct a follow-up assessment to evaluate the number of individuals who still appear to be using and/or possessing

¹ The Geographic Area includes Belltown, Denny Triangle, the Commercial Core, Pioneer Square, the Chinatown-International District, and the Stadium District. It spans from Denny Way to South Holgate Street, bordered on the west by the waterfront and on the east by Interstate 5, except for an extension of the east border to include all of the Chinatown-International District and Little Saigon.

controlled substances in public or are significantly affected by the Health Crisis within the Geographic Area, along with any other measurements to gauge the effectiveness of the strategies called for in this EO. SPD shall also identify, over a 12-month period, the number of arrests made under Ordinance 126896 and the number of referrals made to diversion or other alternative strategies used other than or after an arrest. None of the data obtained will be used to target specific individuals for arrest strategies or any other City action or function other than the purposes described in this EO.

3. Given the critical need to implement this law effectively and justly, each officer shall receive notification of this EO and the City's approach to the Health Crisis. Officers will be encouraged to converse together and with other service providers using a team-based approach; instructed to maintain professionalism and a commitment to constitutional policing when enforcing Ordinance 126896; directed to record their actions on body-worn video, consistent with the requirements of SPD policy; and asked to provide their experience and expertise in assisting the City address the Health Crisis. Officers, SPD command staff and managers, and applicable City employees will be encouraged to discuss and develop new methods of engagement and to learn from past and current practices.

Section VIII: Outreach.

1. The City, through its departments, employees, outreach workers, or other service providers under contract with the City, should endeavor to provide notice of the EO and Ordinance 125896 to the following groups: those using controlled substances; individuals who reside with, care for, or interact with those using narcotics; members of the legal defense bar, prosecutors, and the courts; members of the treatment and service provider community; and others directly affected by open use and possession of controlled substances. This outreach should relay the intent of the City to provide urgent health assistance to people who use drugs while simultaneously creating safe, walkable, and welcoming conditions throughout Seattle. To the extent this outreach is performed by service providers, the City will ensure that this work is contemplated under existing contracts. Nothing herein directs that service providers must communicate in a way that compromises their core mission to effectively engage with individuals with complex behavioral health needs and build trusting relationships with their clients.
2. When focused drug enforcement activity occurs in a specific neighborhood, SPD will provide notice to Public Health – Seattle & King County and the Seattle Fire Department to monitor potential overdose increases.

Section IX: Diversion, Judicial Coordination and Ongoing Work.

SPD's new policies will include guidance informed by the recommendations made by the Mayor's Fentanyl Systems Work Group as established by Executive Order 2023-004. The policies will include guidance on diversion practices and procedures. The policies will further make clear that diversion and referral to services is the preferred response to public possession and use while acknowledging that jail booking and referral for prosecution are warranted in some situations.

As the Municipal Court, the Seattle City Attorney's Office, and other stakeholders continue work on prefile and pretrial diversion strategies, SPD is directed to meaningfully cooperate in all these efforts to

the extent desirable to achieve the most effective judicial and police strategies addressing the Health Crisis.

Section X: Legislative and Policy Intent.

1. Nothing in this EO is intended to compromise the safety or well-being of the City's police officers, and they shall continue to maintain their own safety within the parameters of this EO.
2. This EO does not create a cause of action that does not otherwise exist in law and should not be construed to do so.
3. The threat of harm assessment will govern officer decision making and will not be an element of the crime to be proved during the prosecution of the crimes described in Ordinance 120645 and cannot be used as a defense at trial.
4. Officers' good faith exercise of their judgment in making determinations to arrest due to threat of harm, and in choosing among various lawful options in seeking to assist individuals, shall not be a basis for officer discipline, but may be a basis for coaching and guidance by supervisors.
5. The express purpose of this EO and Ordinance 126896 is to promote the health, safety, and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this legislation. The specific intent of this EO and Ordinance 126896 is to provide guidance to police officers enforcing the crimes described in Subsection 3.28.141.A of the Seattle Municipal Code, and to improve public safety. No provision or term used in this EO or Ordinance 126896 is intended to impose any duty whatsoever on the City, or any of its officers or employees.

Section XI: Continued Implementation of Executive Order 2023-004.

The Executive shall continue to implement Executive Order 2023-004, which directed City departments to build, invest in, and expand the City's public health infrastructure in partnership with other stakeholders to further combat the opioid and synthetic drug crisis. This includes prioritizing law enforcement resources on enforcing narcotics sales and distribution-related crimes to the fullest extent permissible.

This Executive Order will be in effect until rescinded or modified by the Mayor.

Any questions regarding this Executive Order should be directed to Andrew Myerberg, Chief Innovation Officer, at andrew.myerberg@seattle.gov, Office of the Mayor.

Dated this 28th day of September, 2023.



Bruce A. Harrell
Mayor of Seattle