

# Independent Investigation into the City of Philadelphia's Response to Civil Unrest



**City Controller  
Rebecca Rhynhart**  
January 2021



### Dear fellow Philadelphians,

In May, many of us were devastated and heartbroken when George Floyd was murdered by police in Minneapolis. This marked yet another Black man's life being taken too soon by the very people that are supposed to protect us. As Philadelphians took to the streets to express their First Amendment rights with justified anger at the institutions that enabled this to happen and to advocate for Black lives, the City of Philadelphia appeared unprepared to handle the resulting unrest.

Questions needed to be answered: Why was the response to events on 52nd Street and I-676 so heavy-handed, while vigilantes in Fishtown and Marconi Plaza were unbothered by law enforcement even past curfew? Why did the City deploy teargas, which had not been used since the MOVE bombing in 1985, on multiple occasions? Why did looting and vandalism go on for hours in Center City and other neighborhoods without intervention by police? To answer those questions, on June 4th my office announced an independent investigation into the taxpayer-funded response to understand what happened, why, and what needed to change going forward. My office engaged investigation and law enforcement experts Ballard Spahr LLP and AT-RISK International, Inc. to conduct the independent review.

As is detailed in the following pages, the investigation found that the City failed to sufficiently plan for the protests and civil unrest despite having a blueprint for effectively maintaining peace during other large scale events in the past. This lack of planning had cascading negative consequences. Because the City failed to plan for the unrest, it did not anticipate the level of officer staffing needed, so they did not take necessary actions to increase officers on duty, such as cancelling scheduled days off. The investigation found that the failure to staff appropriately likely compelled the City to compensate with increased and inappropriate force, including deploying teargas and other excessively violent reactions to protesters and bystanders. The lack of sufficient manpower also meant that looting of businesses continued unabated for hours at a time. Overall, the absence of a well thought out plan resulted in significant injury to individuals and the businesses that were victims of widespread looting and property damage.

The investigation shows that the root cause of the lack of planning was a lack of leadership at the highest levels. While demonstrations deteriorated across the nation in the days leading up to Philadelphia's unrest, City leadership did not believe similar events would take place here and therefore, failed to plan accordingly. The former-Managing Director, who the Police Commissioner and Fire Commissioner/OEM Director report to, claimed that there was no way to plan for what occurred. Yet, the City's previous history of maintaining peace during large events and protests provided a comprehensive blueprint that could have been used in its response to these events. The Police Commissioner had left the position of Inspector of Homeland Security vacant since March 2020. Historically, this position has been responsible for planning responses to large gatherings and civil unrest. The Fire Commissioner, who is also serving as the Director of the Office of Emergency Management, took a more hands-off approach to his role as OEM Director than previous independent directors of the office had. And according to the City's emergency management doctrine, the Mayor is the one ultimately responsible for any City emergency response. However, the investigation shows that he did not exercise the leadership that was necessary.

It is also important to spend time reflecting on the fact that teargas was deployed in our city during these events. Teargas is banned in warfare and has not been used in Philadelphia for civil unrest since the MOVE crisis in 1985. Despite this, teargas was deployed on our own people several times during the unrest. The negative and painful effects of teargas cannot be overstated, and it should not have been used the way it was. The report details how our own police department shot teargas canisters down residential streets in West Philadelphia, hurting children in their own homes and innocent bystanders. This is not acceptable. It should not have happened, and I don't want to see it happen in our city again.

These horrific events demonstrate what happens when our leaders refuse to responsibly plan ahead for situations that could have a widespread impact on our residents. We need leaders that actually lead – ones that consider the implications of their actions and decisions, and above all, hold themselves accountable. Without stronger leadership, the City will continue making the same mistakes. We must do better because Philadelphians deserve better.

The investigation also found that the Police Department showed disparate approaches to protesters gathered in opposition to police brutality versus groups claiming to gather in support of the police in Fishtown or a statue at Marconi Plaza. Outside of Philadelphia, it's important to reflect on the events that occurred at the Capitol Building in Washington, D.C. earlier this month. There, we saw an extremely different response to domestic terrorists storming a federal building in our nation's capital with explicit threats to the lives of lawmakers, in stark contrast to largely peaceful Black Lives Matter demonstrations that took place nearby in the late spring and summer of 2020. These events raise serious concerns around bias and the systemic racism in our country and our institutions, including policing. We need to recognize the problems of structural racism and implicit bias in policing in order to fix it. For us, we can start by taking action on this issue right here at home in Philadelphia.

Our country's history is deeply racist, from slavery and segregation, to redlining and current criminal justice policies. We need to acknowledge that the senseless deaths of people at the hands of police, like George Floyd and many others, are not unavoidable tragedies, but rather the consequences of the larger deep-seated problem of structural racism in a system where advantage is based on race. Until structural racism is dismantled in our country, we will not have solved the problem. We must all commit to taking on the deep and important issue of dismantling racism, so that we can have a local government that is truly serving the people and protecting all of its residents. It is against this backdrop that we must analyze the findings of this investigation. I believe that the findings in the following pages and the resulting recommendations for improvement create a path forward – a path of healing and action for a better Philadelphia.

The investigation is followed by a supplemental Call to Action, which was developed with input and guidance from the investigation's Community Advisory and Accountability Council. The Call to Action dives deeper into these issues and provides the necessary historical context and perspective to better understand the findings in the report and their implications.

I would like to thank all of those that took part in this review for their time and cooperation, including Hank Hockeimer, Terence Grugan, Emilia McKee Vassallo and Izabella Babchinetskaya of Ballard Spahr LLP, and Mark Concordia and Matt Lynch of AT-RISK International, Inc.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca Rhynhart'. The signature is fluid and cursive, with a large initial 'R' and a distinct 'A' at the end.

Rebecca Rhynhart  
City Controller

# Report of the City Controller's Independent Review

*Prepared for Office of the City Controller, City of Philadelphia*

**REPORT OF THE CITY CONTROLLER’S INDEPENDENT REVIEW**

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## **I. Introduction**

On May 25, 2020, Minneapolis police officer, Derek Chauvin, killed George Floyd, a 46-year-old Black man detained for a minor infraction. Video of Mr. Floyd's murder rapidly circulated depicting Officer Chauvin restraining Mr. Floyd on the ground by kneeling across his neck for nearly nine minutes while ignoring pleas from Mr. Floyd and onlookers to stop.

Protests erupted in Minneapolis in the hours following Mr. Floyd's murder, which rapidly deteriorated into rioting, looting, and clashes with police. In the days that followed, the same pattern of peaceful protests escalating to riots and police clashes repeated in cities throughout the country. Information disseminated as early as May 27, 2020 to relevant City of Philadelphia agencies and departments, including the Philadelphia Police Department, began forecasting potential similar unrest to occur in Philadelphia.

On May 30, 2020, the first large-scale protests began in Philadelphia. As in other cities throughout the country, those protest quickly grew in size. As the demonstrations grew some began looting and rioting in Center City Philadelphia and its surrounding neighborhoods. Civil unrest continued throughout Philadelphia over the course of the following week. Police met the escalating unrest with increasingly forceful responses, including deploying CS gas (commonly referred to as tear gas)<sup>1</sup> and firing rubber bullets at both rioters and civilians on 52<sup>nd</sup> Street in West Philadelphia, rioters and looters in Kensington, and protesters on I-676. By 9:00 a.m. on June 2<sup>nd</sup>, 692 people had been arrested and 72 police vehicles were vandalized, including 12 police vehicles that were completely destroyed. One hundred four officers were injured and/or assaulted.<sup>2</sup> The City estimates that the unrest resulted in \$1,400,526.54 in damage to equipment, City vehicles, and cleaning costs.

While initial protest activity arising from the killing of Mr. Floyd continued throughout the week of June 1<sup>st</sup>, other gatherings of armed individuals developed in pockets of the city, including in the Fishtown neighborhood and South Philadelphia. These gatherings consisted of "counter-protesters" purporting to support police in Fishtown, and individuals showing support for and opposing the removal of a statue of Christopher Columbus in South Philadelphia. These gatherings, which included numerous acts of violence, contributed to the escalating tension among the various constituencies, commanding further police attention and resources while creating the appearance of unequal treatment by police of violent actors.

On June 4, 2020, City Controller Rebecca Rhynhart announced that her office would conduct "an independent review of the City of Philadelphia's operational and resource deployment and tactics during the civil unrest that followed George Floyd's murder."<sup>3</sup> To conduct the independent review, the Controller engaged two firms: Ballard Spahr LLP ("Ballard") and AT-RISK International, LLC ("ARI") (together, the "Investigation Team"). To "advise and support the Office's independent review" by contributing "the perspective and experience of those individuals who were affected during the civil unrest,"<sup>4</sup> the City Controller announced the creation of a Community Advisory Accountability Council ("CAAC"), comprised of "a coalition of community and nonprofit leaders, business owners and residents of Philadelphia."<sup>5</sup> The CAAC, which includes 19 members, is co-chaired by Reverend Mark Tyler, Pastor, Mother Bethel A.M.E., and Jeff Brown, President and CEO, Brown's Superstores.<sup>6</sup>

The investigation resulted in five major findings:

- **First**, unfortunately, despite substantial experience policing large-scale First Amendment activity, the City failed to sufficiently plan for protests and implement measures to avoid or mitigate resulting unrest in the aftermath of George Floyd’s murder. Numerous prior experiences managing and policing large-scale events provided the City with a blueprint for effectively maintaining peace during the May and June 2020 demonstrations. Past event management proved the efficacy of peacekeeping strategies and the utility of forward-thinking and contingency planning for similar demonstrations. Based on past results, it is likely that had the City undertaken a planning and implementation approach similar to past events, it could have prevented or lessened violent activity.
- **Second**, a failure of leadership at the highest levels of key City departments/agencies, coupled with organizational deficiencies and personnel vacancies affected the City’s ability to plan for the protests and respond to the subsequent civil unrest. For instance, the Managing Director did not believe that there was a way to plan for the type of unrest that the city experienced, despite a blueprint existing from past practices of the City. And, the Fire Commissioner who is also currently the head of the Office of Emergency Management (“OEM”) views OEM’s role in a more limited fashion than past independent directors of OEM, which may have contributed to the lack of leadership exhibited in planning for the unrest. Moreover, the lack of an Inspector of Homeland Security in late May 2020, which historically was key to planning and implementing a response to large protests and unrest, had an outsized impact on the City’s ability to plan for the protests.
- **Third**, because the City failed to anticipate unrest, it failed to anticipate the resources and strategies necessary to minimize violence when it did occur. It is likely that the City’s failure to meet unrest with sufficient resources compelled the City to compensate with increased and inappropriate force, including the deployment of CS gas and other, similar, violent reactions to protesters. In many respects, the outsized use of force exacerbated, rather than calmed, tensions between police, protesters, and other involved groups, prolonging periods and circumstances of unrest and, in turn, increasing personal, property, and reputational damage. In addition, the investigation found that the Department failed to devote adequate resources to the unrest that followed the initial protests that began on May 30th in Center City. As a result, the Department lacked both the sufficient manpower and transportation to arrest looters, and looting spread throughout the city, continuing without challenge for hours at a time. Thus, the absence of a well-thought-out plan resulted in not only injury to individuals engaged in peaceful protest, but also to businesses who were victims of widespread looting and property damage over the weekend.
- **Fourth**, as noted, the City appeared to overcompensate for its lack of pre-planning with increased force, including utilizing crowd-control tactics, such as deployment of CS gas, not used in recent history, to quell and disperse both

peaceful and violent gatherings. The City failed to ensure its use of force was only the minimal amount of force necessary to overcome an immediate threat. Rather, the City used CS gas and other crowd dispersal tactics in a broad manner inconsistent with policies governing use of such tactics and affecting individuals who were engaging in lawful First Amendment activity and, in some instances, bystanders entirely uninvolved in protest activity or violent unrest.

- *Fifth*, the City’s planning and response continued to show similar failures in connection with additional instances of unrest that occurred throughout the summer and fall in response to police-involved killings. The Police Department showed disparate approaches to protesters gathered in opposition to the police versus groups purporting to gather in support of police. This occurred even when those who demonstrated support gathered in a manner that was threatening and hostile to those who were gathered to peacefully protest.

## **II. Factual Background**

### **A. George Floyd’s Murder in Minneapolis**

At approximately 8:00 p.m. on Monday, May 25, 2020, four Minneapolis police officers responded to a call from a convenience store in South Minneapolis. Shortly after arriving, officers arrested 46 year-old George Floyd (“Floyd”). Video taken by a bystander shows one of the four officers – Derek Chauvin (“Chauvin”) – with his hands in his pockets kneeling on Floyd’s neck for almost nine minutes. Floyd repeatedly stated that he could not breathe, and asked for Chauvin to take his knee off his neck. Bystanders heard on the video plead with Chauvin to do the same. None of the three other officers present took any action to stop Chauvin, despite Floyd’s or the bystanders’ pleas. It was only after Floyd became unresponsive that Chauvin removed his knee from Floyd’s neck. Floyd was declared dead that night at 9:25 p.m.<sup>7</sup>

The next day – May 26<sup>th</sup> – the Hennepin County Attorney’s Office announced that the Minnesota Bureau of Criminal Apprehension and the Federal Bureau of Investigation (“FBI”) had each launched investigations into Floyd’s murder.<sup>8</sup> All four of the officers involved in Floyd’s arrest were fired.<sup>9</sup> That evening, thousands of protesters gathered at the site where Floyd was killed and began to peacefully protest and march to the Minneapolis Police Department’s Third Precinct Headquarters.<sup>10</sup> After arriving, a group vandalized the building and police vehicles.<sup>11</sup> In response, officers in riot gear arrived and fired tear gas and flash grenades at the protesters as protesters threw rocks and water bottles at police. Protests continued on Wednesday, May 27<sup>th</sup> at the site where Floyd was killed, and protesters again marched to the Third Precinct. Police again fired tear gas, rubber bullets, and flash bangs at protesters.<sup>12</sup> As the protest grew, elements turned violent and individuals began smashing the windows of and looting several nearby businesses. The unrest expanded with rioters setting fire to businesses and residences. The next night, May 28<sup>th</sup>, rioters set fire to the Third Precinct.

National and local Philadelphia media outlets reported these events in real time. For example, one Philadelphia media outlet reported on the Third Precinct fire as it occurred.<sup>13</sup> That report also noted the activation of 500 National Guard soldiers to the Minneapolis area. Reports

explained that “dozens of businesses across the Twin Cities boarded up their windows and doors in an effort to prevent looting.” Target – headquartered in Minneapolis – also announced that it was temporarily closing two dozen stores in the area in response to the civil unrest. At the same time, the protests had spread to other cities including New York City, Oakland, Denver, Los Angeles, and Memphis. On May 28<sup>th</sup> in Denver, “police fired gas canisters and used rubber bullets to drive away people who were blocking streets.”<sup>14</sup> That protest “briefly spilled over onto Interstate 25, blocking all lanes of traffic until police used tear gas to drive them away.”<sup>15</sup> Another protest in Louisville, Kentucky became violent when seven people were shot.<sup>16</sup>

References to these events were also included in information circulated to relevant City departments. For example, on May 27<sup>th</sup>, OEM’s Regional Integration Center (“RIC”)<sup>17</sup> issued a Daily Situation Awareness Report (“DSAR”) at 6:00 a.m., highlighting Minneapolis demonstrations and unrest, and indicating that “thousands” attended protests after Floyd’s murder and noting there “was chaos and destruction in Minneapolis Tuesday night as police officers and protesters clashed . . .” On May 28<sup>th</sup>, the Delaware Valley Intelligence Center (“DVIC”) – an arm of the Philadelphia Police Department’s Intelligence Bureau – issued a report to officers indicating that there were “increased threats towards law enforcement following the national coverage of a Minneapolis in-custody death” and “calls for looting and acts of civil disobedience.” At 4:30 p.m. on Friday, May 29<sup>th</sup>, the DVIC once more reported that “there is a social media movement calling for protest/looting of Target stores *all across the country* in response to the in-custody death of George Floyd in Minnesota.”

Four days after Floyd’s murder, on Friday, May 29<sup>th</sup>, authorities charged Chauvin – the officer who pinned his knee on Floyd’s neck – with third-degree murder and manslaughter. Chauvin was taken into custody the same day.<sup>18</sup> While the other three officers involved were not charged at that time, the County Attorney noted that all three remained under investigation. That same day, United States Attorney General William Barr released a statement in which he noted that “[o]n a separate and parallel track, the Department of Justice, including the FBI, are conducting an independent investigation to determine whether any federal civil rights laws were violated.”<sup>19</sup> That night, Minneapolis enacted an 8:00 p.m. curfew. Yet, despite that curfew, protesters once more took to the street setting fire to vehicles and buildings throughout the city and reportedly shooting fireworks at police.<sup>20</sup> According to a *New York Times* report, that night “thousands of protesters gathered in cities across the country.”<sup>21</sup>

## **B. The Investigation**

The Investigation Team reviewed over 1,700 documents provided by the City in response to four sets of document requests. These documents included intelligence reports, after action reports, Philadelphia Police Department policies and procedures, training records, and training materials. The Investigation Team also analyzed the City’s past responses to large events ranging from long-term and pre-planned events to spontaneous gatherings.

In addition to reviewing documents the City produced, the Investigation Team conducted interviews of the following current and former City officials and employees:

- The former and current Managing Directors;
- Two Councilmembers;

- The Fire Commissioner and OEM Director;
- The Police Commissioner;
- Four members of OEM staff;
- Four Deputy Police Commissioners;
- Two Chief Inspectors;
- Three Inspectors;
- Two Captains;
- Three Lieutenants;
- Two Sergeants; and
- One Police Officer.<sup>22</sup>

The Investigation Team also interviewed representatives from the University of Pennsylvania and Drexel University Police Departments. In response to a request for an interview, the Pennsylvania State Police submitted a written response in lieu of submitting to an interview. The Investigation Team requested to interview the Mayor, but he, through a representative, declined, offering instead to provide written responses to a pre-approved set of written questions. The Mayor did offer to sit for an interview if the questions were provided in advance and follow-up questions were submitted in writing. Under the constraints dictated, the Investigation Team did not proceed with an interview. Additionally, the Investigation Team interviewed 22 individuals, including members of the Community Advisory Accountability Council, who were impacted by the City’s response to the civil unrest that occurred in the days and weeks after Floyd’s murder.

In addition, AT-RISK International (“ARI”) performed an extensive Open-Source Intelligence (“OSINT”) search resulting in a timeline of critical events between May 25 and June 25, 2020, and an open-source comparison of major cities’ responses to protests and civil unrest. To develop a set of recommendations and best practices, ARI also compared the City of Philadelphia’s protest and civil unrest response, policies, and training to recognized authoritative guides, studies, and research such as, but not limited to:

- Center for Domestic Preparedness’ (“CDP”) Mobile Field Force training;
- MCCA Report on the 2020 Protests and Civil Unrest;
- Leadership Matters: Police Chiefs Talk About Their Careers. Police Executive Research Forum, (2009), Police Executive Research Forum (2018);
- The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned;
- Georgetown Law’s Institute for Constitutional Advocacy and Protection (2020), Protests & Public Safety: A Guide for Cities & Citizens;
- Department of Justice (2011) Law Enforcement Guidelines for First Amendment-Protected Events;
- Report of the President’s Task Force on 21st Century Policing (2015);
- Physicians for Human Rights (2020), Crowd-Control Weapons and Social Protest in the United States;
- Collaborative Reform Initiative (2017), Interim Final Report of the Philadelphia Police Department;

- Legitimacy and Procedural Justice (2014), A New Element of Police Leadership: A Report by the Police Executive Research Forum (“PERF”); and
- The International Association of Chiefs of Police (“IACP”) Law Enforcement Policy Center.

**C. Protests and Civil Unrest in Philadelphia**

**1. Relevant Departments and Agencies**

Large events, such as the protests that commenced on May 30, 2020, involve agencies and departments across the City’s government. Responding to such events involves extensive logistical efforts and coordination. In the City’s response to the events that occurred in May and June 2020, the following departments and groups of individuals were involved.

**a. The City of Philadelphia**

Throughout this report, the “City” includes references to the City of Philadelphia, including the Managing Director and other senior executive staff.

**b. Office of Emergency Management**

The Office of Emergency Management (“OEM”) is responsible for ensuring that the City of Philadelphia is prepared to respond to any emergencies that may occur within the city, including large events and gatherings. OEM facilitates the City’s emergency response by providing planning and resource support to involved City departments. OEM operates the Emergency Operations Center (“EOC”), which is the nerve center for the City’s response to any large incident or emergency. The EOC is housed in the basement of the Fire Administration Building, and provides a central location for those involved in leading the City’s operational response to gather and communicate in person. The Regional Integration Center (“RIC”) is OEM’s 24-hour watch center. The RIC gathers public information regarding local, regional, national, and international events that might impact the Philadelphia area. Daily Situational Awareness Reports (“DSAR”) are circulated from the RIC daily.

**c. The Unified Command Group**

When coordinating the City’s response to large events and gatherings, including protests, a group comprised of senior City officials organizes as the Unified Command Group (“UCG”) to oversee and direct the City’s response. A UCG formed on May 30, 2020 to manage the City’s response to the protest activity and developing unrest. At the time of these events, the UCG was comprised of the following individuals:

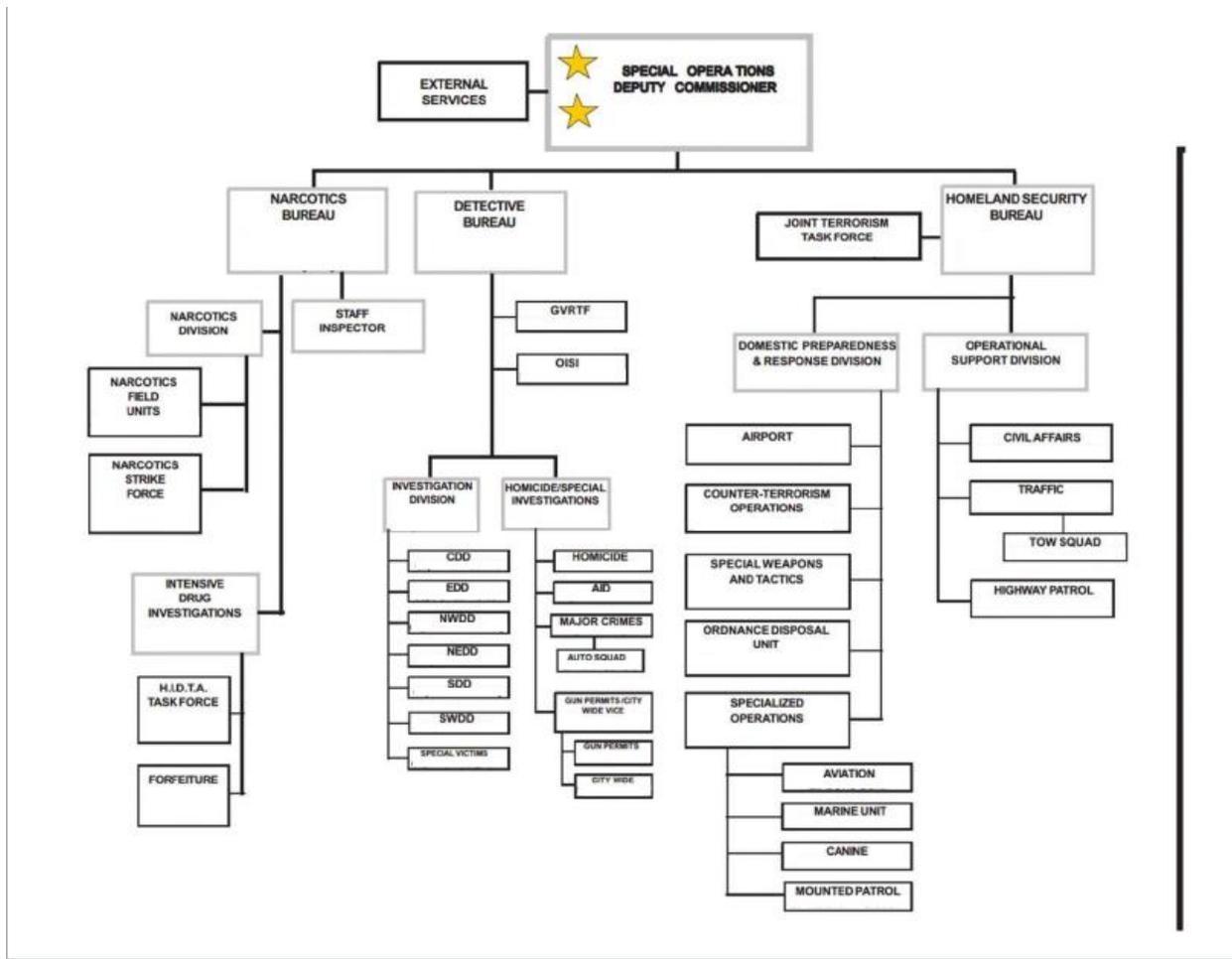
- Honorable Jim Kenney, Mayor
- Brian Abernathy, Managing Director
- Danielle Outlaw, Police Commissioner
- Adam Thiel, Fire Commissioner and OEM Director
- Jim Engler, Chief of Staff to the Mayor
- Tumar Alexander, Deputy Managing Director

- Marcel Pratt, City Solicitor
- Deborah Mahler, Deputy Mayor for Intergovernmental Affairs
- Richard Lazer, Deputy Mayor of Labor
- Sylvie Gallier Howard, Acting Commerce Director

The UCG met both telephonically, through virtual conferencing, and in person at the EOC throughout the City's response.

#### d. The Philadelphia Police Department

The leadership of the Philadelphia Police Department (the “Department”) consists of a Commissioner and six Deputy Commissioners, each of whom is responsible for individual divisions of the Department. Crucial to the Department’s planning and response to protests is the role of the chief inspector of homeland security, which falls under the deputy commissioner for special operations. The chief inspector of homeland security oversees the Homeland Security Bureau, which includes the Department’s special units, including Counter Terrorism Operations, Special Weapons and Tactics (“SWAT”), and the Civil Affairs Unit (“Civil Affairs”). As will be discussed more fully below, in May and part of June 2020, this position was vacant, as the person who had occupied the position was promoted to the role of deputy commissioner. A portion of the Department’s organizational chart demonstrates the structure of the Special Operations division of the Department:



Civil Affairs has historically played a leading role in planning, coordinating, and implementing the City’s response to large events, including protests. This unit is “responsible for policing all demonstrations, protests, marches, [and] labor-management disputes.”<sup>23</sup> Further, its mission “is to preserve peace and public order by impartially balancing the rights of demonstrators and protesters with the rights of all others.”<sup>24</sup> To achieve this goal, Civil Affairs

and its officers work to coordinate resources within the Department, as well as with other City agencies.<sup>25</sup>

**e. Other Agencies Referenced and Abbreviations used in this Report**

In addition to the divisions and groups discussed above, this report will also reference the following entities that were involved in the City's response:

- The Fire Department: The Fire Department responded to a number of fires during the course of the unrest that occurred in Philadelphia on May 30<sup>th</sup> and the days that followed. Additionally, as will be discussed more fully below, the Fire Commissioner also serves as OEM Director.
- The Pennsylvania State Police ("PSP"): The PSP deployed to the City of Philadelphia on the morning of May 30<sup>th</sup>, and remained deployed in the days that followed.

**2. May 30, 2020**

At approximately 7:00 a.m. on Saturday, May 30, 2020, the Department requested that OEM activate the EOC at 11:00 a.m. This was the first request from the Department for meaningful support from OEM in coordinating the City's response to planned protests, despite internal reporting from the RIC on May 27<sup>th</sup> and the DVIC on May 28<sup>th</sup> and May 29<sup>th</sup> that there was a potential for unrest to reach Philadelphia. Around midday, two peaceful protests began in the City of Philadelphia. One group gathered at City Hall while another gathered at the Art Museum. According to the Captain of Civil Affairs, the protesters who gathered at City Hall were peaceful and openly communicated with the civil affairs officers present to monitor the protest. At approximately 12:00 p.m., the demonstrators from City Hall marched to the Art Museum where approximately 2,500–3,000 individuals gathered. According to the Captain of Civil Affairs, once the groups combined at the Art Museum, communication between the protesters and the Civil Affairs officers who were monitoring the protest ceased. Later, the protesters marched toward Broad Street, and then north toward the entrance ramp to I-676 East at Broad and Vine Streets. According to an OEM Spot Report, as of 3:09 p.m. the crowd remained peaceful.

PSP were stationed at the top of that I-676 East entrance ramp to ensure that protesters could not enter the highway. Despite the PSP's presence, some members of the group were able to break through a piece of fencing above the Broad Street ramp, from where the PSP reported that the group threw objects at the troopers who were on the ramp. The protest turned increasingly violent as segments of the protesters began vandalizing property and setting fire to the PSP vehicles blocking the I-676 on-ramp. In response, the PSP deployed a Noise Flash Diversionary Device,<sup>26</sup> which caused the group to disperse and allowed the Department and PSP to secure the entrance ramp and adjoining intersection. Two state troopers suffered minor injuries during the incident.

After the group dispersed from the I-676 East entrance ramp, they marched towards the Municipal Services Building (“MSB”) and City Hall. Outside of the MSB there was a large police presence near the Frank Rizzo statue, which a group of protesters unsuccessfully attempted to tear down using ropes. After some time, the police marched toward the group and, using batons, attempted to disperse the crowd. One individual interviewed noted that police struck him on his head as he tried to leave the area.

On behalf of the Department, and as the unrest around the MSB began to unfold, OEM submitted a request for mutual aid to be deployed from surrounding counties at 4:55 p.m. In that request, OEM sought “MIRT [Major Incident Response Team] and/or Law Enforcement forces with proper PPE for demonstration activities to report to the City of Philadelphia ASAP.”<sup>27</sup>

At approximately 5:30 p.m., a group of demonstrators set fire to a Department vehicle parked outside of City Hall at the intersection of Broad Street and John F. Kennedy Boulevard, and vandalized three other police vehicles. By 6:00 p.m., individuals had attempted to break the windows and gain entry to City Hall. The violence spread from City Hall to businesses in Center City where individuals began looting stores along Chestnut and Walnut Streets. Almost every store in the corridor experienced property damage and looting. One individual reported observing “chaos” from her apartment on Rittenhouse Square along the commercial corridor, including individuals looting, destroying property, and spray-painting buildings. According to a DVIC report, looters acted in a somewhat sophisticated manner, coordinating their efforts using social media and by listening to police radio to determine where the police had staged.

One example of the looting occurred around 6:00 p.m., when a group shattered the glass windows and gained access to a restaurant near Rittenhouse Square. For about 45 minutes, the group proceeded to destroy the restaurant and its furniture and appliances. All of the refrigerators were broken and the bar tops were scratched. By the end of the evening, the restaurant and bar sustained approximately \$60,000 worth of damage. The windows of the adjoining retail spaces were broken, and the looters spray-painted the exterior of another storefront.

Yet, despite the massive amount of looting, witness accounts describe police engagement as limited. For example, some interviewed reported that there was virtually no police presence in the area to deter the looters or to restore order. Others reported that where police were present, they refrained from engaging the looters. Another individual reported that she witnessed individuals break into the Apple Store on Walnut Street with police officers nearby. None of the officers, however, took any action to stop these individuals.

According to the Commanding Officers interviewed, there were reasons for what some perceived as their “hands off approach.” One Commanding Officer noted that not only were there insufficient officers to arrest looters, but when arrests were made, the Department lacked sufficient resources to transport those arrested for processing. A Chief Inspector also explained that because of the limited police resources available, some looters were allowed to drop stolen goods and disperse in lieu of arrest.

In an attempt to gain control over the widening unrest, the City enacted an 8:00 p.m. curfew that night. Around the time the curfew was to go into effect, a group of about 12 clergy

members gathered in Center City to observe what was occurring and serve as unofficial protest monitors – a visible presence to serve as the eyes and ears of those who were peacefully protesting and to deter the use of excessive force in response. According to one clergy member present that night, the laid-back approach of police with regard to the looters was particularly striking. He observed individuals simply running in and out of stores, while the police stood by and watched. That clergy member opined that there seemed to be a lack of interest and/or plan for addressing the looting, which was widespread and continuous. Another clergy member noted that despite a large police presence in the area, officers were taking a “hands-off” approach to the looting and violence.

Police officers who were involved in the City’s response also suffered personal injuries on the night of May 30<sup>th</sup>. In one incident at approximately 11:00 p.m., a Department officer responded to a call for a burglary in progress on the 700 block of Chestnut Street, where witnesses observed several women looting a beauty supply store. The officer attempted to obstruct the looters from fleeing by blocking their vehicle’s path with his bicycle. The driver, however, ran over the left side of the officer’s body, breaking his left arm, ribs, and scapula, and fracturing a vertebrae, critically injuring him.<sup>28</sup> By the end of the night, at least 13 officers were injured, nine structures were set on fire – including a three-alarm fire at a store on Walnut Street in Rittenhouse Square – while four police vehicles were damaged, including two police vehicles that were set on fire. The Department reported 109 arrests, including 52 for curfew violations and 43 for looting.<sup>29</sup>

### **3. May 31, 2020**

The EOC remained active overnight in response to the looting and civil unrest that occurred throughout the city. At 11:58 a.m. on Sunday morning, OEM, on behalf of the City, once more submitted a mutual aid request to the surrounding counties, noting in the request that the support provided the day before “was invaluable to the City’s response,” and seeking “any support that can be mustered” by 4:00 p.m. The request further apologized for OEM’s failure to discuss the need for mutual aid for May 31st the night before and acknowledged that other regional events were occurring that day. Seventy-five PSP troopers were supporting the City’s operations as of noon, and the City submitted a request for another 200 troopers at that time. At 4:00 p.m., the City also submitted a request to the Pennsylvania Emergency Management Agency (“PEMA”) for “24/7 PA National Guard LNO coverage.”

Also around noon, a group of commanding officers met to discuss the Department’s operational response to any potential unrest that might occur that day. At 12:30 p.m. a second meeting was held in the Nutter Conference Room of the Convention Center. In attendance were several Deputy Commissioners, Chief Inspectors, Inspectors, the Special Advisor to the Commissioner, and representatives from SWAT. The Police Commissioner was also in attendance. According to SWAT’s Captain, historically, SWAT participated in advance planning for protests and other large events but had not been actively deployed as part of such a response. He explained that, instead, SWAT deploys to high-stakes events, such as hostage situations, warrant executions, or barricades.

Despite the fact that neither SWAT’s Captain nor other commanding officers interviewed could remember a time in recent history where SWAT was deployed in response to protests or

civil unrest, the purpose of the meeting was to review the munitions available to SWAT for potential deployment to continued unrest that day. The group specifically discussed the potential use of CS gas in the City's response. Two ranking officers present at that meeting noted that a senior long-time Department official with previous experience responding to civil unrest expressed that he was not in favor of using CS gas, in part because of the optics associated with its use. According to these officers, the Police Commissioner was very familiar with the equipment available to SWAT from her experience in other police departments, including having previously approved the use of CS gas during her tenure as the police commissioner in Portland, Oregon. She indicated that she was amenable to using it in response to civil unrest as long as she and the Mayor approved its use in advance. At the end of the meeting, SWAT personnel fitted both the Commissioner, her driver, and other commanding officers for gas masks.<sup>30</sup>

**a. 52<sup>nd</sup> Street**

Later that afternoon, a group gathered on 52<sup>nd</sup> Street in West Philadelphia to loot a shoe store. According to an Inspector interviewed, he first learned of the expected gathering at approximately 10:00 or 11:00 a.m. that morning from community members who contacted him directly. That contact included a text message containing a screenshot of a social media post announcing plans to loot the Foot Locker on 52<sup>nd</sup> Street at 3:00 p.m. A Councilmember received a similar text from a constituent, which she, too, shared with the Inspector. In response, the Inspector contacted a Deputy Commissioner, and also shared the information with the Intelligence Unit. He then held a Microsoft Teams Meeting to coordinate a response. En route to the planned staging area, the Inspector saw individuals lining up near 52<sup>nd</sup> Street, suggesting that the gathering might be larger than initially anticipated. This prompted him to call the Deputy Commissioner once more and request additional resources. The Deputy Commissioner informed the Inspector that an additional 30 officers would be deployed to the area.

The police utilized the McDonald's located at 52<sup>nd</sup> and Chestnut Streets as a staging area for their response. Officers also stationed near the Foot Locker expected to be targeted by looters, on the northwest corner of that intersection. Quickly, the officers were outnumbered by those who were engaged in the looting. According to an Inspector interviewed, two Captains on the scene attempted to peacefully calm the crowd. However, those efforts failed and the crowd turned violent, throwing bricks at police. Through this time, police continued to be vastly outnumbered by rioters and looters. Yet, despite the ongoing violence, additional resources did not arrive for approximately one hour. Ultimately, in addition to the requested officers that arrived from the Department, officers from both the University of Pennsylvania and Drexel University Police Departments also responded to the call for assistance. Each of the very experienced officers from the various Departments interviewed who were present on 52<sup>nd</sup> Street that afternoon described what occurred as something they had never previously experienced in their time on the police force.

An Inspector on the scene submitted a request for SWAT assistance to quell the violence. According to a SWAT Captain, when SWAT arrived on the scene, it found officers completely surrounded by rioters throwing bricks, bottles, and other projectiles at them. Police cars were on fire or otherwise damaged and disabled. Some officers were visibly injured. Upon SWAT's arrival, the crowd began to throw objects at the armored vehicle. The SWAT Captain sounded an air horn and directed the crowd to disperse. Those efforts failing, SWAT next used OC

spray<sup>31</sup> – a substance that is lower on the tier of less-than-lethal munitions, and more commonly referred to as pepper spray – to help disperse the crowd. However, according to both the Inspector and the Captain, the OC spray was not effective – the crowd would disperse and then gather once more.

This Inspector, whose nose was broken by a brick thrown by the crowd, asked the SWAT Captain whether there was “anything stronger” that could be used to help disperse the crowd. Both the Captain and a Deputy Commissioner present on the scene noted that they needed approval from Commissioner Outlaw before they could authorize the use of CS gas. The Deputy Commissioner initiated the request to the Police Commissioner.

According to a former Managing Director interviewed, he and others (including the Police Commissioner) from the City’s UCG were observing the events unfolding on 52<sup>nd</sup> Street that afternoon on both live television and from aerial footage shown in the EOC when the request for CS gas authorization came through. The Police Commissioner explained that although she did not believe that she needed authorization from the Mayor prior to approving use of CS gas, she nevertheless had consulted with the Mayor earlier that afternoon about its potential use. She chose to do so because when the Mayor interviewed her for the position, the Mayor indicated that he was aware that CS gas and other less-than-lethal munitions were used in Portland in response to protests. He explained the Department historically did not utilize CS gas against large gatherings, and he personally opposed its use. Yet, when confronted with the potential use of CS gas in the unfolding unrest, the Mayor, while hesitant, ultimately supported its use if absolutely necessary. With this background, and observing the conditions on 52<sup>nd</sup> Street in real time, the Police Commissioner authorized the deployment of CS gas without further consulting the Mayor.<sup>32</sup> Upon obtaining authorization to use CS gas, SWAT deployed it in the area to disperse the crowds. SWAT documented its use of force in a timeline as follows:

## SWAT UNIT PROTEST REPORT

DATE:		DATE / TIME COMPLETED:	
05-31-2020		05-31-2020 / 11:45 PM	
TIME	ACTIONS TAKEN		
12:00 PM	SWAT UNIT IS DEPLOYED TO CENTRAL DIVISION.		
2:40 PM	1 PLT IS REDEPLOYED TO EAST DIVISION.		
2:50 PM	O.C./FN'S USED ARAMINGO AVE.		
3:20 PM	2 PLT IS REDEPLOYED TO WEST DIVISION.		
3:30 PM	CAR 5 GIVES SWAT UNIT PERMISSION TO USE FN'S.		
3:40 PM	CAR 5 MAKES 52 <sup>ND</sup> & MARKET AN UNLAWFUL ASSEMBLY.		
3:40 PM	O.C./FN'S/CS GAS DEPLOYED BY 2 PLT IN WEST DIVISION.		
3:50 PM	1 PLT IS REDEPLOYED TO WEST DIVISION.		
4:45 PM	CS GAS DEPLOYED AT 52 <sup>ND</sup> & ARCH.		
5:00 PM	MARKING WITH FN PEPPER BALLS IN THE AREA OF 52 <sup>ND</sup> & MARKET.		
5:30 PM	CS GAS DISPERSED BY 1 PLT ON 52 <sup>ND</sup> ST BETWEEN MARKET & SPRUCE.		
5:40 PM	PEPPER BALLS DEPLOYED AT 52 <sup>ND</sup> & MARKET BY 2 PLT.		
5:45 PM	CS GAS DISPERSED AT 52 <sup>ND</sup> & ARCH BY 2 PLT.		
6:39 PM	CS GAS DISPERSED AT 52 <sup>ND</sup> & WALNUT BY 2 PLT.		
6:50 PM	3 PLT DEPLOYS TO WEST DIVISION.		
7:45 PM	1 & 2 PLT REDEPLOYED TO THE AREA OF BROAD & ERIE.		
9:05 PM	1 & 2 PLT REDEPLOYED TO FRANKLIN MILLS MALL.		
9:10 PM	1 PLT REDEPLOYED TO COTTMAN & BUSTLETON...FN'S & O.C. USED ON LOOTERS.		
9:50 PM	SWAT UNIT REDEPLOYED TO 60 <sup>TH</sup> & MARKET ALONG WITH S1. O.C. USED ON LOOTERS.		
10:30 PM	3 PLT. DEPLOYED TO 100 S. 52 <sup>ND</sup> ST., BY C-2 & C-11. FOAM ROUNDS USED		
10:45 PM	1 & 2 PLT REDEPLOYED TO STAGING AREA AT CONVENTION CENTER.		
10:50 PM	1 & 2 PLT REDEPLOYED TO KENSINGTON & ALLEGHENY.		
11:34 PM	1, 2, 3 & 5 PLT REDEPLOYED TO STAGING AREA AT CONVENTION CENTER.		
11:45 PM	SWAT UNIT REDEPLOYED TO HQ.		

Those who were present on 52<sup>nd</sup> Street that afternoon note that the Department's use of CS gas, rubber bullets, and other less-than-lethal munitions went beyond only dispersing violent actors. According to the Police Commissioner, her authorization to use CS gas was limited in scope to 52<sup>nd</sup> and Market to 52<sup>nd</sup> and Chestnut Streets, the focal point of the unrest.<sup>33</sup> However, SWAT's own documentation, as well as witnesses interviewed and videos reviewed, demonstrate that SWAT deployed CS gas and shot rubber bullets down the 52<sup>nd</sup> Street corridor as far south as Spruce Street. Witnesses interviewed noted that the CS gas and rubber bullets were deployed not only along Market Street, but also down side streets where no protest or any improper activity occurred; those side streets intersected with Market Street and flowed through the residential section of the neighborhood. Video reviewed also demonstrates that this occurred. And, those interviewed also described the scene as chaotic.

The Police Commissioner reported approaching the scene at some point that afternoon, but she was not able to advance past 50<sup>th</sup> Street and Market Street. She noted that at that location – two blocks east of where officers were met with violence – the CS gas was thick in the air and “wafting.” The timeline SWAT created also reflects the same scope of use. The officers deploying the CS gas and firing rubber bullets were in what many described as “riot gear.” Some officers carried shields and wore gas masks. None of the civilians interviewed reported hearing any warnings to disperse or to leave the area before police deployed the CS gas and rubber bullets.

As these incidents occurred, a large group of individuals began to gather along the 52<sup>nd</sup> Street corridor to both observe what was occurring and to oppose the strong police presence and show of force. These individuals who were not involved in rioting or looting, but rather were innocent bystanders, were not only affected by the use of both CS gas and rubber bullets, but in some instances, they felt targeted despite not being a part of the unrest. One individual interviewed encountered an elderly woman who was in the neighborhood to visit her niece. That woman had been shot in the face with a rubber bullet, sustaining an injury as a result. Another witnessed police deploying CS gas near children picnicking in Malcolm X Park and near elders merely standing outside of their homes. This individual also witnessed police shoot tear gas toward other residents congregating outside their homes on Chestnut and Walnut Streets, including disabled individuals in wheelchairs who were unable to easily escape the gas' effects. And, she witnessed how a family having a birthday party on their porch on Chestnut Street also felt the effects of the CS gas that SWAT deployed.

#### **b. Looting in Parkside and Disturbances in Other Areas**

That same afternoon, looting began in a shopping plaza located in the Parkside section of the city. Looters targeted virtually every store in that shopping plaza, including a grocery store, a hardware store, and a bank. A fight occurred at the hardware store, leaving an individual severely injured. While paramedics responded to an emergency call to assist this individual, the police never dispatched any officers to the scene. And, although employees at the grocery store called 911 multiple times to request police assistance, the police never arrived to help. The grocery store's employees were left without any option but to leave the store unprotected and to go home for their own safety. When the store's director returned the next morning at 6:00 a.m., looters were still in the store stealing and vandalizing the property. She described the store as "completely destroyed" by the looting. Video shows individuals destroying the interior of the store for hours without any intervention from police.

The shopping center in Parkside was not the only site where looting occurred that night. By 7:00 p.m., the DVIC reported that local malls, including both Philadelphia Mills and the King of Prussia Mall, were targets of looting. By the end of the night, looting occurred in 15 different locations throughout the city.

Later that night, and in response to looting and unrest in the Kensington neighborhood, SWAT once more deployed. After arriving at the intersection of Kensington and Allegheny Avenues, SWAT's armored vehicle was met by a crowd that threw bricks and other items at it. In response, the team deployed CS gas and other less-than-lethal munitions.

That evening throughout the city, the Department reported issuing 58 Code Violation Notices ("CVN")<sup>34</sup> and arresting 40 individuals, including one individual for assaulting a police officer and 36 for looting/burglary. There were 378 fires, 246 commercial burglaries, 154 acts of vandalism, and 21 shooting victims. Additionally, at least two officers were injured, and 10 police vehicles were damaged and/or placed out of service. Meanwhile, the Fire Department reported that as of 8:00 p.m., it had received 629 medic calls and 200 fire calls, which was a "significantly higher fire volume than usual." The City chose to close its offices at City Hall, MSB, One Parkway, and the Justice Juanita Kidd Stout Center for Criminal Justice the following day, Monday, June 1, 2020.

#### **4. June 1, 2020**

On June 1, 2020 – after two nights of looting throughout the city – the DVIC sent the following message to banks and businesses in the Philadelphia region:

The DVIC is expecting continued incidents of looting in the Philadelphia area during the week of 1 June 2020, as well as additional criminal activity directed at banks and businesses in the region.

Anarchist activity has historically included vandalism to the exterior of banks and businesses, ATM vandalism, destruction of security cameras, and even arson. Both opportunistic and targeted looting is likely to continue.

Organized looting campaigns have also targeted large businesses and malls. Additionally, there has been neighborhood-based looting on the commercial corridors. Criminals may exploit this unrest to divert police attention to rob or burglarize banks and priority businesses, such as gun shops and car dealerships. We ask all businesses and banks to be vigilant, enhance security, and secure or remove high value items.

Criminal activity should be reported to 911. Please preserve any CCTV footage and take photos of any damage for insurance and for follow-up investigations. Thank you.

Additionally, on June 1<sup>st</sup>, the Department began to avail itself of additional resources to address the growing unrest. Officers returned from their Regular Days Off (“RDO”) and by noon on June 1<sup>st</sup>, 35 Pennsylvania National Guardsmen were stationed at three locations: City Hall, the MSB, and the Fire Administration building.<sup>35</sup> The PSP once more deployed to Philadelphia, and were stationed at the I-676 Broad Street ramps.

##### **a. I-676**

In the afternoon of June 1<sup>st</sup>, protesters gathered at Police Headquarters and marched west through the city. Around 4:50 p.m. they gained access to I-676 from a 22<sup>nd</sup> Street ramp. The protesters were able to stop traffic in both the eastbound and westbound lanes. A marked PSP patrol vehicle that was left unattended in the stopped westbound lane was vandalized by members of the crowd. The Police Commissioner reported that as the crowd made its way onto the highway, she was parked on one of the overpasses above I-676. She stated that a Deputy Commissioner – the same Deputy Commissioner who sought and received from the Police Commissioner authorization to deploy CS gas the day earlier – called her to discuss the situation on the highway. According to her, the two discussed the potential use of CS gas, however, she said that she directed him to call her before deploying it. Shortly thereafter, and although she had not given explicit approval, she recalled hearing that it had been deployed on the highway. According to an after action report, at 5:00 p.m., based upon what he was observing and the information he was provided over police radio, a Deputy Commissioner gave permission over

police radio to deploy CS gas to disperse the crowd. In his after action report, he indicated that he ordered the use of CS gas to stop at 5:13 p.m. A review of the police radio indicates, however, that an Inspector who was also on the highway issued an order to stop.

Individuals who were present on I-676 that afternoon described the protest as being peaceful in nature when it approached the on-ramp and the protesters gained access to the highway. One individual interviewed stated that as he and his 14 year-old daughter walked eastbound on I-676 towards City Hall, he began to smell the CS gas that had been deployed ahead. The large group began to turn around and run toward the ramp from which they entered the highway. At that time, he saw a large armored vehicle approach from the west, and he then understood that the police had also deployed CS gas on the ramp, trapping the protesters on the highway. The group tried to scale the hill on the side of the road in an attempt to escape either through or over the fence at the top. This individual noted that while he was trying to get himself and his daughter out of the fenced area, he noticed a police officer aim and fire rubber bullets at the crowd that was largely facing away from the police and attempting to escape. Another individual interviewed described a similar experience, yet when she was unable to climb the fence to escape the CS gas and rubber bullets, she was taken into custody. She noted that she and many others were required to sit on the highway's median for a significant period of time, as transportation was not available right away to transport those arrested to a police district for processing.

In addition to the CS gas that the Department deployed on I-676, the PSP deployed CS gas above the highway on 22<sup>nd</sup> Street. After protesters gained access to the highway, the PSP deployed its Special Emergency Response Team ("SERT"). The PSP's stated purpose for deploying the SERT was to protect individuals trapped in their cars, to prevent further destruction of property, and to regain control of the highway. The PSP reported that upon reaching the area of the 22<sup>nd</sup> Street ramp, protesters would not allow the SERT Bearcat<sup>36</sup> to proceed any further. SERT deployed two Noise Flash Diversionary Devices in an attempt to disperse the protesters. SERT then deployed smoke canisters, and ultimately OC spray, beanbag rounds, and CS gas.

An individual present on 22<sup>nd</sup> Street that afternoon captured the interaction between the PSP and protesters on video. The video depicts protesters placing their hands in the air and chanting upon arrival of the Bearcat. From the video, there is no evidence of objects being thrown at the Bearcat prior to it firing CS gas. Nor are orders to disperse audible on the video before the CS gas was fired. The individual present stated that this group of protesters was multi-generational and included children. He also reported that upon feeling the effects of the tear gas, he quickly left the area, regrouping with protesters at Logan Circle where he witnessed a Department helicopter drop tear gas upon another group of protesters gathered on the Benjamin Franklin Parkway toward the Art Museum. The fact that tear gas canisters were dropped from a helicopter onto either I-676 or the Parkway has not been documented in any of the materials the City provided to the Investigation Team, and it has been denied by City officials.

## **b. Fishtown**

On June 1<sup>st</sup>, the Department learned that there would be a gathering outside of the 26<sup>th</sup> Police District in Fishtown. According to the District's Captain, there was no intelligence

regarding the type of protest or gathering that was planned. However, late that afternoon, a group of civilians gathered outside of the 26<sup>th</sup> Police District. The Captain described this group as “long-time Fishtown residents” who told him that they were gathered there to protect the neighborhood and the police. Many of these individuals carried bats, golf clubs, and other similar weapons, and aggressively confronted protesters who had peacefully gathered in the area. According to the Captain, there were two individuals who were the primary agitators among the group. One of those individuals, the Captain later learned, is the brother of an officer who is assigned to the District. From both video and witness accounts, these individuals used aggressive, hostile, and offensive language when referring to others that were there to show support of the Black Lives Matter movement. One individual was captured on video yelling that the group was there to protect the police as “a cop can’t defend themself [sic].”

In contrast to the police action toward groups gathered on 52<sup>nd</sup> Street and I-676, the Department did not use any force when attempting to control or disperse the group in Fishtown. While the Captain from the District reported that he and those within his command asked this group to disperse, a large group remained until after the day’s curfew went into effect. And, photos show the individuals gathered outside of the district interacting in a friendly manner with police officers, some even exchanging high fives. According to two individuals interviewed, an officer was seen handing food from inside of the District to a member of the crowd that gathered to protect the police.<sup>37</sup> To help control the crowd, a Deputy Commissioner deployed to Fishtown with a “response team package” that consisted of SWAT, highway patrol, a strike force, and a Sheriff’s bus for major arrests. He noted, however, that the police were able to get the crowd under control quickly such that it was not necessary to arrest anyone.

The event, however, was not without violence. For example, two individuals interviewed recounted how while they were peacefully standing across the street from the 26<sup>th</sup> District holding a “Black Lives Matter” sign, a group of five to seven men approached them. Two of the men carried bats and threatened to attack them and/or fight them. One forcibly ripped the Black Lives Matter sign out of the woman’s hand. Despite being across the street from the 26<sup>th</sup> District, and in clear view of numerous officers, the police did nothing to intervene. In a separate incident that was reported by various news agencies, a journalist was attacked while filming the gathering. The journalist suffered a broken nose, a fractured maxilla, and other injuries.<sup>38</sup> And, again, while the incident occurred in close proximity to the police station, where there was a large presence of police officers, no one was arrested until over three weeks later –on June 25<sup>th</sup> – after extensive media coverage of the incident. Deputy Commissioner of Patrol Operations Ben Naish testified before City Council that the Department “investigated all complaints” related to the June 1<sup>st</sup> event as “thoroughly as we could and were not able to make any additional arrests.”<sup>39</sup>

## **5. June 13-14, and June 23 – Marconi Plaza**

On at least three different occasions in June 2020, violent confrontations and “large-scale civil unrest” occurred near the Christopher Columbus statue located in Marconi Plaza on South Broad Street.<sup>40</sup> On Saturday, June 13, 2020, a group of individuals gathered at Marconi Plaza to defend the statue from potential vandalism and/or to prevent its removal. According to the situation report that the EOC issued that afternoon, it was anticipated that approximately 40 people would attend.<sup>41</sup> News reports indicate that at least two individuals present on June 13<sup>th</sup> were openly carrying firearms.<sup>42</sup> Police took no action to disperse the crowd. However, that

evening, the Captain of the 1<sup>st</sup> District, which encompasses Marconi Plaza, was recorded ordering an individual to leave the plaza and stop recording those gathered, even though that individual identified himself as a journalist.<sup>43</sup> One individual interviewed stated that she and her friend walked over to the plaza that evening to observe the scene. While she noted a police presence, she also noted that some of those present to defend the statue had baseball bats, and at least two openly carried large firearms. That night, her friend, who was of Asian descent, was verbally assaulted by the crowd. When she spoke to the police present about the incident, she was told to leave the area as the police perceived her presence and that of other counter-protesters as what was causing the violence.

This individual returned the next day and found that the crowds on both sides of the protest were larger, as was the police presence. She reported that an individual there to allegedly protect the statue reached over the police line and punched her friend in the face. When they sought assistance from the police, she and her friend were told that the police were unable to make an arrest that day. Rather, they were told that if they wanted to press charges they had to report the incident to the District Attorney's Office. While trying to leave the area, she reported that she was threatened in numerous ways. She and her friend were then surrounded by a group in the middle of the intersection of Broad and Oregon. Someone from the group burned her with a cigar, sprayed her hand with pepper spray, and sexually assaulted her as she tried to get away. One of her friends was dragged further into the intersection and in front of moving cars, while another friend was knocked to the ground where they were physically assaulted. She later had to seek medical treatment, as she suffered both a knee injury and an asthma attack as a result of the incident. Her friend who came to pick her up was punched in the face and then pepper-sprayed by a Columbus statue supporter. As a result, he suffered a broken nose.

From June 13<sup>th</sup> to June 15<sup>th</sup>, the Department deployed 50 to 250 police officers and other personnel to Marconi Plaza "each day in an effort to preserve public safety."<sup>44</sup> After the statue was covered with plywood on June 16<sup>th</sup>, the activity at the plaza subsided momentarily. On June 23<sup>rd</sup>, however, a group of protesters marched from Center City to Marconi Plaza. Approximately 100 predominantly White men who had gathered at the plaza and who, according to news reports and those interviewed, held baseball bats and hammers confronted the protesters. The Department deployed 700 police officers to Marconi Plaza that evening.<sup>45</sup> Yet, despite the heavy police presence, the gathering was not without violence. Video from the evening shows a White male who was a member of the group that had gathered to defend the statue repeatedly telling a Black man to "go away, boy," before punching the Black man in the face.<sup>46</sup> That individual was later criminally charged with assault. Two others were also arrested for charges that included harassment and simple assault that arose out of incidents that occurred that evening.<sup>47</sup>

Another video from the gathering that night shows a large fight that broke out between those who were there to defend the statue and those who marched in protest of the statue.<sup>48</sup> One individual interviewed who was present for the events that evening stated that when she tried to speak to police officers that night, no one would respond to her. She reported witnessing a young Black man attacked by about four or five members of the group. When the police intervened, the Black man who was attacked was the one who was arrested, not the men she witnessed initiate the fight.

According to police, from June 12 to June 23, 2020, as a result of events that occurred at Marconi Plaza, 36 incident reports were filed, five reports of simple assault were made, including the two referenced above.<sup>49</sup>

### **III. The Investigation's Major Findings**

The Investigation resulted in five major findings. First, the City failed to sufficiently plan for the protests and civil unrest that occurred in late May and early June. Second, a failure of leadership at the highest levels of key City departments/agencies, coupled with organizational deficiencies and personnel vacancies, affected the City's ability to plan for the protests and respond to the subsequent civil unrest. Third, the City failed to dedicate sufficient resources to its response to the protests and subsequent civil unrest. Fourth, the Department inappropriately utilized CS gas and other less-than-lethal munitions in its response on 52<sup>nd</sup> Street, I-676, and Kensington. Fifth, over the course of June and into the fall, there was continued inappropriate and inconsistent use of lethal and non-lethal force. We discuss each of these findings below in turn. Following these findings, the Report will provide recommendations that were developed from Ballard Spahr and ARI's review and analysis of the City's response to the events that occurred, as well as ARI's review of recognized best practices related to the handling of protests and civil unrest.

#### **A. The City Failed to Sufficiently Plan for the Protests and Civil Unrest**

The Investigation revealed that leadership of the key City departments and agencies charged with planning and responding to large protests and civil unrest (including, but not limited to, the leadership of the Department, OEM, and the Managing Director's Office) failed to exercise their duties in advance of the events that began on May 30<sup>th</sup> and continued through the early part of June. Indeed, this view was shared by City officials, including responding and commanding police officers both in interviews during the course of this Investigation and in incident reports prepared in the midst of and shortly after the period of civil unrest.

The former Managing Director took the position, both during his interview for this Investigation and publicly, that the City could not have prepared for the level of civil unrest that occurred. He stated during his interview that no community or city could have prepared for the type of unrest that the City experienced. He insisted that there was no way to plan for the unrest that occurred, and that the City did its best while things were unfolding.

The Police Commissioner initially shared this view, testifying on October 20, 2020 before City Council that there was "no playbook" or "reference" for what occurred in the city from May 30<sup>th</sup> forward.<sup>50</sup> During her interview in connection with this Investigation, however, she acknowledged that the City could have better planned for the events that occurred on May 30<sup>th</sup>.

The Police Commissioner further testified before City Council on October 20<sup>th</sup> that there "was no specific intelligence, specific to Philadelphia" that the unrest would be as violent and destructive as it was. However, she also acknowledged that "[w]e all know what was happening in other parts of the country."<sup>51</sup> Indeed, a review of media sources indicate that the events that occurred in Minneapolis beginning on May 26<sup>th</sup> were not unique to that city. Rather, by

Wednesday, May 27<sup>th</sup>, protests and civil unrest had occurred in at least three other large cities (Los Angeles, Chicago, and Memphis). In Los Angeles, the protesters gained access to and blocked the Route 101 Freeway.<sup>52</sup> Moreover, as discussed more fully below in Section III.A.2, there were indications from intelligence the Department did gather and from information that OEM and the DVIC circulated that there would be a significant impact upon Philadelphia.

The City has extensive experience planning for and responding to large gatherings and protests. Contrary to the Managing Director's assertion that there was no way to be prepared for this, and contrary to the Police Commissioner's testimony that "no playbook" existed for addressing the unrest that unfolded on May 30<sup>th</sup> and beyond, several witnesses, including individuals involved in the City's planning and response efforts expressly noted that the City's extensive experience provided exactly such a "playbook." It was not followed. Although Floyd's murder was widely reported by May 26<sup>th</sup>, and the particularly disruptive and violent responses to Floyd's murder in Minneapolis and beyond by May 27<sup>th</sup>, the City did not appear to begin its planning for potential demonstrations until May 29<sup>th</sup>, or for unrest until after it had already begun.

### **1. The City has Successfully Planned for Large Gatherings and Protests Prior to May 2020**

Over the past decade, the City of Philadelphia has had significant experience in planning for and maintaining peace during large gatherings, demonstrations, and protests. And, the City's responses have been consistently successful. City officials – both those from the Department and other City agencies – who were interviewed consistently noted that they considered Philadelphia a model for planning and policing large-scale public events, and they took pride in those experiences.

The Investigation revealed that there are three types of events for which the City has experience planning: (1) long-term pre-planned events, such as the Papal visit; (2) short-term planned events, such as the 2018 Eagles' victory night and parade; and (3) more spontaneous events, like previous protests of police-involved deaths of Black men in other cities, such as protests relating to the death of Michael Brown in Ferguson, Missouri or the death of Freddie Gray in Baltimore, Maryland.

The first two types of events are not exact comparators to the events that occurred in May and June 2020 because they allowed significant time for advance planning. Additionally, the tenor of these events was fundamentally different from the protests that occurred in May and June 2020, where people were angry and frustrated, and the focus of that anger and frustration was the police. Yet, these events did provide tactical and logistical guidance the City should have relied on when planning its response to the protests that began on May 30<sup>th</sup>. The Investigation revealed no evidence that the City did so.

#### **a. Long-Term Planned Events**

In September 2015, the City hosted the World Meeting of Families.<sup>53</sup> The event was "a weeklong triennial [C]atholic religious gathering" and was expected to draw up to 15,000 participants from around the world.<sup>54</sup> As part of the event, the Pope held a public outdoor mass

on the Benjamin Franklin Parkway. From a planning perspective, the City anticipated that attendance for this mass could top one million.

In advance of the World Meeting of Families and the Papal visit, the City engaged in extensive planning over a 15-month period. OEM played a central role in the planning process, as is evident by the numerous planning documents it issued that governed the City's response. For example, the City issued an overarching Incident Action Plan ("IAP"). The IAP considered known threats and hazards, including weather conditions and intelligence reports, which were gathered in part from the DVIC. DVIC social media analysts were responsible for monitoring social media platforms for threats, in coordination with local, state, and federal partners. The IAP also clearly delineated who had decision-making authority during the event. Pursuant to the IAP, "command and control" would be "exercised through a unified command," which included representatives from the City (the Mayor, his Chief of Staff, and the Police Commissioner), the United States Secret Service, FBI, and the World Meeting of Families.

OEM also issued a Tactical Incident Action Plan ("TIAP") that, for example, identified contact persons for each agency involved in this response, and identified the EOC as the "primary citywide situational awareness, operations coordination, and policymaking venue." The TIAP also set forth the intervals in which information would be communicated from the EOC during the event, as well as the content of each report. Planning considerations related to public transportation, parking, fueling of official vehicles, and medical care were also contained therein.

With regard to police staffing for the World Meeting of Families, Counter Terrorism Operations also created a document that outlined the resources it dedicated to the event. The document reflects that in advance of the Papal visit, the Department secured mutual aid support from three other counties, the PSP, and the New Jersey State police. The city was divided into 37 sectors, each of which was assigned a commander and officers. The Detective Bureau also issued a planning document that indicated that personnel and sites were dedicated for mass arrest processing. And for the headlining event, the Papal mass, which was scheduled for Sunday, September 27, 2015, the Department's staffing plans called for a significant police presence – 1,886 police officers, 42 corporals, 166 sergeants, and 45 lieutenants.

#### **b. Short-Term Planned Events**

The City also has significant recent experience planning for events and large gatherings with little lead time. For example, in 2018, the Department prepared for the possibility that the Philadelphia Eagles would win the Super Bowl. The City began its planning once it learned that the team had advanced to the championship game. As a result of the City's planning, the Homeland Security Bureau of the Department drafted Operational Orders. These orders clearly identified an incident commander and the objectives were clear: (1) "Ensure the safety of the public, emergency responders and police"; (2) "Protect the constitutional rights of all parties involved in the celebration"; (3) "Prevent the destruction of public and private property"; and (4) "Preserve peace and order." Citing Department Directive 10.1, officers were directed to utilize "only the minimal amount of force necessary to protect the officer and/or effect the arrest."

Planning documents identified hot spots in the city where officers would be deployed, and it detailed the nature of the deployment. One Commanding Officer interviewed explained that the Department analyzed prior events to create these plans and forecast where police presence might be required. For example, where they anticipated that individuals might set cars on fire or engage in vandalism, a commanding officer would coordinate with the appropriate division to ensure that they were properly staffed and had enough resources. Additionally, as part of the Department's response, teams of officers were deployed to take high-ground positions through businesses along the hot spots identified.

The Department also issued patrol operations orders that further outlined the planned response. These plans called for the deployment of 1,015 officers and an additional 138 officers on bicycles. RDOs were canceled for several units. In addition, command posts were established at eight different locations throughout the city, as were roll call locations for officers reporting for duty. Traffic boxes were established to limit the flow of traffic into key locations. And, the orders identified "flashpoint locations" to which officers were assigned. Thirty-eight sanitation vehicles were also deployed to three key locations to be used as blocking vehicles at various intersections.

Department after action reports from the day of the parade illustrate that the officers on the ground believed that even though planning had occurred, there were ways in which the Department's response could be improved for future events. For example, a Commanding Officer noted that "[t]he use of mounted operations should be standard on all Parkway operations." Counter Terrorism Operations' Commanding Officer wrote in another after action report that "[o]verall, the detail went very well with only a couple exceptions." He noted that there were communications issues during the detail due to "poor cell service and the utilization of one radio band" for the event. He recommended that for future events, the Department should utilize multiple radio bands, each with clearly defined functions.

### **c. Spontaneous Events, Including Protests Related to Police-Involved Deaths**

In recent years, there have been at least two instances when protesters gathered to protest police-involved deaths of Black men. The first occurred in August 2014, when a Ferguson police officer killed Michael Brown, an unarmed 18-year-old Black man. The second occurred when Freddie Gray, a 25-year-old Black man, died in Baltimore Police custody in April 2015. According to one Commanding Officer interviewed, the City had a standard response to these types of protests. Prior to implementing the response, there were several in-person briefings to plan and coordinate. The Department then deployed police officers on bicycles to Center City. This Commanding Officer could not recall the City having had major issues in the past. A Lieutenant similarly recalled participating in meetings to discuss what resources were needed to adequately respond to these protests. Absent a meeting, the Inspector of Homeland Security would direct his Sergeant to request and obtain the necessary resources for the Department's response from this Lieutenant.

The City also has experience putting contingency plans in place. For example, in November 2014, in advance of a potential announcement from a grand jury in Ferguson regarding whether the officer involved in Brown's death would face charges, the Department

drafted contingency plans. Listed first under the “General Orders” section, the plans directed in bold and capital letters that “**ALL PERSONNEL WILL MAINTAIN A PROFESSIONAL DEMEANOR AT ALL TIMES.**” The plans also considered the potential risks to and impacts upon businesses, directing officers to ensure a commander was “**IMMEDIATELY NOTIFIED** of any incidents involving businesses on Broad Street within the 22<sup>nd</sup> District.” Additionally, several businesses were proactively contacted and asked to close. The orders further indicated that the Department of Licenses and Inspections “will be contacted to help close [businesses] if emergency conditions exist.”

## **2. The Severity of the Civil Unrest that Occurred in Other Cities in Response to Floyd’s Murder Was Widely-Reported as Early as May 26<sup>th</sup>**

In the days after Floyd’s murder, it was apparent that the protests that erupted in response were more violent and disruptive than those in the recent past. And, those protests were not limited to Minnesota. In fact, a number of the commanding officers interviewed noted that almost immediately after Floyd’s murder, they became aware not only of the unrest that occurred in Minneapolis and elsewhere, but also concerned about the impact that it might have upon Philadelphia. OEM’s Regional Integration Center (“RIC”) issued a Daily Situation Awareness Report (“DSAR”) at 6:00 a.m. on May 27<sup>th</sup> that highlighted the protests in Minneapolis the night before. That report cited under “Regional Intelligence” a news report entitled “‘It’s real Ugly’: Protesters Clash with Minneapolis Police After George Floyd’s Death.” It further reported that there “was chaos and destruction in Minneapolis Tuesday night as police officers and protesters clashed over the death of George Floyd.” And, with regard to the size of that protest, the DSAR noted that “thousands” were in attendance.

The City of Philadelphia relies in part upon the DVIC to provide intelligence to the Department. The DVIC supports the five-county region and reviews local, regional, national, and global incidents in an attempt to determine the impact that those events might have upon the region. A Commanding Officer noted that in the days leading up to the protests, the Department sought all available intelligence from the DVIC. The DVIC’s Commanding Officer noted that his unit first began to hear “chatter” about civil unrest occurring in other cities on May 26<sup>th</sup>. In the days after Floyd was murdered, DVIC’s Commanding Officer reports that the unit was sending out daily briefs about what they were seeing in other cities and the events that were scheduled to occur that weekend in Philadelphia.<sup>55</sup> For example, on May 28<sup>th</sup>, the DVIC issued a report to officers indicating that there were “increased threats towards law enforcement following the national coverage of a Minneapolis in-custody death.” That report stated that there had also been “calls for looting and acts of civil disobedience.” As the numbers of individuals interested in attending the protests scheduled for May 30<sup>th</sup> in Philadelphia began to increase, DVIC’s Commanding Officer reports that he and his team were “sounding an alarm” that the threats to Philadelphia were significant and that additional resources would be needed to sufficiently respond.

A number of the commanding officers interviewed stated that they became personally aware of the unrest occurring in other cities in the days leading up to May 30<sup>th</sup>. Each one commented that they believed that there was a potential that such unrest would occur in Philadelphia. One even noted that as he began to see unrest occur in New York City, he grew

more concerned that the unrest was getting closer geographically to the city, and thus, was becoming more likely to occur. The Police Commissioner noted that her “radar went up” on May 29<sup>th</sup> when she saw the protests and unrest that occurred in Atlanta that night. As a result, she began to send text messages to members of her command to better understand what was being done to prevent a similar level of unrest in Philadelphia. She was told that there were plans in place. However, she reported that the general belief among the command staff was that the type of civil unrest experienced in other cities did not and would not occur in Philadelphia.

In the absence of strong leadership and direction, which resulted in a lack of City-wide planning, individual commanding officers began to take informal steps to prepare for potential unrest within the city. For example, in the days before May 30<sup>th</sup>, one Commanding Officer recalls having a conversation with a fellow Commanding Officer regarding the potential for large protests in Philadelphia following Floyd’s murder. He was particularly concerned with ensuring that police stations were adequately protected after seeing that protesters had targeted police stations in other cities. Therefore, the Commanding Officer spoke to all six of his captains to determine how they were going to protect their stations, and whether there was a need for additional equipment or personnel to do so. He also held a virtual meeting with his captains to discuss their plans.

The Fire Commissioner and OEM Director noted that he became instantly aware of the potential that civil unrest could occur in the city as soon as he saw the video of Floyd’s murder on May 26<sup>th</sup>. That week, he participated in daily telephone calls with the UCG that were scheduled to discuss the City’s response to the COVID-19 pandemic. He recalls that during each of the calls after Floyd’s murder, but before May 30<sup>th</sup>, the group discussed the potential for unrest to occur in Philadelphia. He could not, however, recall the contents of these conversations. Additionally, despite being the OEM Director, he noted that he deferred to the Department to determine when additional resources were necessary and if and when the EOC should be activated to coordinate the City’s response to protests. Given that the Department had not requested such support from OEM, the Fire Commissioner/OEM Director left the city prior to May 30<sup>th</sup> to travel out of state.

As discussed later in the report, this approach to defer to the Department about whether to activate the EOC stands in contrast to how OEM was run previously (prior to 2018) when its director was empowered to make a recommendation to City leadership regarding whether the EOC should be activated, and it was rare for this request to be denied.

### **3. Formal Planning for the May 30<sup>th</sup> Protest Seemingly did not Begin until May 29<sup>th</sup>**

Despite reports of widespread unrest in other cities, including as close as New York City, the City failed to utilize its advance warning to craft preventative plans. The first reported meeting to discuss the City’s planned response occurred on May 29, 2020 – the day before the first planned large-scale protest. That day, a Chief Inspector called a meeting at SWAT headquarters to discuss preparations for the protests scheduled for the next day. Four commanding officers attended, according to the Captain of Civil Affairs. The group discussed the Department’s planned response to the protests. While it was unclear to this group how many people were planning to attend the demonstration, the Commanding Officer interviewed noted

that the group decided to approach the event as if anything was possible. To that end, the Commanding Officer noted that the Department pulled resources from various units within the Department as part of the planned response.

On May 29, 2020, the Department began to craft formal operational orders documenting its course of action for the protest planned for May 30, 2020 by “members of the ‘Philly BLM’” for a “George Floyd Protest” at City Hall.<sup>56</sup> The orders set forth an overarching plan for the Department’s response to the planned protest. While failing to include plans for various divisions commonly deployed to a large event response, as reflected in operations plans created for prior large events, the operations plans did set forth specific strategic plans for the following divisions: Specialized Operations/Aviation, the Bomb Disposal Unit, Civil Affairs, Counter Terrorism Operations, SWAT, and the Patrol Unit.

While the orders note that the number of participants were initially unknown, they nevertheless identify certain risks: “[d]ue to current events around the United States related to this event, several cities have seen violent acts of civil unrest in the form of arson, looting, and assaults.” The Department’s objectives were to: “(a) Ensure the safety of the public and emergency responders; (b) Protect the constitutional rights of all parties involved in the event; (c) Prevent the destruction of public and private property; [and] (d) Preserve peace and order.” The orders also provided for the use of only “the minimal amount of force necessary to protect the officer and/or effect the arrest.”

The Aviation Unit’s orders directed it to provide aerial surveillance to allow for “monitoring for crowds, traffic control, and surveillance of suspicious vehicle movements” beginning at approximately 11:00 a.m. on May 30, 2020.

Noting that “[t]here are comments posted on the social media page [for the event] that indicate civil disobedience at this protest,” the Counter Terrorism Operations detail directed that a “Civil Disorder Package will be deployed by Chief Inspector.” Additionally, “the decision to deploy MIRT FIELD FORCE<sup>57</sup> in Civil Disorder Personal Protective Equipment will be made by Chief Inspector, Narcotic Bureau (C-6) after consultation with pertinent Deputy Commissioner.”

The SWAT plan directed units to be staged near the Convention Center by 11:00 a.m. equipped with helmets, gas masks, and all tactical equipment.<sup>58</sup> A Lieutenant interviewed recalled that he received a request to deploy officers on bicycles to the May 30<sup>th</sup> protest. He does not recall, however, when that request was made. Ultimately, plans were made to deploy a total of 69 bicycle patrol officers on May 30<sup>th</sup> to the protest along with, six sergeants, three lieutenants and one staff inspector.<sup>59</sup> These staffing levels appear to be significantly lower than those established for other large gatherings such as the Super Bowl Parade, to which 138 officers on bicycles were deployed. And, unlike in prior protests to police-involved deaths, teams of officers used to prevent looting were not initially deployed. At least one Commanding Officer interviewed noted that such teams are typically deployed to areas that are prone to looting, and were previously a standard part of the Department’s planned response to large protests. However, these teams were not deployed until June 1<sup>st</sup>, after unrest and looting had commenced.

Additionally, it does not appear that the Department took steps to identify potential hot spots in advance of the May 30<sup>th</sup> protest, as it had previously done with other events. Nor were officers deployed to high-ground locations along hot spots on May 30<sup>th</sup> or at any time after the unrest occurred, in contrast to past large events. Moreover, initially the Department did not plan to use the Mounted or Marine Units in its response. As one officer noted in an after action report for the Super Bowl parade, the “use of mounted operations should be standard on all Parkway operations.” Previously, the Mounted Unit had been deployed as part of the Department’s response to protests and other large gatherings. Thirteen horses were deployed, for example, to a political protest on November 10, 2016 that the Department anticipated would draw approximately 2,000 people. Yet, as of May 29<sup>th</sup>, even with 3 days of increasingly violent and destructive gatherings occurring in other cities, the Deputy Commissioner of Special Operations did not plan to deploy the Mounted Unit. In fact, it was only after seeing the way in which other cities were impacted by protests and looting during the night of May 29<sup>th</sup> that the Deputy Commissioner chose to deploy this unit and the Marine Unit. Describing the City’s planning for May 30<sup>th</sup>, he noted “[i]n hindsight, a citywide local, Federal and military deployment was needed to try to suppress what was encountered during the first few days of this protest.”

In the afternoon of May 29<sup>th</sup>, OEM proactively reached out to the Department to ask whether it required EOC support for the protests the next day. The EOC is by all accounts the “nerve center” of the City’s operational response to any emergency or mass event. It is where all responding agencies are able to gather, facilitating a greater level of communication and coordination during the City’s response to any incident. As of 2:42 p.m. that afternoon – the day before the mass looting that occurred in Center City – the Department notified OEM that it planned to deploy approximately 30 police officers to the May 30<sup>th</sup> protest.<sup>60</sup> The Department also notified OEM that it did not require EOC activation. That same day, a Traffic Lieutenant from the Department reached out to the PSP to advise that there were protests planned in the city for the following day. According to that Lieutenant, the Department believed that it had sufficient resources available such that it did not anticipate needing assistance from the PSP. And, as of May 29<sup>th</sup>, RDOs were not canceled.

The Police Commissioner reported that she did not see the operational orders for May 30<sup>th</sup> until early that morning. She described them as “barebones” in that they failed to reflect adequate resourcing for the expected protests. She immediately directed her command to activate the EOC and to work to get additional officers and resources to report for duty. She also directed her command to obtain additional support from the PSP. It is important to note that OEM asked the Department on May 29<sup>th</sup> whether the EOC should be activated and was told “no.” In addition, on May 29<sup>th</sup>, the Department told the PSP that it would not need assistance.

#### **4. After Action Reports Reflect City’s Lack of Planning**

The City produced a number of the after action reports created by various units and officers involved in the City’s response. These reports provide candid insight regarding the preparations and planning that preceded the City’s response to the civil unrest. These reports demonstrate that those who were in the field believed that advanced planning was not only possible but necessary, and the lack thereof had an outsized impact upon the City’s response. For example, one Inspector noted in an after action report he drafted that prior to May 30<sup>th</sup> “[i]t was apparent that riots in Center City would spread to neighborhoods.” He noted that he

“requested RDOs be canceled but it was not being considered at that time.”<sup>61</sup> He further opined that because “Philadelphia is a city of neighborhoods and each division has different priorities, the decision to cancel RDO’s [sic] should have been made on recommendation of Commanders in that respective division.” During his interview, this Inspector noted that RDOs were eventually canceled, but by the time this action was taken, it was very difficult to get officers to respond to requests that they report to assist in the City’s response. This Inspector was not alone in his belief that RDOs should have been canceled. Rather, another Commanding Officer interviewed shared this belief and noted that a number of the commanders had similarly requested that RDOs be canceled early during the unrest.

In another example, the Captain of Civil Affairs stated in an after action report that “[d]ue to the unrest and rioting throughout the United States which proceeded [sic] 5/30/20, the Philadelphia Police Department should have recognized the danger and high likely hood [sic] of this occurring in our city.” He also recommended that the City devote more “manpower, equipment, and resources” to such events in the future. When asked about this statement during his interview, the Captain noted that the Department did not anticipate that this type of violence and property damage would occur within Philadelphia.

The Commanding Officer of Counter Terrorism Operations echoed these and other similar assessments of the City’s planning in an after action report that included observations from all supervisors on the detail:

There was enough intelligence throughout open source media on what was happening throughout the country regarding riots. The approach taken to planning for this detail completely underestimated what was going to happen and left us woefully underprepared. Had we been better prepared, we would not have lost the city the way we did.

Another officer agreed with this assessment, noting under the “planning” section of his after action report: “Was there any? Department appeared completely unprepared, despite violent protests and rioting in Minneapolis, St. Paul, Portland, Seattle and Atlanta, prior to scheduled protest.”

In a separate after action report, another Commanding Officer agreed with the need to ensure that appropriate resources were available to the Department when responding to potential unrest, noting:

By Thursday, 5/28/20, Los Angeles, New York, Minneapolis, Washington DC and Atlanta had already experienced serious civil unrest. It was likely foreseeable that Philadelphia would not escape such outcomes. Earlier mobilization of resources and assets is recommended when events (such as violence and civil unrest) in one locality clearly have a nationwide effect. The cities of Detroit and Miami, with personnel and equipment in place, along with adequate supervision for officers, gave clear direction to act immediately as soon as individuals’ actions turned violent.

Immediate police intervention resulted in minimal violence, damage, looting and unrest in those cities.

The after action reports also reflect how the lack of a clear command structure impeded the City's response. A Captain noted that there were "too many commanders trying to be in charge and giving orders to do the same thing at the same place but in different ways." He opined: "[t]here needs to be one designated commander . . . [who] needs to let the subject matter expert know what they want . . . and let that expert plan and carry out the movement." This lack of coordination placed the Major Incident Response Team ("MIRT") officers in danger, according to this Captain, as after following the orders of a Commanding Officer, the team "became cut off from the rest of the MIRT and bike teams, and were eventually isolated by the protesters. They used the bike rack barricades to build a wall around us, trying to trap us" while the officers were "hit with various objects." He concluded that the Department was understaffed, unprepared, and seemed not to have an actionable plan to deal with the number of protesters and violence. Another officer agreed that there was a lack of coordination in the Department's response, stating that he "didn't know who [he] was reporting to" on May 30<sup>th</sup>. This officer concluded that the officers responding to the unrest were "totally outnumbered and underequipped in terms of gas masks, shields and other equipment necessary for riot suppression."<sup>62</sup> In this regard, the City clearly failed to utilize its vast experience with prior large events by relying on those existing plans as templates for establishing an effective command structure.

The PSP also expressed concern regarding the lack of advanced planning. The City's initial declination of PSP assistance on May 29<sup>th</sup>, followed by its emergency call for substantial PSP support on May 30<sup>th</sup>, further demonstrates its failure to recognize the severity of the unrest it would face. The lack of advanced planning and communication led to ambiguity regarding the PSP's role, specifically with regard to protecting the highway.<sup>63</sup> Additionally, because both the Department and the EOC were making simultaneous requests for support, there was further ambiguity regarding what PSP support was needed. (The requests from the EOC were, according to the PSP, for orders of magnitudes greater than those that came directly from the Department.) This not only created confusion, according to the PSP, but also unnecessarily delayed decision-making. Thus, those in the field including both Department personnel and the PSP agreed that the Department's planning efforts were insufficient for May 30, 2020.

##### **5. Due to the Lack of Advanced Planning, the Department had to Coordinate its Response as the Protests and Unrest Evolved in Real Time**

Given the events that occurred overnight in other cities, by the morning of May 30<sup>th</sup>, it was apparent to the Department that additional resources above those originally allocated would be necessary. In addition, as detailed earlier, according to the Police Commissioner, she first saw the operational orders for May 30<sup>th</sup> the morning of May 30<sup>th</sup> and found them to be lacking.

As a result, at approximately 7:30 a.m. that morning, a Department Lieutenant called an OEM official to request that OEM activate the EOC by 11:00 a.m. "to coordinate public safety support in response to planned protest activity against the death of George Floyd."<sup>64</sup> The EOC provided the location for the agencies involved in coordinating a response to the protests to

gather. By the afternoon of May 30<sup>th</sup>, the City's Unified Command Group ("UCG")<sup>65</sup> was formed.

Several commanding officers noted that because the City failed to plan for increased officer needs in advance, it encountered significant logistical issues scaling up its response as events unfolded. A Commanding Officer attempted to recall officers who were off duty either because they were on vacation or on an RDO by directing officers within her command to request that they recall officers within their units. She estimated that only 20-30% of police officers actually responded to the request on May 30<sup>th</sup>. Some were away from the city for the Memorial Day holiday and could not be physically present. Others simply did not respond to the calls because they are not required to answer their phones when off-duty.

In addition to staffing challenges, the lack of pre-planning impeded the City's implementation of response strategies. For example, one Commanding Officer who responded to a request to report late on May 30<sup>th</sup> was deployed into the field by 9:00 p.m. to coordinate part of the City's operational response. In that role, he used officers who were deployed to Center City from the 2<sup>nd</sup> District (Northeast Philadelphia) to put in place a makeshift traffic box to prevent cars and people from entering the commercial corridors in the Rittenhouse Square area to engage in looting. He used whatever resources he received to establish a clear police presence in the area. At the same time, in a separate location, a Chief Inspector also worked to create a similar traffic box to prevent the looting. These successful tactics had been pre-emptively employed in prior large events in a strategically thoughtful and coordinated manner. Yet, here, the City failed to include establishing traffic boxes in advance of the protests to prevent unrest, and officers were left to establish them in real time on an ad hoc basis.

## **6. The City's Failure to Plan had a Negative Impact upon the City's Residents and Businesses**

Numerous locations throughout the city sustained significant damage in connection with the civil unrest beginning on May 30<sup>th</sup>. Although the unrest presented unique challenges, it is likely that its effects could have been mitigated or diminished had the City more effectively implemented contingency planning in the days leading up to the first large-scale protests.

One individual interviewed noted that when she walked through the Rittenhouse Shopping district at 6:30 am on May 31<sup>st</sup>, she observed continued active looting of local businesses. Police were not present to stop the looting. In addition, the commercial corridor was heavily vandalized, as demonstrated through photographs depicting the area on the night of May 30<sup>th</sup>. The unrest incurred not only damage-related costs on business owners and residents, but also costs to prevent further destruction. One business owner interviewed noted that after the civil unrest, the company paid to have its storefront boarded up, and hired private security to assist both in the days that followed the initial unrest in May and June, and also in response to civil unrest that occurred later in the fall. The company made this decision to deter further acts of violence that were not previously prevented by the police.

The damage to the city goes beyond the damage incurred to physical property. For example, a hotel general manager interviewed noted that while she could quantify the physical damage that her business had sustained from the civil unrest, it was impossible to quantify the

amount of lost business. This sentiment was shared by a real estate developer interviewed who is currently developing a high-end residential building in the area in which the civil unrest occurred. He noted that buyers have expressed hesitance to move into the city after these incidents. The perception among his potential buyers is that the area is no longer safe given what happened and that the City's response was inadequate.

Another individual, a Rittenhouse Square resident, noted that the impact of the civil unrest was apparent in the two to three weeks after May 30<sup>th</sup>, as Rittenhouse Square was a "complete ghost town." She was disappointed by the lack of communication from the City or police in advance of the planned protest. The day after the looting, she wrote to a City official to express her concerns and disappointment. He responded:

Police were present at City Hall and MSB and had trouble accessing Walnut Street. We also faced numerous issues scattered throughout the City, not just in Rittenhouse Square or in Center City. Unfortunately, severely outnumbered at times and for their own safety, police found it difficult to interfere in some of the looting activity. Even with precautions, we had a number of officers injured – including one that was run over trying to intervene in looting activity. We had as many officers we could pull on duty as well as support from the State Police and the surrounding counties.

Please help us remind people that most major cities in the country faced similar issues – it was not for lack of effort on the Police Department's part but for an unmanageable situation.

Today, we're doing everything we can – we have pulled in as many resources as we can, including the National Guard. And despite these efforts, we're still going to have looting, vandalism and violence.

We appreciate and understand the impact that these activities have had on our residents and businesses. We will do everything we can to protect our communities but these are incredibly challenging times.

Thus, the failure to plan for these events had an impact on the City, its residents, businesses, and its reputation.

**B. Failure of Leadership at the Highest Levels of Key City Departments/Agencies, Coupled with Organizational Deficiencies and Personnel Vacancies, Affected the City's Ability to Plan for the Protests and Respond to the Subsequent Unrest**

Two entities that have historically played a key role in the City's response to large gatherings, protests, and demonstrations are OEM and the Department. Both have recently experienced changes that appear to have impacted the City's response to the civil unrest that

occurred in Philadelphia in the days following Floyd’s murder. First, in 2018, the former head of OEM left the City and the administration made the decision to not fill this position with an independent head, but instead give this role to the Fire Commissioner and have him assume both roles. Thus, OEM transitioned from being a standalone office with an independent director under the Managing Director’s Office to being an office within the Fire Department, reporting to the Fire Commissioner in his dual role as OEM Director.<sup>66</sup> Second, in March 2020, the Police Commissioner promoted the Chief Inspector of Homeland Security, who historically had the responsibility for planning for large protests and gatherings in the city, to the role of deputy commissioner. The position of chief inspector of homeland security remained vacant from March through mid-June 2020. We will discuss the implications of these two structural and personnel issues below.

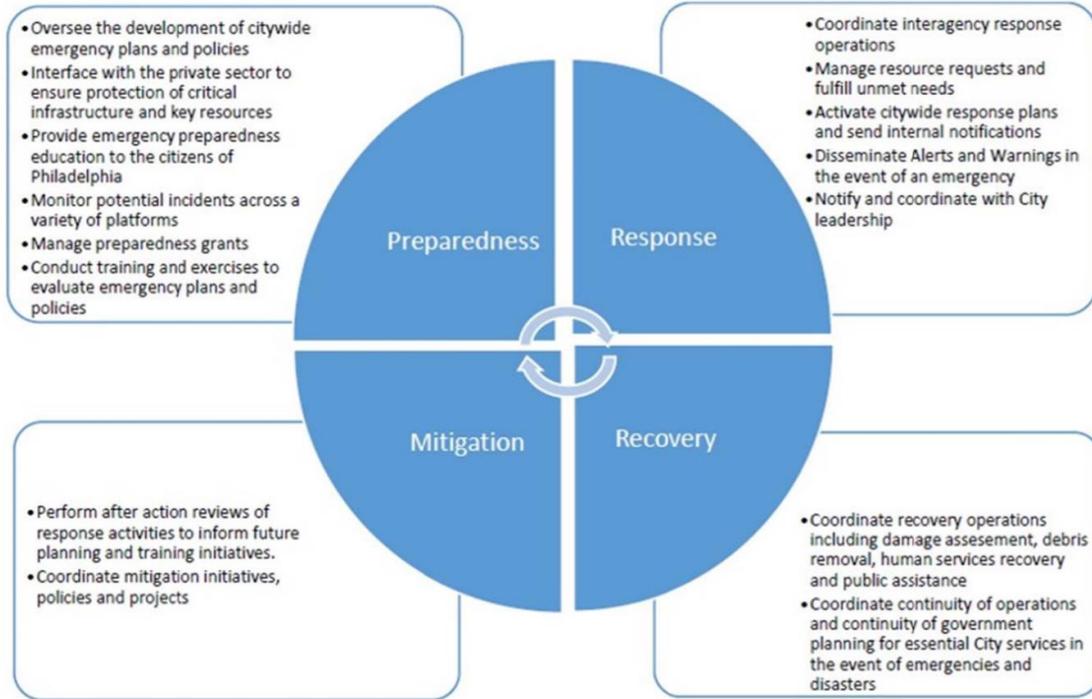
### **1. The Lack of an Independent OEM may have Played a Role in the City’s Response**

In 2006, then-Mayor John F. Street authorized a new position charged with fulfilling emergency management duties for the City: the deputy managing director for emergency management.<sup>67</sup> The deputy managing director led OEM, which “is responsible for ensuring the readiness of the City of Philadelphia for any kind of emergency.”<sup>68</sup> In 2015, then-Mayor Michael Nutter adopted OEM’s 2015 Emergency Operations Plan (“EOP”) “as the emergency management doctrine of the City of Philadelphia.”<sup>69</sup> According to the EOP, “OEM’s mission is to focus people, plans, and programs to promote a prepared and resilient Philadelphia.”<sup>70</sup> OEM has been and continues to be majority-funded by grants from both the City and other state and federal agencies. Today, OEM is comprised of 42 full-time employees divided among two divisions: planning and operations.

OEM plays a central role in preparing and coordinating the City’s response to disasters and emergencies, such as the civil unrest that occurred in May and June. In addition to aiding the coordination of efforts among agencies involved in the City’s response to an incident, OEM is also tasked with considering second and third-level implications of a planned response. For example, if a planned result is likely to have a negative impact upon a certain sector, it is OEM’s role to advocate for that sector and suggest a deployment of resources in a manner that would avoid that negative impact. The EOP itself contemplates this role, as is evident from the graphic below.

**Figure A: The Role of OEM in All Phases of an Incident**

The following table outlines the various roles that OEM undertakes throughout the phases of an emergency incident.



To be clear, while the EOP outlines the role that OEM plays in responding to emergencies and other large events that occur within the city, it also outlines the role that other key City officials are to play. The Mayor is at the helm as, according to the EOP, “[t]he Mayor, acting through the Deputy Mayor for Public Safety and Director of Public Safety, is *responsible for overall management of incidents affecting public welfare.*”<sup>71</sup> Thus, pursuant to the EOP, the ultimate responsibility for any City response lies with the Mayor.

The City’s response to emergencies and other large events is coordinated from the EOC, “the City’s primary venue for interagency coordination and decision making.”<sup>72</sup> It is staffed by liaisons from various state, federal, and City agencies. One OEM Deputy Director interviewed described the EOC as the “nerve center that supports, but does not direct, what is going on in the streets.” In the EOC, each agency that is participating in the City’s response to an incident is provided a literal seat, providing agencies with a location to interact in person to coordinate the City’s response. The EOC also serves as the central communications post for internal and public messaging during emergencies.

**a. OEM’s Role in the City’s Response to the Protests and Civil Unrest in May and June 2020**

On May 30<sup>th</sup>, only hours before the protests were set to begin, the Department requested that OEM activate the EOC in advance of the planned protests. The OEM activated the EOC at 11:00 a.m. that morning “to coordinate public safety support in response to planned protest activity against the death of George Floyd.” It should be noted that OEM proactively reached

out to the Department on May 29<sup>th</sup> to ask whether it required EOC support for the protests the next day. However, the Department notified OEM that it did not require EOC activation.

While OEM may not direct the City's response, as the author of the EOP, it is central to ensuring that the policies and procedures that govern the City's response are adequate and up-to-date. And, although the office does not direct the City's tactical response with regard to civil unrest and/or protests, it does provide the physical room for the coordination of the response – the EOC – and advocates for sectors that might be negatively impacted by a planned result.

**b. OEM's Current Director Views the Office's Role in a More Limited Fashion, which May Have Contributed to A Lack of Leadership in Planning for the Protests and Subsequent Unrest**

Although the EOP contemplates that OEM will play a central role in coordinating the City's response to emergencies and other large incidents, OEM's current Director views the office's role in a more limited fashion, which may have contributed to the lack of leadership exhibited in planning for the civil unrest. For example, when asked whether OEM would have the ability to activate the EOC in advance of May 30<sup>th</sup>, he noted that because the protests and civil unrest were "law enforcement events," the decision to activate would lie with law enforcement, not OEM. This suggests that in its current structure and under its current leadership, OEM lacks the independent leadership necessary to take a proactive stance in the City's response to incidents or to independently advocate for a course of action. Previously, when OEM was an independent entity, its director was empowered to make a recommendation to City leadership regarding whether the EOC should be activated. It was rare for such a request to be denied. Given the need to have a high level of coordination for the City's response to future large protests or instances of civil unrest among other varied City emergencies, OEM should be returned to its previous status as a stand-alone agency with an independent director to ensure that leadership exists in this function.<sup>73</sup>

**2. The Lack of an Inspector of Homeland Security in Late May 2020 had an Outsized Impact upon the City's Ability to Plan for the Protests and Civil Unrest**

The Department was responsible for the tactical and operational response to the protests and civil unrest that occurred in May and June 2020. The Investigation revealed that historically, the role of the inspector of homeland security was key to planning and implementing such a response to prior large protests and incidents of civil unrest. On behalf of the Department, this position is responsible for working with state and federal agencies to ensure that the city is protected while not impeding permissible First Amendment activity. This position supervises the Department's special units, including among others, SWAT, Counter Terrorism Operations, the Bomb Squad, the K-9 Unit, Highway Patrol, the Mounted Unit, and the Marine Unit. This role is also tasked with planning the Department's response to events, including, but not limited to, large protests.

Numerous individuals interviewed from both within the Department and OEM noted the central role that this position has historically played in terms of developing and coordinating a

planned response to large events. This role was particularly instrumental in planning and responding to events that occurred in the city prior to 2018, including protests that occurred in response to the deaths of Michael Brown and Freddie Gray. It was also heavily involved in the City's planning for three other large events – the Papal visit (2015), the Democratic National Convention (2016), and the Eagles' 2018 Super Bowl victory and the subsequent parade. According to those interviewed, the individual who occupied this role prior to 2018 took a particularly proactive stance toward coordinating resources and contingency planning to avoid potential instances of civil unrest.

In May and June 2020, however, the position of inspector of homeland security was vacant, as its previous occupant had been promoted to the rank of deputy commissioner by the Police Commissioner in March 2020. During the at-issue time period, the historical functions of the position were fulfilled by the Deputy Commissioner of Special Operations. This individual was tasked with planning and implementing the City's response to the planned protest on May 30<sup>th</sup> and the subsequent unrest, while simultaneously fulfilling the other duties associated with his position. Thus, the duties that the inspector of homeland security were expected to carry out were not handled by a single individual solely dedicated to the role.

Members of the Department noted that this had an effect upon the Department's pre-planning and early response to the protests and subsequent civil unrest. For example, in an after action report for May 30<sup>th</sup>, one Commanding Officer noted that “[t]he current vacancy in the Chief Inspector of Homeland Security position proved to be detrimental and came at the worst possible time.” Another Commanding Officer interviewed agreed, noting that without someone in that position, there was no one to advocate for what additional resources were necessary based upon that individual's previous experiences responding to similar protests. A third Commanding Officer agreed, noting that any vacancy can cause a delay to a police response, as it means that there is no one in the position to fulfill the position's duties quickly when an issue arises. Rather, an individual who is already responsible for another tactical response or operational role must take action to cover for the vacancy, which takes time.

The Police Commissioner acknowledged that in May 2020, the inspector of homeland security position was vacant. She referred to the vacancy as untimely, and attributed it in part to her recent arrival to the Department and the time consuming process of filling out her command staff. While the decision to leave the position vacant was not intentional, it nevertheless resulted from her promoting the individual who had been in that role without contemporaneously filling the role.

As noted above, in the days leading up to the May 30<sup>th</sup> protests, the Deputy Commissioner for Special Operations was responsible for planning the Department's response. However, as the severity of the unrest became clear, and as the unrest continued over the course of almost a week, another Deputy Commissioner who had previously served as the inspector of homeland security began to play a greater role in the planning and operational response, and ultimately the two Deputy Commissioners split the duties. However, both Deputy Commissioners were fulfilling these roles while maintaining their other primary duties and responsibilities.

Thus, to avoid any delay in future planning for large protests or other events that might devolve into civil unrest, the Department should ensure that all key positions, and most notably that of the inspector of homeland security, are filled. And with regard to the inspector of homeland security specifically, the City should ensure that a designated official with the experience and skill set to carry out the functions of this position is identified at all times.

**C. The City Initially Failed to Dedicate Sufficient Resources to Its Response to the Protests and Civil Unrest**

The Investigation revealed that the City's planning for the initial protests on May 30<sup>th</sup> was also poorly coordinated. As a result, insufficient resources were allocated to the City's response. In fact, according to one Commanding Officer, it was "common knowledge," within the Department that the planned detail for May 30<sup>th</sup> was not going to be sufficient.

As a threshold matter, the Department had a number of officers who were unable to participate in its response to the protests on May 30<sup>th</sup> because of COVID-19. Others interviewed suggested that there was a sense among the Department and City officials generally that the city would not be impacted in the way that other cities were. Some attributed this belief to the relative success that the City has had in recent years in avoiding civil unrest after other police-involved deaths. Several commanding officers attributed the previous success to "luck" and not to the City's planning or implementation of its responses. Others explained that the City's failure to follow the "playbook" developed from these prior successes significantly contributed to the extensive unrest.

**1. The Department was Understaffed on May 30<sup>th</sup>**

The City's staffing deficiencies were apparent by the evening of May 30<sup>th</sup>. At 4:55 p.m., OEM submitted to surrounding counties a request for mutual aid. In that request, OEM sought "MIRT and/or Law Enforcement forces with proper PPE for demonstration activities to report to the City of Philadelphia ASAP." Over the course of the weekend, police records indicate that 130 officers reported from Abington Township, Bucks County, Lackawanna Township, Montgomery County, SEPTA, and the PSP. And, as noted above, given the failure to cancel RDOs in advance of the protests, once it was apparent that the Department needed to expand its response, getting officers to report to duty was extraordinarily difficult.

That the Department failed to devote an adequate number of officers to the May 30<sup>th</sup> protests is further evident from the massive destruction that occurred to numerous commercial corridors in the city on Saturday night. Commanding officers who responded to requests to report amid the unrest culled together a response with whatever resources they could find in the field. For example, the Chief Inspector who coordinated a traffic box to help curb the looting did so using officers he happened to encounter on the streets whom he knew from previous experiences in their district.

The City also lacked sufficient transportation or manpower to arrest looters. For example, one Commanding Officer reported that when officers detained 2-3 people at 18<sup>th</sup> and Chestnut Streets for looting, they had to wait for over an hour for assistance to transport them to the 22<sup>nd</sup> District for processing. Where transportation was available, those detained were taken

for processing. The process, however, was disorganized, as there were no procedures in place to clearly identify from where the individuals were being transported or who the arresting officer was. Thus, it is not clear whether all of those who were arrested were actually charged, or if they were, whether sufficient evidence was preserved to sustain the charges.

Moreover, according to one Chief Inspector, the widespread nature of the unrest made making arrests logistically challenging. For instance, each arrest required two officers to detain and process the arrestee. That, in turn, removed two officers from a substantially undermanned force on the ground. Thus, to address looting while preserving manpower, some officers merely interrupted individual looters and permitted them to leave the area if they left behind stolen merchandise. Civilian witnesses observed and characterized this approach as a “hands-off” approach to the looting on May 30<sup>th</sup>. Crime statistics compiled by and obtained from the Center City District (“CCD”) bear out that Center City businesses were victim to an unprecedented increase in criminal activity. From May 30<sup>th</sup> through June 4<sup>th</sup>, 2020, there were 126 reports of commercial burglaries in Center City compared with only six reported burglaries during the same seven-day period in 2019. Crime reports from the weeks immediately preceding May 30<sup>th</sup>, 2020 further indicate the explosion of criminal activity was related to the unrest as from May 16<sup>th</sup> – 29<sup>th</sup>, 2020, only six burglaries were reported in Center City.

To alleviate the Department’s inability to efficiently effectuate arrests, one Deputy Commissioner worked on May 31<sup>st</sup> to create a mass arrest detail out of the 22<sup>nd</sup> District. However, given the number of arrests that had been made during the night of May 30<sup>th</sup>, the Deputy Commissioner also arranged for overflow to be handled by the South and Northwest Divisions. He further coordinated with the District Attorney’s Office and its Charging Unit to ensure that officers were collecting and preserving enough information to ensure that those arrested could ultimately face charges.

The City also faced challenges responding to citizen calls for assistance to its 911 call center due to the unprecedented volume of calls and staffing issues stemming from the COVID-19 pandemic. According to one Commanding Officer, at the height of the unrest, the call center received approximately 19,000 calls a day, compared to a “normal” day when the center received 4,000 calls a day.<sup>74</sup> Given the high volume of calls and the inability to staff the call center at 100% capacity due to COVID-19-related social distancing requirements, a large number of calls went unanswered. This is true even after the 911 call center was augmented by operators who were stationed in other locations, including the 311 and training call centers. And, according to another Commanding Officer, even when callers were able to get through to a 911 operator, the Department did not always have the resources to deploy in response to the calls. During the May 30<sup>th</sup> weekend, the City experienced a number of violent crimes that were unrelated to the civil unrest.

## **2. The Events that Occurred on 52<sup>nd</sup> Street are Further Evidence of the City’s Failure to Plan and to Dedicate Adequate Resources to its Response**

If the City had dedicated sufficient resources on May 30<sup>th</sup> to the initial protests, it is unclear whether the unrest would have continued throughout the city over the following days. Yet, even after seeing the events from May 30<sup>th</sup> and the impact of having insufficient resources

available, the Department still failed to adequately allocate resources to its response to planned unrest and criminal activity on 52<sup>nd</sup> Street on the afternoon of May 31<sup>st</sup>. As a threshold matter, vital information was inefficiently disseminated to relevant City officials and responders. For instance, the intelligence related to these incidents was not disseminated by the DVIC to the Department. Rather, a member of the community relayed information about prospective unrest to a Commanding Officer via text message. A Councilmember also received notice from a constituent that the looting was going to occur. She forwarded the information to a Commanding Officer within the division. Thus, while the Department's interactions with the community resulted in actionable information, enabling the Department to initiate planning, such information likely should have been received and acted upon by the Department's intelligence gathering services.

The officers interviewed who were present that day on 52<sup>nd</sup> Street all noted that the Department was understaffed for the level of violence they faced from the crowds. One Commanding Officer noted that despite the volatile conditions and the extreme need for additional officers to report, it took approximately an hour for additional officers to arrive. That the Department did not have sufficient resources to respond to the incidents occurring on 52<sup>nd</sup> Street is further evident from the "Officer Assist" call the Department issued around 3:00 p.m. on the afternoon of May 31<sup>st</sup>.<sup>75</sup> Both University of Pennsylvania and Drexel Police deployed to 52<sup>nd</sup> Street in response to the call. These calls were made, however, only after the situation on the ground had deteriorated. Penn Police assisted in providing protection to the Fire Department, which was attempting to extinguish the police vehicles that were on fire. Two Penn and two Drexel police officers sustained minor injuries from projectiles that were thrown at them, and four Drexel Police vehicles were seriously damaged. By the end of the night, 15 officers were injured during the standoff that occurred, including a Commanding Officer who suffered a broken nose after a brick struck him in the face, and another who required surgery as a result of his injury.

The violence and destruction, however, was only exacerbated by a tactical decision to park a large number of police vehicles along 52<sup>nd</sup> Street in a line. Two of these police vehicles were set on fire. Others were vandalized and their contents were stolen. Aerial footage shows those involved in these acts of vandalism putting several of the cars in neutral and pushing them along the street towards police officers. According to one Commanding Officer interviewed, the high number of vehicles that were damaged that afternoon impacted the Department's ability to respond to calls that day and potentially beyond. For example, one Captain sought assistance from the Drexel Police in responding to police calls from within the 16<sup>th</sup> District, as there were no available Department vehicles to do so. According to an Inspector interviewed, that same afternoon, there were also two homicides that occurred within the Southwest Division, including one that occurred as part of a quadruple shooting. Thus, the Department's ability to respond to incidents that occurred both in West Philadelphia and beyond, was negatively impacted by both the damage to police vehicles and the large number of injured officers.

Given the Department's inability to calm the unrest at 52<sup>nd</sup> and Market, and despite the fact that SWAT has historically not been used to control crowds or civil unrest, the decision was made to deploy the unit to the area to assist in the Department's response. Ultimately, as will be discussed more fully below in Section D., the Police Commissioner authorized the use of CS gas and less-than-lethal munitions to combat the unrest. These munitions were, however, utilized

against not only rioters, but also against individuals who were simply present in the neighborhood and not participating in any of the events. Whether this increased level of force would have been necessary had sufficient resources been dedicated to the initial response to the looting at 52<sup>nd</sup> and Market, or if the police vehicles had not been left unattended along 52<sup>nd</sup> Street, is unclear.

### **3. As a Result of the Department's Lack of Resources, Mass Looting went Unchallenged in Many Areas of the City for Hours**

While Center City was the initial focus of the looting on May 30<sup>th</sup>, looting spread throughout the city over the course of the following days. Because of the lack of police resources available, looting occurred without challenge in some areas for hours on end. One Inspector noted that because a large number of police vehicles had been damaged during the unrest on 52<sup>nd</sup> Street, the Department was unable to respond to reports of looting at a nearby shopping center in the Parkside neighborhood. When the looting began at the grocery store located in that shopping center, there were approximately 100 staff members on site, as Sunday is typically the store's busiest day. After the looting began, staff attempted to call the police. However, these calls went unanswered and the staff had no choice but to leave the premises. As a result, the store remained unprotected for hours overnight and through the next day, allowing looters to pillage the store. The damage was catastrophic. For example, the front doors to the store were completely destroyed, as were display cases, self-checkout stations, and other equipment within the store. Very little was salvageable, and many of the grocery and pharmacy items were stolen or destroyed during the looting. The credit union that resides within the store was also heavily damaged, as were its ATMs. It was estimated that the damage was close to \$1.6 million.<sup>76</sup>

The store's destruction had a significant impact on the surrounding community. Employees were unable to enter the store to begin the remediation process until Tuesday, June 2<sup>nd</sup> when the National Guard arrived. The store, which is one of the only grocery stores in the community, served about 22,000-25,000 customers a week, and potentially more at the beginning of the month when this incident occurred. After the looting, the store and its pharmacy were closed for a week, and did not reopen until Monday, June 7<sup>th</sup>, depriving members of the community of one of the few food and medication sources in the neighborhood.

Another grocery store in North Philadelphia was also looted on the night of May 31<sup>st</sup>. Approximately nine staff members were in the closed store when the looting began. The group escaped to the roof of the building, where they repeatedly attempted to call 911. Only after the staff told 911 that the building was on fire did anyone respond to their calls for help. When the police eventually arrived, the store's employees were able to secure the store for the night. However, the next night, the looting occurred once more. Although the second night of looting was more intense, the police did not respond to the store despite the store's employees calling 911 multiple times. As a result, the store was heavily damaged and ultimately, had to close for five days for repairs and to restock. During that time, the National Guard provided protection. Like the grocery store in Parkside that was vandalized, the impact of this looting was felt heavily by the surrounding community. Looting caused approximately \$955,000 of damage.

Looting and vandalism also occurred in areas of the Northeast. For instance, the owner of a rental property reported that a business located on the ground floor of her apartment building was destroyed by looters on June 1<sup>st</sup>. In that incident, a tenant of the apartment above the store reported the break-in. Police dispatch informed the landlord that they were receiving a high volume of calls, and she is unsure whether police responded to her call. According to footage from an adjacent business, a car drove through the front window of the property, causing extensive damage.

**D. The Department Inappropriately Used CS Gas in Response to the Protests and Civil Unrest**

Midday on May 31<sup>st</sup>, Department officials held a meeting at the Convention Center to discuss the City’s planned operational response to protests and civil unrest. After the operational meeting, SWAT, the Police Commissioner, and members of her command staff held a separate meeting. The purpose of the meeting was for SWAT to present to the Police Commissioner and members of the command staff regarding the munitions and equipment available to the team. SWAT’s potential deployment to face the gathering crowds was unprecedented, as all of the commanding officers interviewed were unable to recall an event since the 1985 MOVE bombing where either SWAT responded to issues of civil unrest or where CS gas was utilized in response to such incidents. In fact, the use of OC Spray<sup>77</sup> – a substance that is lower on the tier of less-than-lethal munitions – is prohibited by Department policy in the following situations: “(1) for the dispersal of non-violent persons; (2) for disorderly crowds; (3) in situations where people are peacefully exercising their Constitutional Rights of free speech or assembly; (4) at random; [and] (5) as a threat to gain compliance or information.”<sup>78</sup> That the use of CS gas – higher on the tier of less-than-lethal munitions – is not referenced by name in this Department policy suggests that its use is also prohibited in these defined scenarios.<sup>79</sup> And, a review of the numerous use of force reports the City produced to the Investigation Team, reveals that CS gas is not even a listed option on the Department’s standard form.

Type of Force Used by Police						
<i>(Check all appropriate blocks)</i>						
<input type="checkbox"/> Baton	<input type="checkbox"/> O.C. Spray	<input type="checkbox"/> Taser	<input type="checkbox"/> Control Holds			
<input type="checkbox"/> Vehicle	<input type="checkbox"/> Canine	<input type="checkbox"/> Blunt Object				
<input checked="" type="checkbox"/> Other Weapon/Type of Force: <u>Control holds</u>						
Number of Times Force used by Police this incident: <u>1</u>						
Baton (effect on subject)	<input type="checkbox"/> None	<input type="checkbox"/> Mild	<input checked="" type="checkbox"/> Moderate	<input type="checkbox"/> Substantial	<input type="checkbox"/> Incapacitated	
Taser (effect on subject)	<input type="checkbox"/> None	<input type="checkbox"/> Mild	<input type="checkbox"/> Moderate	<input type="checkbox"/> Substantial	<input type="checkbox"/> Incapacitated	
OC Spray (effect on subject)	<input type="checkbox"/> None	<input type="checkbox"/> Mild	<input type="checkbox"/> Moderate	<input type="checkbox"/> Substantial	<input type="checkbox"/> Incapacitated	
Officer Contamination <input type="checkbox"/> Yes <input type="checkbox"/> No		Back-up Officer Contamination: <input type="checkbox"/> Yes <input type="checkbox"/> No				
Was O.C. Spray / Taser effective in overcoming Force/Threat: <input type="checkbox"/> Yes <input type="checkbox"/> No			If no, explain police action:			
Was O.C. Spray used on dog? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						
Did Animal attack or did it threaten to attack?			Other Animal: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<input type="checkbox"/> Attacked <input type="checkbox"/> Threatened						

The Department’s Standard Operating Procedure #24, SWAT Unit Chemical Agent Deployment Policy addresses the use of CS gas. That policy sets forth a defined authorization structure for the deployment of Chemical Agents, which includes CS Gas, only in “Barricaded Person/Hostage Incident[s].” However, it appears internally inconsistent as it later references the

deployment of Chemical Agents for such additional purposes as “disbanding a riotous crowd and/or looters” without defining these circumstances or describing an authorization structure for the deployment of Chemical Agents in such circumstances. Compounding the policy’s lack of clarity, throughout it references “Tactical Operations” and “Tactical Missions” as broad terms encompassing policing incidents that may call for the use of Chemical Agents. It fails to define with any precision or consistency to what “Tactical Operations” or “Tactical Missions” the policy applies.

Despite SWAT’s historical lack of involvement in the Department’s response to civil unrest and protests, it was staged in a location near the Convention Center in Center City on May 30<sup>th</sup>. Two City officials noted that the Police Commissioner made a request to the UCG that afternoon to use CS gas in response to the unrest that began in front of the MSB and devolved into mass looting in Center City. Both of these officials reported that the UCG quickly dismissed this request. The Commissioner does not recall making such a request, but does not deny that it occurred, noting that approval was not given, as CS gas was not used on the 30<sup>th</sup>.

**1. CS Gas and Less-Than-Lethal Force was Discussed with the Police Commissioner Early on May 31<sup>st</sup>, before any Civil Unrest Occurred**

Around 12:30 p.m. on May 31<sup>st</sup>, a special meeting was held between members of SWAT, the Commissioner, and her command staff in the Nutter Conference Room at the Pennsylvania Convention Center. During the meeting, SWAT presented to the Commissioner and members of her command staff regarding the munitions and equipment available to the team. It was understood that the purpose of the meeting was to discuss what munitions could be used in response to any potential civil unrest that could occur later that day.

The commanding officers interviewed all agreed that the Department has not used less-than-lethal munitions, such as rubber bullets or CS gas in response to protests or civil unrest, since MOVE. Two ranking officers present at the meeting recalled that a senior long-time official with the Department who had previous experience responding to civil unrest specifically expressed his opposition to the use of CS gas, as he was not only concerned with the optics of its use, but also noted that historically, previous commissioners had opposed its use. The Police Commissioner did not recall getting any “push back” from those present regarding the potential use of these munitions in a response to potential civil unrest later that day. She acknowledged that she was told during the meeting that these munitions had not, in recent history, been used in response to protests and civil unrest. In response, she stated that it was her hope that it would not be necessary.

Officers interviewed recalled that the Police Commissioner was not only familiar with the munitions available to SWAT, but was also unopposed to the use of CS gas in response to civil unrest, noting that she had previously used it in Portland. Prior to its use, however, those interviewed reported that the Police Commissioner required that officers seek her approval. The Police Commissioner confirmed that she required her approval to deploy CS gas, and would grant approval only in accordance with Department policies. At the end of the meeting, SWAT fitted Commissioner Outlaw and other members of the command staff with gas masks.

The Police Commissioner recalls having a conversation later that day with the Mayor regarding the potential use of CS gas in response to unrest. According to the Police Commissioner, during the conversation, which was in person, she consulted with him regarding the potential use of marking rounds and CS gas. While the Police Commissioner did not believe that she needed to obtain the Mayor's approval for the use of these munitions, she discussed their use with him that afternoon in light of the comments he made during her interview for the position. The Mayor indicated that he was not comfortable with the use of these munitions, but that if the situation were to call for it he would support their use. After this conversation, the Police Commissioner did not believe that she needed to consult with the Mayor before authorizing the use of CS gas or other less-than-lethal munitions in the field. Based upon his earlier conversation with the Police Commissioner regarding the possible use of CS gas, and under the obligations set forth in the EOP, the Mayor should have expressly required the Police Commissioner to obtain his approval prior to the authorization given to deploy CS gas. The EOP provides that the Mayor is "responsible for [the] overall management of incidents affecting public welfare."

**2. The Manner in which the CS Gas and Other Less-Than-Lethal Munitions Were Deployed on 52<sup>nd</sup> Street Was not Narrowly Tailored to the Unrest the Officers Faced and was Inappropriate**

Many interviewed – officers and civilians alike – described the atmosphere along 52<sup>nd</sup> Street as "chaotic" and "out of control." Others referred to the police officers present as "overwhelmed." The officers interviewed who were present on 52<sup>nd</sup> Street that day were unanimous: this was the worst experience that any have had while on the force. The Police Commissioner recalled seeing video footage in the EOC of individuals vandalizing and looting police vehicles along 52<sup>nd</sup> Street.

After seeing these images, she reported that she left the EOC to respond to 52<sup>nd</sup> Street herself. At some point, she received a call from a Deputy Commissioner present on 52<sup>nd</sup> Street who asked for permission to use CS gas to disperse the crowd and allow the officers to retreat from the area of 52<sup>nd</sup> and Market Streets to 52<sup>nd</sup> and Chestnut Streets, which was where the violence was occurring. The Police Commissioner reported authorizing the use of CS gas based upon her earlier conversation with the Mayor. According to the Police Commissioner, she did not seek specific authorization for the use of CS gas on 52<sup>nd</sup> Street from the Mayor. The Police Commissioner's belief was that the authorization she did provide, however, was not broad. Rather, she believed that she narrowly authorized its use solely in the area of 52<sup>nd</sup> and Market Streets to 52<sup>nd</sup> and Chestnut Streets. She did not, however, report putting any limitations upon how much could be used, other than to indicate that the CS gas was to be used within policy. Yet, the Department's use of force in response to the unrest was not narrowly tailored. Rather, the use of force was far reaching and affected more than just those who were engaged in the standoff.

SWAT created a timeline of its participation in the events on 52<sup>nd</sup> Street. Pursuant to its own timeline, SWAT deployed CS gas five times between 3:40 p.m. and 6:39 p.m. along the 52<sup>nd</sup> Street corridor. And, despite reports that the unrest was relatively confined to a portion of 52<sup>nd</sup> Street from Market to Chestnut Streets, according to SWAT's timeline, CS gas was

deployed along almost a half mile stretch of 52<sup>nd</sup> Street from Arch Street to Spruce Street. Civilians present that day also confirm the broad geographic scope of SWAT's actions.

At least three people interviewed noted that they saw the CS gas deployed that afternoon impact those who were in the residential area of the neighborhood, who were in no manner connected to the looting or other violence that occurred near the McDonald's. These observations, however, are by no means unique. Rather, during a public hearing of Philadelphia City Council's Committee on Public Safety, individuals affected by the City's response to the civil unrest were permitted to testify about their experiences that afternoon along 52<sup>nd</sup> Street. At that hearing, a physician testified that she witnessed "tear gas canisters land well within what is a mostly Black residential part of the neighborhood," where no protesters or individuals were engaged in the civil unrest.<sup>80</sup> She saw a "Black woman [run] out of one of the houses . . . carrying her crying daughter, who looked like she was about 6 years old."<sup>81</sup> The mother told the physician that "a canister had landed on the roof of their front porch . . . right below their second-story windows, which caused the tear gas to pour into the second story of the woman's home."<sup>82</sup> The six-year-old child "thought she had been permanently blinded and . . . was screaming at the top of her lungs and crying."<sup>83</sup> Three other children came out of the house also affected by the tear gas. While the physician tried to persuade the mother to seek medical attention for her child, the mother was too afraid to seek help from the police or any other authorities.<sup>84</sup> This is just one example of the non-monetary, yet costly impact of the police response that afternoon.

Another individual who testified noted that he believed that the police response that afternoon demonstrated a lack of "regard in the 52<sup>nd</sup> Street corridor for the thousands of residents who were simply trying to live in peace."<sup>85</sup> And, another testified that he witnessed officers refer to those gathered on the corridor using the "N-word" and as "monkeys."<sup>86</sup> Thus, the events that occurred on 52<sup>nd</sup> Street on the afternoon of May 31<sup>st</sup> have only further strained tensions in a community that has historically had a less-than-favorable relationship with both the City and the police.

### **3. The Use of CS Gas on I-676 Was Improper and Could Have Been Avoided**

The next day – June 1, 2020 – the Department once more deployed less-than-lethal munitions, including CS gas and rubber bullets, to disperse a crowd that peacefully marched onto I-676. This use of force, however, could have been avoided had the City taken actions to protect the entrance ramp to the highway. The Department was aware that the "taking of the highway" is a common tactic used by protesters. In fact, during the protests that occurred in Philadelphia after Michael Brown's death in Ferguson, the protesters attempted to do just that. According to a news report regarding these protests, the protesters "tried several times to enter Interstates 95 and 676 in Old City, [and] officers were forced to hold a strong line on at least three highway on-ramps."<sup>87</sup> A police official interviewed as part of that news report stated that the taking of the highway by protesters was "something [the Department] just can't permit."<sup>88</sup>

In the years since that protest, the Department has taken proactive steps to protect the highways during protests. For example, in November 2016, the Department planned a response to a protest in opposition to then-President-Elect Donald J. Trump. The protest, which occurred on November 10, 2016, was anticipated to draw "crowds upwards of 2,000 participants,"

primarily along the John F. Kennedy Boulevard and at 33<sup>rd</sup> and Market Streets. The plans not only demonstrated an advanced level of coordination with the PSP, including the consideration for how additional troopers would be provided from other units outside of the region, but also included clear plans for blocking the entrances to highways. Specifically, the plans called for the on-and-off ramps to I-676, both eastbound and westbound in the vicinity of Broad and Vine Streets, “to be covered during Demonstrations by stationary or mobile blocking vehicles as needed.” The plans further identified on-and-off ramps for I-676 and I-95, as well as other I-676 ramps that could potentially require blocking during the course of the protests. Several commanding officers interviewed noted that in response to prior protests, the use of such blocking vehicles has been standard practice.

Indeed, on May 30<sup>th</sup>, the first day of the protests and unrest in Philadelphia, protesters tried to access the highway when they marched towards the entrance to I-676 at Broad and Vine Streets. Ultimately, while members of the group set fire to a PSP vehicle at that intersection, they were prevented from entering the highway. Yet, despite the fact that in previous protests, including one just days earlier, protesters had attempted to take the highway, no effort was made to block the ramps to I-676 off of 22<sup>nd</sup> Street in advance of the protest on June 1<sup>st</sup>. The Department seemingly relied upon the PSP to secure I-676 throughout the period of civil unrest.<sup>89</sup> State troopers were stationed at the on-and-off ramps for I-676 at Broad Street from midday May 30<sup>th</sup> through June 8<sup>th</sup>. However, there was no effort to protect the highway at any other entrance ramp. On the afternoon of June 1<sup>st</sup>, various officers can be heard over police radio requesting that the PSP block the entrance as the group was advancing towards it. By that point, however, it was simply too late, and the impact of that failure was that it permitted the protesters to take the highway where police later inappropriately dispersed the group using CS gas.

Several officers agreed that the failure to block the highway was problematic. For example, one Commanding Officer noted in his after action report that had I-676 been blocked, there “would have been no members of the public trapped and no urgency to use force to disperse the riotous crowd.”<sup>90</sup> Thus, the incident that occurred on I-676 was avoidable and could have been prevented.

**a. The Use of CS Gas and Other Less-Than-Lethal Munitions on I-676 and the Manner in which They Were Used Was Inappropriate**

Notwithstanding *why* or *how* the protesters were able to gain access to I-676 that afternoon, the use of force to disperse the crowd was excessive. In various after action reports, officers defended the use of CS gas to disperse the crowd based upon reports that individuals were throwing objects, including bricks and traffic barrels, from overpasses onto officers on the highway below. Three officers interviewed reported the same, though, accounts were inconsistent in some respects. One reported that before the CS gas was deployed, a Deputy Commissioner ordered that police clear a crowd that was throwing trash and bottles from one of the overpasses. The police were successfully able to do so without using any force. Another Inspector interviewed recalled that *after* the CS gas was deployed on the highway, individuals from the overpasses began to throw items onto the officers. He reported that not only did this crowd throw a traffic barrel, but the crowd also shot fireworks and threw liquid substances and other objects at the police. Yet, the Investigation revealed no video evidence that this occurred.

SWAT officers who deployed the CS gas and less-than-lethal munitions were not outfitted with body worn cameras. As such, there is no video from the perspective of those who were tasked with deploying the gas and less-than-lethal munitions. In fact, one Commanding Officer interviewed noted that when he reviewed the footage from the event, he, too, did not see anyone throwing objects from the overpasses onto the officers below. The Police Commissioner also acknowledged that she has not seen any video footage that depicts these events.

Rather, the video footage obtained from the City – including footage from the Department’s Audio Visual Team, traffic cameras and body worn cameras – and the interviews conducted of individuals present on I-676 that afternoon contradict this account. The video demonstrates that the protesters were able to gain access to the highway quite easily. Upon entering the westbound lanes of the highway and stopping traffic, the group was able to cross over to the eastbound lanes and begin to march peacefully back towards the Broad Street exit and City Hall. One individual who was able to look down from an overpass noted that a group of protesters were able to surround a PSP vehicle that was stopped in traffic in the westbound lanes. One individual vandalized the car. He, too, however, did not witness anyone gathered on the overpass throwing items at the police.

It is unclear whether the proper authority was given to deploy CS gas that afternoon. According to one former City official, who was a member of the UCG, it was his expectation that the UCG would be notified prior to the use of CS gas by any officers. However, he asserted that neither Commissioner Outlaw nor the UCG were notified that CS gas was going to be deployed on I-676 before it was utilized. Rather, he reported learning of the use of CS gas in real time as he watched it be deployed against the crowd on a live video feed playing in the EOC that day. The Police Commissioner reported directing a Deputy Commissioner to call her for authorization before deploying CS gas that afternoon. However, she too learned that the CS gas had been deployed in real time over police radio. According to the Police Commissioner, she did not authorize its use.

Although the Police Commissioner and Mayor initially defended the use of CS gas on I-676, they later recanted these statements during a press conference. During that same press conference, Deputy Commissioner Dennis Wilson stated that he was the commanding officer that provided authorization for the use of CS gas that afternoon. During an interview, however, one former City official noted that there was some question regarding which entity – the Department or the PSP – utilized CS gas first.

Regardless of which entity deployed CS gas first or which commanding officer authorized its use, its use to disperse peaceful protesters was against Department policy. And, according to those present on the highway that afternoon, the manner in which the CS gas was deployed made it virtually impossible for protesters to disperse, which was the purported justification for deploying CS gas in the first place. Protesters attempting to disperse the area were left to climb an embankment on the side of the road then scale a 10-foot fence or squeeze through whatever small openings they could find, effectively creating a bottleneck of trapped protesters. This situation was widely recorded and reported upon, including by the *New York Times*. Despite protesters being trapped between oncoming police and barriers to egress, police officers continued firing CS gas canisters and rubber bullets into the fleeing crowd. This served not to subdue the crowd or encourage them to disperse faster; rather, the group became only

more panicked as they remained trapped on the highway, struggling to breathe and see due to the CS gas.<sup>91</sup>

Additional instances of excessive force were widely recorded and reported upon. In a video published by the *New York Times*, an officer is seen spraying a protester who was peacefully kneeling on the highway in the face with OC spray. When she did not seem to respond, the officer is seen approaching her and then pulling down her goggles before deploying the OC spray once more directly into her eyes from close range. The officer also proceeded to spray several other protesters in the face. This is in direct contravention to Department policy, as discussed above in Section III.D. On July 22, 2020, this officer was criminally charged with various offenses, including simple assault, reckless endangerment, official oppression, and possession of an instrument of crime.<sup>92</sup>

#### **E. Over the Course of June and into the Fall There Was Continued Inappropriate and Inconsistent Use of Lethal and Non-Lethal Force**

Despite the strong use of force on May 31<sup>st</sup> in West Philadelphia and on I-676 in the late afternoon of June 1<sup>st</sup>, the Department took a more restrained approach to managing a demonstration outside of the 26<sup>th</sup> Police District on the evening of June 1<sup>st</sup>. That evening, a group of largely White men, gathered to purportedly protect the police and the neighborhood from protesters and looting. The group was comprised of individuals who carried various blunt objects, including bats and golf clubs. Yet, despite the outwardly aggressive and hostile tone of this crowd, the police took no steps to disperse them and, in some instances, showed active support for the group, high-fiving members of the group in some cases and providing food from the district in others. Significantly, police took no actions when the group confronted those gathered to protest peacefully.

Commissioner Outlaw testified before City Council that she “want[ed] to be clear in that merely carrying a bat is not a crime.”<sup>93</sup> She also acknowledged, however, that “the leadership at that district and in a community meeting made very clear that in hindsight they wish they would have handled that situation differently in how they utilized the officers deployed there and the interactions, understanding the impact it had on the community.”<sup>94</sup> During her interview, she noted that in some of their interactions with the group that afternoon, some of the officers may have been “tone-deaf,” and failed to think about the optics of their actions.

In a letter to the community, the Captain of the 26<sup>th</sup> District stated that “[t]he incident on Monday night was very tensious [sic] and could have been disastrous.” Deputy Commissioner Ben Naish testified before City Council regarding the incident, noting that the Department’s objective during the event was “to de-escalate” and “to maintain peace as best as possible.”<sup>95</sup> For that reason, the police “weren’t out there creating more problems by arresting people left and right.”<sup>96</sup> Thus, Commissioner Naish opined that “the actions as we look back on them, maybe they weren’t all the best actions that could have been taken . . . but we did everything with the idea of fairness and impartiality.”<sup>97</sup>

Deputy Commissioner Naish seemingly justified the Department’s response to the gathering in Fishtown by stating that the officers “were also outnumbered and . . . that’s important to keep in mind.”<sup>98</sup> Yet, during the course of this Investigation, numerous officers

who were present on 52<sup>nd</sup> Street used a similar justification for the extreme show of force that the Department used that afternoon. However, in Fishtown, there was seemingly no effort to disperse this crowd prior to the curfew, despite the fact that there were several instances in which members of the group became violent. Some of these incidents occurred within eyesight of the officers gathered outside of the district. For example, a group of those there claiming to protect the police, armed with bats and other blunt objects, approached a small group of individuals standing across the street from the district to protest in support of the Black Lives Matter movement. Using aggressive and threatening language, an individual from this group ripped a Black Lives Matter sign out of the hands of a peaceful protester. Yet, the police did nothing to intervene. Nor did the police take any action when a reporter was violently assaulted near the police station. Rather, it took more than three weeks for police to make an arrest. That the police did nothing to intervene in these two instances, and instead permitted this group of individuals to gather with what many considered to be weapons, stands in stark contrast to the actions the Department took the day before in West Philadelphia and earlier the same day on I-676.

This contrast is further apparent in the Department's approach to a similar group of individuals who gathered to protect the Christopher Columbus statue in South Philly the following week. After there were reports that the City was considering taking action in response to calls for the statue's removal, a group of mostly White males gathered to protect it. Some of those present in the statue's defense openly carried firearms. On three separate nights in June – June 13<sup>th</sup>, 14<sup>th</sup>, and 23<sup>rd</sup> – violent interactions occurred between those who gathered in support of the statue and those who arrived to protest the statue and the group's presence. Those interviewed noted that the police viewed those who came to protest the statue's presence as the agitators. This is evident from video from June 13<sup>th</sup> in which the 1<sup>st</sup> District's Captain ordered a reporter to leave the area, stating that the situation was "volatile" and that the journalist was "aggravating the situation."<sup>99</sup> The Captain stated that the journalist was "inciting a riot," although there were various people there to "protect" the statue with weapons, who can be seen in other videos threatening the journalist and slashing the tires of his bike. Shortly after this incident, this Captain was reassigned to another position within the Department.

On June 23<sup>rd</sup>, the Department deployed approximately 700 officers to Marconi Plaza to staff a planned protest in opposition to the statue, while others gathered to protect the statue. Yet, despite the significant police presence, there were a number of violent interactions between the two groups. One person interviewed reported that she was burned, pepper sprayed, and sexually assaulted by a group of men. This group also threw one of her friends into the middle of the intersection and punched another friend in the face, breaking his nose. She reported that the police did nothing to stop these assaults. The Investigation also revealed that there were instances in which the police were unwilling to take reports from those who were harassed or assaulted by the group of men. Instead, the police directed those who wished to make reports to the District Attorney's Office to press charges. Others reported that they were not able to get the officers to interact with them in any manner. Rather, the officers were unwilling to speak to those gathered in protest of the statue. It was also reported that some officers made statements indicating that those who gathered deserved to be harassed or harmed in some way by the individuals who were there to protect the statue.

In both Fishtown and Marconi Plaza, despite the presence of two large groups of individuals who many perceived to be threatening and dangerous, the police did nothing to cause these groups to disperse. In fact, during the events that occurred in Marconi Plaza, there are several photographs and reports of individuals present to protect the statue who were carrying large firearms. Yet, with regard to these two groups, non-lethal munitions were neither used, nor were they seemingly even considered. Thus, the contrasting approaches that the Department took with regard to those gathered on 52<sup>nd</sup> Street and on I-676 versus those who gathered in Fishtown and Marconi Plaza only reinforces the community's concern about how the Department chose to deploy force, and the disproportionate manner in which force was exercised against those who expressed their dissatisfaction or objections to the police and their actions.

### **1. Walter Wallace, Jr.'s Death Further Illustrates the Inconsistent Use of Force**

On October 26, 2020, two Philadelphia police officers responded to a call for assistance from a West Philadelphia home. When they arrived, they encountered Walter Wallace, Jr., a young Black man with a history of mental illness, who was carrying a knife. The officers discharged their weapons fourteen times, killing Wallace after he failed to drop the knife he was carrying.

In the wake of Wallace's death, unrest once more occurred within the city. However, while stores were once again looted, particularly in West Philadelphia and in Port Richmond, the city did not see the same level of massive unrest that occurred in May and June. Until the findings in this report are addressed, there is a significant concern that the city could experience the same level of unrest, destruction to property, and harm to individuals that occurred in May and June 2020. While certainly the level of unrest that occurred after Wallace's death in October was not nearly as destructive as that which occurred earlier, it still occurred. Thus, it is imperative that steps are taken, and taken promptly, both to prevent future interactions between police and members of the community that could result in death, but also to ensure that the City is prepared to address protests and/or civil unrest in a manner that is better than it did in 2020. Wallace's death further illustrates that there are additional areas that the Department and City need to address from a training perspective, both with regard to de-escalation methods generally, but also with regard to how to manage a mental health crisis.

## **IV. Recommendations**

Based upon the Investigation, Ballard recommends the following:

- 1.** Given the need to have a high level of coordination for the City's response to future large protests or instances of civil unrest, OEM should return to its previous status as a stand-alone agency with an independent director to ensure that leadership exists in this function.
- 2.** To avoid any delay in future planning for large protests or other events that might devolve into civil unrest, the Department should ensure that all key positions, and most notably that of the inspector of homeland security, are filled. And with regard to the inspector of homeland security

specifically, the City should ensure that a designated official with the experience and skill set to carry out the functions of the office is identified at all times.

ARI makes the following recommendations based upon the Investigation's findings, ARI's participation in and review of interview notes, and its critique of documents the City produced to the Investigation Team. Additionally, ARI's recommendations are based upon its experience and comparative analysis of best practices governing law enforcement's response to First Amendment activity and civil unrest:

1. As discussed in Finding A, the Investigation found that the Department did not request activation of the EOC before May 30<sup>th</sup>, which created significant communication and intelligence gaps. Moreover, when OEM reached out proactively on May 29<sup>th</sup> to see if the EOC should be activated, the Department notified OEM that it did not require EOC activation. Because the EOC was not activated to coordinate public safety support in advance, OEM did not produce an Incident Action Plan ("IAP") covering the May 30<sup>th</sup> scheduled protests. Instead, the response and intelligence dissemination for the first day of the Floyd protests were dictated by a Department operational order.

An IAP typically includes comprehensive public safety coordination of event-specific plans and policies supplemented by a suite of threat- and hazard-specific joint intelligence assessments. In contrast, operational orders prepared by the Department are generally less detailed. The absence of detail is apparent in the Department's City Hall Protest operational order dated May 30<sup>th</sup>, which did not contain a threat assessment, joint threat assessment, open-source intelligence analysis, or an all-known hazards section.

- a. ARI recommends that operational orders for First Amendment-protected events should parallel IAPs, containing a comprehensive threat and all-hazards section and a national and regional joint threat assessment. By enhancing operational orders, the Department's coordinated response planning will align with OEM's IAPs in scope and design and will alleviate sole reliance on the OEM to coordinate comprehensive intelligence collection and distribution. ARI also recommends that current training and civil unrest response policies account for an official channel for civil unrest intelligence distribution to police personnel, including the commanding officers.
2. As discussed in Finding B, a significant shortcoming by City leadership was complacency leading up to the start of the civil unrest. This complacency caused inadequate preparation and planning in the critical days before the outbreak of civil unrest in the City. The City found itself slow to react and overwhelmed, which essentially crippled preparations

and rendered moot the Department's standard operating procedures and trainings for mass demonstrations and civil unrest. It took several days to attain the necessary mutual aid resources to regain control and re-establish a semblance of order.

- a.** To mitigate the chances of this reoccurring, ARI recommends that the City utilize established blueprints from past successful policing of large-scale events, but should begin the planning process as soon as intelligence becomes available indicating a risk for civil unrest, recognizing that it is easier to scale down a prepared response than scale up without sufficient resources allocated.
- 3.** Finding C determined that there appeared to be inefficient civil unrest intelligence distribution to police personnel, including the commanding officers. In relation to Finding C, which showed that vital information was inefficiently disseminated by the DVIC, ARI recommends the Department re-evaluate current policies and protocols related to information gathering, analysis, and intelligence distribution pertinent to protest and civil unrest activity. Additionally, the Department should require that intelligence officers receive advanced training in both strategic and tactical intelligence analysis and dissemination. These officers should meet the Law Enforcement Analytic Standards developed by the International Association of Law Enforcement Intelligence Analysts ("IALEIA"). ARI also recommends identifying and adopting enhanced screening and selection processes for officers assigned to intelligence positions.
- 4.** A review of the Department's policies and training did not identify specific guidance for Public Information Officers ("PIO") related to monitoring open-source intelligence on potential protests, escalations, and public safety threats during mass demonstrations and civil unrest. Before, during, and after mass demonstrations and civil unrest events, the PIO should be assigned to monitor open-source social media for potential protests, escalations, and public safety threats. ARI notes that the International Association of Chiefs of Police ("IACP") recommends that the police department's PIOs participate in open-source intelligence activities for civil unrest.<sup>100</sup>
  - a.** Considering the sensitive nature of monitoring constitutionally protected activities and the real possibility of privacy infringement, ARI recommends that the PIO and other Department officers assigned to intelligence collection receive advanced and periodic refresher training on constitutional protections for First Amendment-protected events. In 2011, the Department of Justice ("DOJ") produced a set of law enforcement guidelines for First Amendment-protected events addressing red flag areas such as intelligence collection.<sup>101</sup> ARI recommends the Department look to the DOJ guide and consult with privacy rights groups such as

the Pennsylvania American Civil Liberties Union for policy and training design.

- b.** ARI recommends that during planning and preparation for large assemblies and protests, the Department's PIO coordinate open-source intelligence activities with officers assigned to the DVIC on all relevant information for strategic and tactical intelligence considerations.

- 5.** Finding D illustrates that the Department's officers and commanders lacked the benefit of an updated and enhanced use of force policy and training specific to civil unrest, which is recommended as part of strategic and operational procedures. Standard use of force training should not be automatically applied to incidents of civil unrest. The Department's use of force training for civil unrest (2016) references Directive 10.2's Use of Force Decision Chart as a guide. These decision charts are most useful in traditional police encounters with the public; however, they are not appropriate for blanket use during civil unrest events. Civil unrest training referencing the standardized decision chart may lead to the inappropriate use of force by police during civil unrest. Generalized statements in the lesson plan, such as "a person with a weapon is a person with a weapon," when applied to the changing nature of mass demonstrations can be misinterpreted. Protestors often carry shields, wooden-handled signs, and other equipment that could, in certain circumstances, be misperceived as a weapon and lead to inappropriate use of force.

- a.** ARI recommends that the Department's defensive tactics instructors and other subject matter experts create a new Civil Unrest Use of Force Decision Chart and integrate it into new training modules and relevant directives. The training should draw clear distinctions between the use of force in general police encounters with the public and encounters during incidents of civil unrest, protests, and mass demonstrations. The Department should update Directive 8.3 Demonstrations and Labor Disputes section 10 Use of Force to reflect enhanced use of force policies and the new Civil Unrest Use of Force Decision Chart.

- b.** The Department should mandate the updated and enhanced use of force training specific to civil unrest for all officers and commanders, emphasizing the appropriate use of less-lethal force and munitions. This training should include how to use less-lethal force and munitions effectively, agency policies that determine when, how, and who can authorize the use of less-lethal force munitions, and a totality of the circumstances standard when making decisions related to use of force.<sup>102</sup> After the initial mandated training, the training should be included with the Department's annual in-service use of force training.

- c. Protests related to police brutality are exceptionally volatile with intense emotions that need to be de-escalated, not escalated through the unnecessary use of force. The Police Executive Research Forum (“PERF”) 2018 Report, *Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, pages 46 through 48, provides informative guidance on the use of force during civil unrest. ARI recommends that the Department utilize this guidance and coordinate with the Pennsylvania Municipal Police Officers’ Education and Training Commission (“MPOETC”) to develop new policies and training programs.
- 6. The Department should review and update its tactical civil unrest policies and standards to ensure they align with the most current standards, training, and tactics as recognized by the Center for Domestic Preparedness (“CDP”). This should be a continuous process and can be accomplished during the training cycle for civil unrest set by the Department.
- 7. The Department should ensure that all mutual aid agencies are provided in advance with the Department’s updated and enhanced policies governing the use of force during civil unrest. The Department should also request the Pennsylvania MPOETC provide standardized enhanced training on the use of force during civil unrest to all Pennsylvania state and local law enforcement agencies. New standardized MPOETC training will ensure that all mutual aid agencies operate under the same best practice guidelines, such as lead agency protocols for deploying its officers in areas that are more likely to experience violence, lead agency authorization of chemical weapons and kinetic energy munitions, and properly equipping police responders.<sup>103</sup>
- 8. Authoritative guidance and new policies and training standards will help provide clear direction on the use of force during peaceful and civil unrest events. Finding D shows that the Department inappropriately used CS gas in response to the protests and civil unrest. Additionally, the existing Department policy on SWAT chemical agent deployment does not adequately address CS gas use for open-air applications such as disbanding a riotous crowd and or looters during civil unrest events, contributing to the disproportionate and indiscriminate use of CS gas.<sup>104</sup>

Moreover, City Council added by ordinance Philadelphia Code Chapter 10-2600 – Less Lethal Devices in October 2020, which prompts the Department to “create a written policy, or update any relevant existing policy, to prohibit the use of Chemical Weapons and Kinetic Energy Munitions by any member of the Department on any individual engaging in First Amendment Activities.” The Mayor and the Department should develop or update policy consistent with the ordinance.<sup>105</sup>

- a. ARI recognizes that mass demonstrations can turn disorderly, and police departments are authorized to declare an event an unlawful assembly and order groups to disperse. The Philadelphia Code § 10-1603(2) [Failure to Disperse] states, “Where three or more persons are engaged in a course of disorderly conduct in a public place of assembly, restaurant/entertainment districts or city permitted festivals or parades which causes or may reasonably be expected to cause substantial harm or serious inconvenience, annoyance or alarm and a police officer or other person authorized to enforce ordinances has ordered the participants and other persons in the immediate vicinity to disperse, no person shall refuse or knowingly fail to obey such an order.”<sup>106</sup> Furthermore, the Pennsylvania ACLU guidance on protesters rights recognizes the government’s right to deem a group disorderly or unlawful, acknowledging; “A police officer can order a ‘disorderly’ group to leave an area, even in a place where they have a right or a permit to be, if that officer **reasonably expects the group’s presence will result in substantial harm or serious inconvenience, annoyance, or alarm.**”<sup>107</sup>
- b. In developing policy consistent with the Code, ARI recommends the Department update Directive 8.3 Demonstrations and Labor Disputes and all directives and civil unrest training to include the following vital elements to protect peaceful and lawful protests from arbitrarily being declared an unlawful assembly or disorderly:
- Guidance on who can declare an assembly disorderly or unlawful. ARI recommends that this authority be vested in the commander's rank or above;
  - What legally constitutes an unlawful assembly; and
  - If and when chemical weapons and kinetic energy munitions can be used after a demonstration has been declared disorderly or an unlawful assembly.
- c. The new Code language banning the use of chemical weapons and kinetic energy munitions on any individual engaging in First Amendment activities does not mention barricade and hostage incidents. A review of the Department’s Standard Operating Procedure #24, SWAT Unit Chemical Agent Deployment Policy, determined the standard was updated in February of 2020 and correctly concluded:
- chemical agents are currently in use by many Law Enforcement Agencies across the United States and are recognized as Less Lethal Weapons. When properly deployed in Tactical Operations, after negotiations have

failed, their use is to prevent lethal confrontations between civilians and police.

d. SOP # 24 adequately describes and justifies the use of chemical agents (CS gas) in barricade person and hostage incidents to mitigate lethal confrontations. To be clear, ARI is not recommending the prohibition of chemical weapons and kinetic energy munitions in all tactical operations. ARI does recommend that the Department consider the guidance contained in the following sources: the Physicians for Human Rights (“PHR”) 2020, *Preliminary Findings: Use of Crowd-Control Weapons on Protestors in Portland, Oregon* and the IACP Law Enforcement Policy Center 2019, *Model Policy Crowd Management* (2019), specifically section E(3)(h). Both reports provide guidance on the use of chemical weapons and kinetic energy munitions as “an absolute last resort when dealing with genuine and imminent threats to the safety of those present and only after all other means have been exhausted”<sup>108</sup> and “CS should be used with caution, as uncontrolled use can **have negative consequences to efforts to control, manage, or disperse crowds.**”<sup>109</sup>

9. The Department failed to aggressively commit to the community-based policing recommendations made by the DOJ. In June 2013, then-Philadelphia Police Commissioner Charles H. Ramsey requested technical assistance from the DOJ to improve all aspects of police use of force and police shootings. In 2017, the final report was released and noted that while the Department has made notable progress, it fell short on community policing.<sup>110</sup> The Department must rededicate itself to meaningful community outreach to increase community trust in the Department and promote social and procedural justice mindsets through its ranks. To bring the Department’s community-policing practices up to standards, ARI recommends using pillars’ 4 and 5 of the President’s Task Force, *21<sup>st</sup> Century Policing Final Report*, as a blueprint to reform and prioritize procedural justice and community-based policing and training.<sup>111</sup>

a. The essence of community-based policing detailed in the blueprint is building police-community trust through extending efforts beyond traditional community policing activities. This type of nontraditional community engagement involves, but is not limited to, engaging key community stakeholders in the training process, realistic scenario-based training exercises to assist with de-escalation of confrontations with the public, mandating procedural justice training, and surveying historically discriminated communities of color on more effective community policing strategies.<sup>112</sup>

10. ARI recommends the Department follow the guidance contained in the PERF related to “communicating with members of leaderless demonstrations” and “winning the loyalty contest with protesters.”<sup>113</sup> The tactics described in the report account for the changed nature of mass demonstrations, and include developing relationships with known protest movement leaders to assist with connecting to more decentralized movements, the use of social media to convey positive messaging during protests, build rapport, and convey rules of engagement to protest groups.<sup>114</sup>
11. Additionally, the Department should consider issuing body-worn cameras to all Department specialized units, including SWAT, if the use of said cameras does not jeopardize ongoing investigations, sources, and/or operational tactics.
12. Additionally, to bring civil unrest, protest, and mass demonstration training to best practice standards, ARI makes the following recommendations:<sup>115</sup>
  - Conduct bias-free policing training, adopt comprehensive bias-free policing policies and trainings that prioritize diversity and cultural competencies.<sup>116</sup>
  - Utilize the Integrating Communications, Assessment and Tactics De-escalation Training resources and toolkits developed by the Police Executive Research Forum.<sup>117</sup>
  - Provide mobile field force and civil disturbance training to all officers, ensuring that any units deployed together during a mass demonstration also train together.
  - Develop and conduct interagency discussion-based "Tabletop" trainings for mutual aid agencies to practice responses and discuss challenges arising from simulated spontaneous, unplanned mass demonstrations and civil unrest scenarios.
  - Develop training on communicating with members of leaderless demonstrations and protestors during the planning, preparation, response, and recovery phases. The Department’s PIO should attend this training.
  - Conduct training on the new policy governing the use of force during civil unrest events. The Department should use the IACP Law Enforcement Policy Center and the President’s Task Force on 21<sup>st</sup> Century Policing Final Report (2015) as a blueprint to update training and policies.
  - Ensure that the Mounted Patrol Unit participates in all civil unrest training exercises, and given the right conditions, make the use of Mounted Patrol during protests standard operating procedure.

## V. Conclusion

The City of Philadelphia's response to the initial protests and subsequent civil unrest that occurred in the days following George Floyd's murder in Minneapolis was poorly planned and inadequate. As a result, numerous individuals were harmed, businesses suffered extensive damage and losses, and the City's reputation was tarnished. The Department's response to the unrest and other gatherings that occurred throughout the months of May and June only further strained relations between it and the city's residents. The City must take prompt action to implement the recommendations outlined in this Report to ensure that these events do not occur again and to rebuild trust with the various communities within the city who were negatively impacted by the City's response.

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<sup>1</sup> CS gas (2-chlorobenzylidene malonitrile) is a type of tear gas. See F.T. Fraunfelder, *Is CS gas dangerous?*, NAT'L CTR. FOR BIOTECH. INFO. (Feb. 20, 2000), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1127513/>.

<sup>2</sup> *Resolution Regarding Review of the City's Response to Systemic Racism and BLM Protests and Bill Related to Less Lethal Devices: Hearing on Resolution No. 200397 and Bill No. 200538 before the Committee on Public Safety of the Council of the City of Philadelphia*, Oct. 20, 2020, 48:17–23 (statement of Commissioner Outlaw).

<sup>3</sup> Press Release, Rebecca Rhynhart, City Controller, Office of the City Controller, Rhynhart Announces Independent Review of City's Response to Civil Unrest Following George Floyd's Murder (June 4, 2020), <https://controller.phila.gov/city-controller-rhynhart-announces-independent-review-of-citys-response-to-civil-unrest-following-george-floyds-murder/>.

<sup>4</sup> Press Release, Office of the City Controller Announces Selection of Community Advisory and Accountability Council Members (Aug. 19, 2020), <https://controller.phila.gov/office-of-the-city-controller-announces-selection-of-community-advisory-and-accountability-council-members/>.

<sup>5</sup> Press Release, Office of the City Controller Creates Community Accountability Council to Advise on Office's Independent Review of the City's Response to Civil Unrest (July 27, 2020), <https://controller.phila.gov/office-of-the-city-controller-creates-community-accountability-council-to-advise-on-offices-independent-review-of-the-citys-response-to-civil-unrest/>.

<sup>6</sup> The 19 members of the CAAC are: Glenn Blumenfeld, Center City; Garlen Capita, Germantown; Amelia Carter, West Philadelphia; Ashlyn Ernst, East Falls; Isaac Gardner, North Philadelphia; Yvonne B. Haskins, Germantown; Ansharaye Hines, West Philadelphia; Reverend Damon Jones, West Philadelphia; John J. Longacre, South Philadelphia; Amanda Mcillmurray, South Philadelphia; Abdul-Aily Muhammad, Southwest Philadelphia; Margaret Mund, Center City; Anna Perng, Chinatown; Elvia

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Ramirez-Vidal, South Philadelphia; Melissa Robbins, Northeast Philadelphia; Leah Shepperd, Fishtown; and Reverend Abbey Tennis, West Philadelphia.

<sup>7</sup> Greta Kaul, *Seven Days in Minneapolis: A Timeline of what we know About the Death of George Floyd and its Aftermath*, MINNPOST (May 29, 2020), <https://www.minnpost.com/metro/2020/05/what-we-know-about-the-events-surrounding-george-floyds-death-and-its-aftermath-a-timeline/>.

<sup>8</sup> Hennepin County Attorney’s Office Statement on Video (May 26, 2020), <https://www.hennepinattorney.org/news/news/2020/May/hennepin-county-attorneys-office-statement-on-video>.

<sup>9</sup> @MayorFrey, TWITTER (May 26, 2020, 3:09 PM), <https://twitter.com/MayorFrey/status/1265359374010273792?s=20>.

<sup>10</sup> *See supra* note 7.

<sup>11</sup> Jeff Wagner, *‘It’s Real Ugly’: Protesters Clash With Minneapolis Police After George Floyd’s Death*, CBS MINN. (May 26, 2020), <https://minnesota.cbslocal.com/2020/05/26/hundreds-of-protesters-march-in-minneapolis-after-george-floyds-deadly-encounter-with-police/>.

<sup>12</sup> *See supra* note 7.

<sup>13</sup> Doug Glass, *Nationwide Protests Over George Floyd’s Death Turn Violent*, NBC PHILA. (May 29, 2020), <https://www.nbcphiladelphia.com/news/national-international/2nd-night-of-violent-protests-over-minneapolis-mans-death/2410122/>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> The RIC is OEM’s 24/7 watch center. The RIC gathers public information regarding local, regional, national, and international events that might impact the Philadelphia area. Daily Situational Awareness Reports are circulated from the RIC daily.

<sup>18</sup> Colin Dwyer and Vanessa Romo, *George Floyd’s Arresting Officer Charged With 3rd-Degree Murder, Manslaughter*, NAT’L PUB. RADIO (May 29, 2020), <https://www.npr.org/2020/05/29/864732088/minneapolis-seethes-over-george-floyds-death-as-trump-calls-protesters-thugs#:~:text=Derek%20Chauvin%2C%20a%20former%20Minneapolis,third%2Ddegree%20murder%20and%20manslaughter.&text=The%20announcement%20comes%20days%20after,for%20at%20least%20seven%20minutes>.

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19 Press Release, William P. Barr, Attorney General, Department of Justice, Attorney General William P. Barr’s Statement on the Death of Mr. George Floyd (May 29, 2020), <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-death-mr-george-floyd>.

20 *‘Absolute Chaos’ in Minneapolis as Protests Grow Across U.S.*, N.Y. TIMES (June 1, 2020), <https://www.nytimes.com/2020/05/29/us/floyd-protests-usa.html?login=email&auth=login-email>.

21 *Id.*

22 The Investigation Team also requested to interview a former commanding officer as well as a current commanding officer. Through counsel, both of these individuals declined to be interviewed.

23 *Civil Affairs*, PHILA. POLICE DEP’T, <https://www.phillypolice.com/units/civil-affairs/index.html>.

24 *Id.*

25 *Id.*

26 A Noise Flash Diversionary Device (“NFDDs”) is a less-than-lethal tool designed to distract and disorient persons for a short duration without sustaining bodily injury. There are different types of NFDDs, including those that only produce light and sound and those that also eject either chemicals or projectiles.

27 Department records indicate that, over the course of the weekend, 130 officers reported from Abington Township, Bucks County, Lackawanna Township, Montgomery County, SEPTA, and the PSP. We note, however, that it is unclear whether all of these officers ultimately reported, as various OEM and Department officials noted that there were instances where other municipalities indicated that they could provide support, but were later unable to fulfill the requests. Additionally, even though University of Pennsylvania and Drexel University Police Departments responded to 52<sup>nd</sup> and Market on May 31<sup>st</sup>, the documents the City produced do not indicate their participation.

28 *Philadelphia Woman Arrested after Officer Hit by Vehicle During*, 6 ABC ACTION NEWS (June 9, 2020), <https://6abc.com/philadelphia-police-officer-injured-offier-hit/6238402/>.

29 *Curfew, Disaster Declaration in Place After Philly Protests are Followed by Looting, Vandalism, Fires*, PHILA. INQUIRER (May 31, 2020), <https://www.inquirer.com/news/philadelphia/live/george-floyd-protest-philadelphia-minneapolis-police-20200530.html>.

30 There is some discrepancy among those interviewed regarding who received gas masks at the end of this meeting. One commanding officer reported that he only had two gas

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masks available to him and, therefore, only the Police Commissioner and her driver were fitted for masks. Another commanding officer interviewed agreed that the Police Commissioner and her driver were fitted, but also stated that he and other commanding officers also received masks.

31 Oleoresin Capsicum (OC) spray is also commonly known as pepper spray. It is a “naturally occurring substance . . . found in the oily resin of cayenne and other varieties of peppers. . . .” *Oleoresin Capsicum: Pepper Spray as a Force Alternative*, NAT’L INST. OF JUST. (Mar. 1994), <https://www.ncjrs.gov/pdffiles1/nij/grants/181655.pdf>.

32 According to two other members of the UCG, the Police Commissioner requested authorization from the UCG that afternoon, and the UCG granted the request. This is inconsistent with the Commissioner’s description of events. Also, it is unclear whether any discussion between the Commissioner and the UCG occurred before or after UC gas was deployed.

33 At the time of these events, the Police Commissioner had only been in her role less than four months. Thus, having only recently arrived in the city, she was admittedly still trying to understand its geographic layout and various neighborhoods.

34 A CVN is a notice issued when a person has violated one or more codes in the City of Philadelphia, or violated one or more Streets Department rules and regulations. CVNs include curfew violations and failure to disperse.

35 The Fire Administration Building is also the site of the EOC, where the UCG was housed.

36 The SERT Bearcat is a wheeled armored personnel carrier designed for military and law enforcement use.

37 One of these individuals interviewed shared a photo of this interaction with the Investigation Team. When asked about the incidents that occurred on June 1, 2020, the Captain of the District stated that the Department’s response to incident events on June 1<sup>st</sup> is the subject of an ongoing Internal Affairs review.

38 David Chang, ‘*Vigilante*’ *Accused of Attacking Journalist During Protest in Fishtown*, NBC PHILA. (June 25, 2020), <https://www.nbcphiladelphia.com/news/local/vigilante-accused-of-attacking-off-duty-journalist-during-protest-in-fishtown/2447046/>.

39 *Resolution Regarding Review of the City’s Response to Systemic Racism and BLM Protests and Bill Related to Less Lethal Devices: Hearing on Resolution No. 200397 and Bill No. 200538 before the Committee on Public Safety of the Council of the City of Philadelphia*, Oct. 20, 2020, 38:22-24 (statement of Deputy Commissioner of Patrol Operations Ben Naish).

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40 F. Healy Aff. at ¶ 2, <https://www.phila.gov/media/20200715135146/Columbus-Statue-Art-Commission-Proposal-071520.pdf>.

41 The spot report also anticipated that a separate group would gather at Penn’s Landing to defend the Columbus statue there.

42 Chris Palmer and Samantha Melamed, *South Philly Residents Surround Columbus Statue as Demonstrations Unfold Across the City*, PHILA. INQUIRER (June 13, 2020), <https://www.inquirer.com/news/christopher-columbus-statue-marconi-plaza-vandalism-threats-protest-20200613.html#loaded>.

43 @UR\_Ninja, TWITTER (June 13, 2020, 8:52 PM), [https://twitter.com/UR\\_Ninja/status/1271968811886022656](https://twitter.com/UR_Ninja/status/1271968811886022656).

44 *See supra* note 40 at ¶ 7.

45 *Id.* at ¶ 10.

46 Mel D. Cole (@meldcole), INSTAGRAM, <https://www.instagram.com/p/CBzE7aoHNLp/?igshid=kwnakrhndovy> (June 23, 2020).

47 Samantha Melamed, *Self-styled ‘Vigilante’ Arrested in Assault at South Philly’s Marconi Plaza*, PHILA. INQUIRER (June 24, 2020), <https://www.inquirer.com/news/south-philly-assault-protest-marconi-plaza-arrest-john-mooney-mel-d-cole-columbus-20200624.html>.

48 @anna\_orso, TWITTER (June 23, 2020, 6:48 PM), [https://twitter.com/anna\\_orso/status/1275561387784314882](https://twitter.com/anna_orso/status/1275561387784314882).

49 *See supra* note 40 at ¶ 13.

50 *Resolution Regarding Review of the City’s Response to Systemic Racism and BLM Protests and Bill Related to Less Lethal Devices: Hearing on Resolution No. 200397 and Bill No. 200538 before the Committee on Public Safety of the Council of the City of Philadelphia*, Oct. 20, 2020, 26: 14-15 (statement of Commissioner Outlaw).

51 *Id.* at 27:1-5.

52 Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (July 10, 2020), <https://www.nytimes.com/article/george-floyd-protests-timeline.html>.

53 The Department of Homeland Security designated the papal visit a National Special Security Event. As a result, the United States Secret Service, Federal Bureau of Investigation, and Federal Emergency Management Agency all played a central role in the planning and security for the event.

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54 Some estimate that the actual attendance at the mass was significantly smaller, perhaps closer to 150,000. See Tom Avril, *How many people actually attended the papal Mass?*, PHILA. INQUIRER (Sept. 29, 2015), <https://www.mcall.com/news/pennsylvania/mc-philly-papal-mass-crowd-size-0929-20150929-story.html>. Regardless, the event represented a massive gathering of individuals for which the City engaged in extensive planning in advance.

55 When asked why these reports had not been provided to the Investigation Team, DVIC's Commanding Officer noted that he was unable to collect all communications, as some had been "purged" pursuant to the City's email management policy. A request for these emails from the City went unanswered.

56 While the orders are dated May 30, 2020, a Captain interviewed noted that he may have been asked to submit his plans in writing on the morning of May 30<sup>th</sup>, and not prior to that date. Thus, it is unclear when these plans were drafted, and the amount of time that was devoted to creating them.

57 MIRT is a unit within the Homeland Security Bureau that is the Department's "first line of defense in a major disaster or terrorist related event." Presentation from Walt Smith, Commanding Officer Homeland Security Unit, Philadelphia Police Department (2010), <https://ndiastorage.blob.core.usgovcloudapi.net/ndia/2010/DIBCIP/WednesdaySmith.pdf>.

58 The plans the Department produced demonstrate that neither the Mounted Unit nor the Marine Unit – two units that were central to previous Department responses to large gatherings and protests – created operations plans for May 30<sup>th</sup>.

59 The same package was used the following day in Center City.

60 The number of officers the Department intended to deploy on May 30<sup>th</sup> is unclear from the documents produced. For example, the Operations Orders indicate that 69 bicycle officers were to be deployed on the morning of May 30<sup>th</sup>. However, in an internal email from the afternoon of May 29<sup>th</sup>, an OEM official reported that the Department planned to deploy just 30 officers to the protest the next day.

61 For instance, RDOs had been canceled in advance of the Super Bowl victory parade.

62 Prior to SWAT's arrival, the only officers that were able to respond to 52<sup>nd</sup> Street on the afternoon of May 31<sup>st</sup> with appropriate equipment for the unrest they faced were the officers from the University of Pennsylvania's Police Department. These officers were equipped with shields and other protective equipment. In contrast, the officers who initially reported from the Department were without this type of protective equipment despite the fact that the group that gathered at 52<sup>nd</sup> and Market were throwing projectiles at the officers.

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63 The lack of communication between the PSP and the Department was not, according to the PSP, unique to this incident. Rather, historically such communication between the two groups has been lacking.

64 Ultimately, the EOC remained active for 11 days until 9:00 p.m. on June 9, 2020. The Pennsylvania National Guard, which was activated on May 31<sup>st</sup>, also left the City at that time.

65 Prior to May 30<sup>th</sup>, a UCG was already in place to respond to and coordinate the City's response to the COVID-19 pandemic. As of the afternoon of May 30<sup>th</sup>, however, this group's purpose and attention turned to the City's response to the civil unrest that began to spread throughout the City.

66 According to the Fire Commissioner, prior to assuming the role of OEM Director, he was already an employee of the Managing Director's Office. Thus, OEM, from his perspective, remains part of the Managing Director's Office. However, others interviewed, including OEM officials and the former and current Managing Directors, noted that OEM is now a part of the Fire Department. According to one City official interviewed, the City has not yet determined whether this move will be permanent.

67 Office of Emergency Management: History, PHILA. GOV'T, <https://www.phila.gov/departments/oem/about/history/> (last visited Dec. 21, 2020).

68 Office of Emergency Management: 2012-2014 Accomplishments, at 9, PHILA. GOV'T, <https://www.phila.gov/media/20150724214322/2012-2014-OEM-Highlights.pdf>.

69 Office of Emergency Management: Emergency Operations Plan, at 3, PHILA. GOV'T (June 2015), <https://www.phila.gov/media/20160310164754/oem-City-of-Philadelphia-Emergency-Operations-Plan.pdf>.

70 *Id.* at 12.

71 *Id.* at 13.

72 *Id.* at 21.

73 Arguably, in its current form and under its current leadership, OEM could have been more proactive in planning for the protests and civil unrest that began on May 30<sup>th</sup> and continued over the following days. For example, OEM's Director could have activated the EOC prior to the Department's belated request on the morning of May 30<sup>th</sup>. Under previous leadership, OEM's Director was empowered to make such decisions. Regardless, such leadership was lacking in the days leading up to May 30<sup>th</sup>.

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74 According to this Commanding Officer, this figure reflects the average number of calls the center has received since the COVID-19 pandemic began. Prior to the pandemic, the average number of calls per day was approximately 5,000.

75 An officer assist was described by many interviewees as a higher priority call – one that is less frequent, and seeks immediate response from surrounding law enforcement personnel.

76 This figure represents the costs to repair the damage incurred. It does not include the business interruption costs (i.e., the costs to the business of remaining closed during the repair period).

77 Department Directive 10.2 defines Oleoresin Capsicum (“OC”) spray as “an inflammatory agent that causes an intense burning sensation of the skin and mucous membranes.” Phil. Police Dept. Directive 10.2 § 6(A). The Directive further notes that “[i]f sprayed in the face, the individual’s eyes, will close, tear and swell as a result.” *Id.* at § 6(B). The effects are significant, as “[w]hen inhaled, the respiratory tract will become inflamed and temporarily restrict breathing to short, shallow breaths. The subject may experience choking, gagging, or gasping for breath. A burning sensation of the skin may also occur.” *Id.*

78 Phila. Police. Dept. Directive. 10.2 § 6(D).

79 In this Directive, under a heading “Use of Other Less Lethal Force,” there is a list of other types of less lethal force in which SWAT personnel are trained and are authorized to use. *Id.* § 8. This list includes “37 mm Chemical Agents,” which may include CS gas. Unlike the explicit instructions and guidance the Directive provides with regard to when OC gas may not be used, no such guidance is provided regarding when SWAT may deploy such 37 mm Chemical Agents. Directive 8.3, entitled “Demonstrations and Labor Disputes,” also references the “use of aerosol crowd-control chemical agents” as a “specific crowd control tactic [that] shall be ordered as necessary where the crowd does not heed warnings.” Phila. Police Dept. Directive 8.3 § 11(H)(4). Yet, while this Directive references these chemical agents generally, it only discusses the use of OC spray specifically, further creating ambiguity regarding the permissible role of CS gas in dispersing crowds.

80 *Resolution Regarding Review of the City’s Response to Systemic Racism and BLM Protests: Hearing on Resolution No. 200397 before the Committee on Public Safety of the Council of the City of Philadelphia, Oct. 7, 2020, at 28:10-16.*

81 *Id.* at 28:20-24.

82 *Id.* at 28:24-29:4.

83 *Id.* at 29:14-18.

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84 *Id.* at 30:4-18.

85 *Id.* at 18:14-18.

86 *Id.* at 21:2-6.

87 *Protesters Take to Philly Streets After Ferguson Grand Jury Decision*, NBC PHILA. (Jan 20, 2015), <https://www.nbcphiladelphia.com/local/philadelphia-braces-for-ferguson-grand-jury-decision/2144315/>.

88 *Id.*

89 A Spot report from June 1, 2020 (“PSP will be closing on/off ramps of I-676 East & West bound into Center City.”).

90 This Commanding Officer also noted that because the City lacked sufficient resources, the group was able to march without a commanding officer present at the front of the procession for a period of time before it entered the highway.

91 Once the police were able to get the group of protesters onto the highway and under arrest, it took a considerable amount of time for support to arrive to transport these protesters to the 22<sup>nd</sup> District for processing. This is yet another example of the insufficient resources that the Department had available to it during its response to these events.

92 Chris Palmer and Ellie Rushing, *Philly SWAT Officer Seen Pepper Spraying Kneeling Protesters on I-676 Turns Himself In and Will be Charged*, PHILA. INQUIRER (June 22, 2020), <https://www.inquirer.com/news/richard-nicoletti-philadelphia-police-swat-officer-arrested-charged-assault-pepper-spray-20200722.html#loaded>.

93 *Resolution Regarding Review of the City’s Response to Systemic Racism and BLM Protests and Bill Related to Less Lethal Devices: Hearing on Resolution No. 200397 and Bill No. 200538 before the Committee on Public Safety of the Council of the City of Philadelphia*, Oct. 20, 2020, at 35:15-16 (statement of Commissioner Outlaw).

94 *Id.* at 36:17-24.

95 *Id.* at 39:10-16.

96 *Id.* at 39:16-18.

97 *Id.* at 39:21-40:2

98 *Id.* at 39:18-20. Deputy Commissioner Naish, however, was not present in Fishtown on the day of this incident.

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- 99     *See supra* note 43.
- 100    IACP, COMMUNITY-POLICE ENGAGEMENT: AGENCY CONSIDERATIONS CHECKLIST FOR CIVIL DEMONSTRATION RESPONSE p. 1, <https://www.theiacp.org>.
- 101    U.S. DEP'T OF JUST., LAW ENFORCEMENT GUIDELINES FOR FIRST AMENDMENT-PROTECTED EVENTS (2011), <https://it.ojp.gov/documents>.
- 102    *See* IACP, MODEL POLICY CROWD MANAGEMENT (2019), <https://www.theiacp.org/sites/default/files/2020-08/Crowd%20Management%20FULL%20-%2008062020.pdf/>
- 103    POLICE EXECUTIVE RESEARCH FORUM, THE POLICE RESPONSE TO MASS DEMONSTRATIONS: PROMISING PRACTICES AND LESSONS LEARNED, at 46-48 (2018).
- 104    SOP#24 Revised 2-26-20 SWAT UNIT CHEMICAL AGENT DEPLOYMENT POLICY
- 105    PHILA. CODE §10-2500 (2020).
- 106    PHILA. CODE §10-1603 (1994).
- 107    *Know Your Rights at a Protest*, ACLU PA., <https://www.aclupa.org/en/know-your-rights/know-your-rights-protest%20>.
- 108    *Preliminary Findings: Use of Crowd-Control Weapons on Protestors in Portland, Oregon*, PHYSICIANS FOR HUMAN RIGHTS (2020), <https://phr.org/our-work/resources/preliminary-findings-use-of-crowd-control-weapons-on-protestors-in-portland-oregon/>.
- 109    *See supra* note 102 at 6.
- 110    James “Chip” Coldren, Ashley Shultz, James LaRochelle, and Blake McClellan, *Collaborative Reform Initiative: Interim Final Report of the Philadelphia Police Department*, COPS and U.S. DEP'T OF JUST. (2017), at 13, <https://cops.usdoj.gov/RIC/Publications/cops-w0838-pub.pdf>.
- 111    FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING (2015), at 51-54, [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).
- 112    *Id.*
- 113    *See supra* note 103 at 78-79.
- 114    *Id.* at 78-79.

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115 *Id.* at 64-68.

116 *See* IACP, MODEL POLICY BIAS-FREE POLICING (2020), <https://www.theiacp.org/sites/default/files/2020-06/Bias-Free%20Policing%20January%202020.pdf>.

117 POLICE EXECUTIVE RESEARCH FORUM, CAT: INTEGRATING COMMUNICATIONS, ASSESSMENT, AND TACTICS, <https://www.policeforum.org/icat-training-guide>.

## Calls to Action and Additional Responses to the Investigation from the Controller's Office

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### Introduction

The City's response to events in the wake of the murder of George Floyd thrust Philadelphia into the national spotlight for all the wrong reasons. Innocent bystanders and protesters exercising their First Amendment rights felt the impact of unnecessary, widespread use of force in West Philadelphia and on I-676. Meanwhile, an aggressive group of mostly White individuals were allowed to menace others in "protecting" their Fishtown neighborhood and a statue at Marconi Plaza in South Philadelphia. Businesses were looted, with many sustaining extensive damage and property loss, with little reprieve from the Philadelphia Police Department. And for the first time in decades, tear gas was deployed against civilians: not once, but on three separate occasions. These images are forever etched in our memories. During this period of unrest, the City failed to protect its residents.

### Summary of the Investigation

The Office of the City Controller launched an independent investigation to determine what went wrong during the City's response and how can it be prevented in the future. The Investigation Team conducted dozens of interviews and reviewed thousands of records, including policies and procedures. The report details the following five major findings.

- **First**, the investigation found that the City failed to sufficiently plan for the civil unrest. The City had a blueprint from managing and policing past large-scale events, including protests. But the City failed to use that experience.
- **Second**, that failure to plan is attributable to a failure of City leadership, aggravated by specific organizational and personnel issues.
- **Third**, that failure of leadership meant that resources and strategies to minimize violence were not effectively allocated or implemented. Those deficiencies escalated tensions between police and protesters and undermined the City's ability to control rioting and widespread looting.
- **Fourth**, the City responded to the unrest with violent reactions to protesters and inappropriate force, like deploying tear gas for the first time in 35 years to disperse gatherings.
- **Fifth**, the planning and response continued to show similar failures in connection with additional instances of unrest that occurred throughout the summer and fall. The Police Department showed disparate approaches to protesters gathered in opposition to the police versus groups gathering in support of the police.

The report also provides recommendations for the City to directly address the findings. Specifically, two recommendations target the organizational deficiencies and personnel

vacancies that affected the City's ability to plan and respond to the unrest. The other recommendations focus on enhancing policies and training specific to civil unrest and provide resources for best practices in community-based policing and modern policing.

As part of the independent review, Controller Rhyhart created a Community Accountability and Advisory Council to ensure the voices of Philadelphians, particularly those who were impacted by the City's response, were not lost in this process. This Call to Action embodies the input and is the result of multiple conversations with the Council in response to the investigation and report.

## Lack of Leadership and Planning

The lack of preparation for the civil unrest was a failure of top City leadership. The Home Rule Charter established Philadelphia as a city with a strong mayor government structure, and it is crucial that the mayor display leadership in times of stress and chaos. Additionally, according to the City's emergency management doctrine, the ultimate responsibility for any City response lies with the Mayor. But as the report details, he did not exercise the leadership that was necessary throughout the unrest.

Under the Mayor's leadership, several top officials in key roles during the unrest also did not exercise the leadership required. Specifically:

- The Managing Director incorrectly believed that there was no way to plan for this type of unrest;
- The Police Commissioner had left the position of Inspector of Homeland Security vacant, which historically was key to planning and implementing a response to large protests and unrest; and
- The current head of the Office of Emergency Management, who also serves as Fire Commissioner, viewed OEM's role in a more limited fashion than past independent directors.

Moreover, the Mayor's lack of leadership and accountability can also be extended to his decision to allow the Police Commissioner alone to make decisions regarding the use of CS gas during the demonstrations. The report explains that during her interview for her current position, the Mayor and the Police Commissioner discussed that CS gas was not typically used for crowd control in Philadelphia. And as the report details, CS gas had not been used for civil unrest or crowd dispersal in Philadelphia for 35 years, not since the 1985 MOVE bombing. According to the Police Commissioner, the Mayor was well aware of her previous history of using CS gas in Portland, Oregon and the Mayor was personally against its use. Despite this, the Mayor allowed the Commissioner to make decisions about its use without his express approval.

Each of these issues contributed to the lack of leadership and accountability, and as a result, the City's failure to plan for the unrest. It's also worth noting that the Mayor declined to participate

in a meaningful interview with the Investigation Team. Instead, he relied on his subordinates to take responsibility for such significant decisions. These inactions demonstrate a lack of accountability, transparency and leadership. At a time when our city needed bold action and leadership, we were met with complacency.

**Call to action:** *Moving forward, both the Mayor and the Managing Director should exercise stronger leadership in times of crisis, including taking a more hands-on role during emergencies. As detailed in the report, the complacency from leadership leading up to the start of the unrest had a direct, negative impact on planning and preparation. In the future, leadership must utilize past experiences successfully managing large-scale events and recognize when to make important decisions and start the planning process sooner. Additionally, the public should work towards taking a more active role in government and hold officials accountable for their actions.*

## Use of CS Gas

This lack of leadership and planning led to the unnecessary and inconsistent use of force throughout the unrest, including the deployment of CS gas. CS gas is undeniably severe and harmful: it is banned in warfare as a chemical weapon. Despite that ban, law enforcement is allowed to use it for “domestic riot control purposes.”<sup>1</sup> In addition to causing excessive tearing as its name implies, tear gas causes blurred vision; chemical burns to eyes, nose, mouth, lungs, and skin; nausea and vomiting; and coughing, wheezing, chest tightness, or choking sensations. Exposure can also lead to conditions as severe as blindness, glaucoma, respiratory failure, and death from severe chemical burns to the throat and lungs.<sup>2</sup> Tear gas may also trigger PTSD symptoms, particularly in military veterans and immigrants. The hot canisters themselves can also cause burns or other physical damage from impact or explosion. As such, decisions regarding its use should not be taken lightly or without clear accountability.

The report explains that the Mayor gave the Police Commissioner permission to use CS gas if she believed it was absolutely necessary. The unnecessary use of CS gas noted in the report contributes to the widespread belief by community members that it should be banned completely from being used by law enforcement on its own residents.

**Call to action:** *The investigation offers recommendations for enhanced policies around the use of less-lethal munitions in responding to civil unrest, in line with the recently passed City Council ordinance directing the administration to establish or update policies to ban the use of CS gas in First Amendment Activity (newly created City Code Chapter 10-2500). Moreover, the Mayor and other City leaders should not give broad, sweeping authorization for the use of CS gas under any circumstances. If CS gas cannot be banned completely, the public should push the Mayor and his administration to adopt additional controls to ensure that CS gas is only used in the most extreme, emergency situations when*

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<sup>1</sup> <https://www.opcw.org/chemical-weapons-convention/articles/article-ii-definitions-and-criteria>

<sup>2</sup> <https://emergency.cdc.gov/agent/riotcontrol/factsheet.asp>

*life is in danger and not used for general crowd-control. Any use should also require explicit approval from a majority of the members of the Unified Command Group including the Mayor and Police Commissioner.*

## Failure to Effectively Respond to Looting in Parkside, Center City and Other Philadelphia Neighborhoods

The report shows how this lack of leadership resulted in insufficient planning that led to widespread personal, property, and reputational damage. Specifically, the City was unable to direct the appropriate resources to handle the rioters and opportunistic looters that followed the initial protests. Without strategic planning and guidance from City leadership, police lacked the manpower and transportation to arrest looters. Officers were left to either take a relatively “hands off” approach to the looting happening right in front of them or patch together makeshift tactics from whatever resources they could find. This failure of leadership and planning led to not only injuries to police officers and damage to city equipment, but also widespread looting for hours at a time, extensive property damage to businesses over the weekend, and lasting reputational damage. Our city is already struggling financially during this pandemic. This response simply failed to protect businesses, including stores critical to neighborhoods for groceries, prescription medication, and employment. This cannot be allowed to happen again.

**Call to action:** *Given the City’s largely successful previous experiences with large gatherings, the City has the chance to genuinely learn from the mistakes of last spring and summer. The report contains detailed recommendations from the Investigation Team on policies and training, particularly for situations of civil unrest. These recommendations could help ensure that the police are better equipped with the knowledge and training to prevent loss of life and destruction of property while protecting the constitutional rights of all Philadelphians.*

## Race and Policing in Philadelphia

The investigation further outlines the many tactical and administrative shortcomings that led to inconsistent policing that violated the trust of the public. In particular, the aggressively militant policing in West Philadelphia stood in stark contrast to the lack of response during much of the looting in Center City. And the well-documented instances of excessive force in mostly Black neighborhoods or against pro-Black Lives Matter protesters clearly differed from what appeared to be a friendly relationship with mostly White vigilantes in Fishtown and South Philadelphia. These examples of disparate treatment highlight the issues of police accountability and implicit bias.

Our city’s long history of racism within the police department is undeniable. For instance, in 1958, City Council heard testimony from Black residents regarding the police specifically targeting the

Black community. This resulted in the creation of the first civilian review board in the nation.<sup>3</sup> It is also well documented that in the 1960s and 1970s under Police Commissioner Frank Rizzo, who later became Mayor, the Black community experienced extreme police brutality and discrimination. The instances of disparate treatment were so widespread that a federal judge ruled that the police violations were systemic. In the most infamous example, in 1985 the Philadelphia Police tear gassed and dropped a bomb on a rowhouse serving as the headquarters for MOVE, a Black liberation organization. As a result, 11 people died, including five children. Sixty-one homes in the predominantly Black neighborhood were destroyed, displacing 250 Philadelphians. Beyond the devastating loss of lives, the surrounding community is still healing from the only time in recorded U.S. history when a City dropped a bomb on its own people. That bombing happened just blocks away from the residential neighborhoods blanketed with tear gas last spring.

It's important to note that this fraught relationship with police extends to an intersection of historically marginalized communities, including but not limited to, the LGBTQIA+, immigrant, and disability communities. These communities should not be overlooked when discussing discrimination and policing.<sup>4</sup>

More recently, in 2019 the Philadelphia Police Department was pulled into the national spotlight when the Plain View Project, a project by the nonprofit journalism organization Injustice Watch, released a catalogue of bigoted social media posts implicating more than 300 Philadelphia Police officers. The Plain View Project revealed that these officers made racist, misogynistic and Islamophobic posts on their social media accounts. More than one third of these officers had previously been named in federal lawsuits over police brutality.<sup>5</sup> At the time, then-Philadelphia Police Commissioner Richard Ross said that the social media posts "will undeniably impact police-community relations," and declared that "we are not naïve to that fact, nor are we dismissive of it."<sup>6</sup> As a result, Commissioner Ross dismissed fifteen officers from the force, all of which filed grievances challenging their discipline.<sup>7</sup> Eleven of those officers opted to retire rather than be dismissed. Another nine officers received 30-day suspensions, and the other more than 300 officers remained on the force with lesser discipline, if any at all.

The systemic bias was once again apparent in the juxtaposition of police responses throughout the unrest. As the report details, the City openly treated groups of people differently with inconsistent and unnecessary use of force. The police trapped and tear gassed protesters who

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<sup>3</sup> <https://time.com/5905583/philadelphia-police-racism-history/>

<sup>4</sup> For example, in 2012 police shot and killed a 25-year-old Cambodian man in Olney. Following the incident, a Cambodian advocacy group detailed 30 instances of police mocking mourners in the days that followed the shooting:

[https://www.inquirer.com/philly/news/breaking/20120725\\_Officials\\_\\_Cambodian\\_residents\\_discuss\\_tensions\\_in\\_Olney.html](https://www.inquirer.com/philly/news/breaking/20120725_Officials__Cambodian_residents_discuss_tensions_in_Olney.html)

<sup>5</sup> <https://billypenn.com/2019/06/07/hundreds-protest-at-philly-police-hq-call-for-action-on-intolerant-facebook-posts/>

<sup>6</sup> <https://www.nytimes.com/2019/06/20/us/philly-cops-plain-view-project.html>

<sup>7</sup> <https://billypenn.com/2020/06/30/philly-police-punished-for-offensive-facebook-posts-are-trying-to-get-their-jobs-back-and-so-are-those-who-voluntarily-resigned/>

marched for Black lives. Yet, the police allowed – even encouraged – armed White vigilantes to roam freely, physically and verbally threatening others, and loiter past curfew. This is even more shocking when you consider the nonviolent, nonaggressive police response to vigilantes in South Philadelphia who claimed to be protecting the Christopher Columbus statue, which arguably represents historical violence against people of color. The inconsistent approaches were also on display in the heavy-handed show of force on 52<sup>nd</sup> Street, while looters ransacked upscale Rittenhouse shops with abandon just the day before. These incidents further highlight the structural racism woven into the fabric of Philadelphia’s history up to the present day.

**Call to action:** *Considering the history of policing in Philadelphia, this report should be the clarion call to measurably address implicit bias and structural racism. The first step to address this issue is implementing the recommendations in the report on conducting training and adopting policies that address implicit bias. However, it should be noted that some individuals, such as those belonging to White supremacist groups, are incapable of or unwilling to work toward addressing implicit bias and should be rooted out.*

*Moreover, a readily implemented change that could build trust with historically marginalized communities would be to include lines of communication to the Office of Public Engagement, the Office of Immigrant Affairs and the Office for People with Disabilities in the Emergency Operations Center when the Unified Command Group is assembled. This would ensure representation and consideration of perspectives that often fall through the cracks, whether it be because of barriers of language, culture, or access, especially in times of crisis.*

## Reimagining and Reforming Policing

As the report identifies, the Police Department has failed to aggressively commit to the community-based policing recommendations made by the Department of Justice in 2017. The Department, along with the Managing Director and the Mayor, needs to take major steps to build police-community trust. True reform would also require the commitment of individual officers, as well as the police union, to work towards implementing better policing practices.

However, the necessary changes in policing go well beyond conducting implicit bias training and working towards better community policing. Lasting reforms need to be implemented to create more trust with the community. A group of state representatives from Allegheny and Philadelphia Counties, Philadelphia City Council and local attorneys, formed the Police Reform Working Group to address urgent reforms in policing. This group has put forth reform proposals that should be given serious consideration. Their robust reform proposals include reforms within the authority of the Governor, the Mayor/Police Department and legislation at both the state and local level. These include Act 111 reform and civilian oversight.

Among the reforms promoted by the Police Reform Working Group and recently established by City Council is the creation of an independent civilian-led review board. Civilian review or oversight boards are widely used external mechanisms intended to promote police

accountability. However, such oversight must have both independence and authority to effectively provide accountability. Although Philadelphia first established a civilian oversight board in 1958 and has had the Police Advisory Commission (PAC) in place by mayoral decree since 1994, the newly created Citizens Police Oversight Commission is now incorporated into the City's Charter (§ 4-2500 et seq.).

**Call to action:** *In determining what this new commission will look like, City Council must work with the community – the civilian citizens – on critical considerations regarding staffing, access, and resources. Community ideas include: holding elections for the members of the commission; tying the budget to a certain percentage of the Police Department's budget; requiring notice of any new or substantively changed policies, rules, or regulations affecting the Police Department; and insight into the grievance and arbitration processes, including access to all complaints, disciplinary records, whistleblower reports, and other records.*

Importantly, change must happen at the state level with Act 111, which restricts what reforms can be implemented locally. Included in the Police Reform Working Group's goals is legislation that would prohibit police collective bargaining agreements from including language relating to interference with police misconduct investigations, discipline, disciplinary action and discipline records. Such legislation will ensure appropriate discipline is applied to officers and increase the public's trust that if an officer violates policies or procedures, they will be held fully accountable.

**Call to action:** *Philadelphia's state representatives should advocate on behalf of their constituents for Act 111 reform to empower the City to meaningfully address unacceptable police behavior. Moreover, public pressure is a vital force in pushing for legislative changes. The general public can and should contact their state representatives to express the desire for better accountability in policing, or support groups that lobby for greater police accountability.*

The period of civil unrest further highlighted the inequities within Philadelphia as the poorest big city in the United States. Amid a pandemic and fiscal crisis, Philadelphians are more in need of community care than ever before. Calls by community members to "defund" the police drive at the heart of this need. We need to reimagine and rethink what policing and public safety looks like in Philadelphia, so the City can work better for all of its residents.

For example, the report made clear that it was the failure of leadership to adequately prepare for the civil unrest, not a lack of resources, that led to understaffing. This snowballed into uncontrolled looting and property damage, as well as excessive force used in residential neighborhoods and against peaceful protesters.

As we push for reforms and a reimagining of policing, there is a critical need to understand how the Philadelphia Police Department is spending their allocated budget, which is the largest departmental budget in the City's General Fund.

For example, since the death of Walter Wallace Jr., there have been renewed calls for reevaluating who responds to certain types of calls. In addition to existing behavioral health training and services, one suggestion is establishing civilian crisis intervention teams to intervene with mental health crises, homelessness emergencies, community disputes and other similar emergency calls. The belief is that crisis intervention teams of mental health professionals or other unarmed experts specializing in de-escalation and mediation could restore trust in the community by no longer criminalizing residents in crisis. These efforts could also include establishing an alternative emergency phone number, as opposed to relying on 911 to address any and all emergencies. A review of best practices will determine the best course to address these issues going forward.

**Call to action:** *The Office of the City Controller is planning a review of the Philadelphia Police Department spending at the request of the members of the Police Reform Working Group on City Council. The goal of the review will be to analyze the Philadelphia Police Department's spending compared to police department spending in other jurisdictions. The review will also aim to identify best practices and opportunities for more efficient spending to meet the needs of our residents and truly embrace public safety for all. This review should help the City engage the public in robust discussions about what policing should look like in our neighborhoods and communities.*

## Conclusion

City leadership needs to position itself to take real and bold action to implement much overdue changes needed to heal our communities. As City leaders work to restore public trust, we must not lose sight of the catalyst for the civil unrest. The civil unrest during the spring and summer of 2020 was sparked by the death of yet another Black man at the hands of police officers. City officials and leaders must rise to the moment by showing that Black lives matter in the implementation of new policies and the changes they bring. There is a critical need for government to authentically acknowledge, assess and address the systemic racism that represents the biggest obstacle to true community policing.

The changes outlined above will empower civilians, Philadelphia police leadership and the administration to engage in the challenging process of correcting implicit bias and rooting out systemic racism. City officials must learn from the events of last year and create a system where community care is prioritized. That system must authentically call out and address structural racism. This can be accomplished only by bringing members of the community to the table to come up with solutions based on their diverse experiences. No strategy or solution will be successful unless there is inclusive and robust engagement with the community and meaningful input in the decision-making process. This input, coupled with community oversight and accountability, the reevaluation of budgeting priorities, and the reimagining of public safety duties, can help prevent future unrest and begin to heal the relationship between the City of Philadelphia and its residents.

The Controller's Office would like to thank all of members of this review's Community Accountability and Advisory Council for their input throughout this process:

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