

CITY OF OLYMPIA, WA

POLICE AUDITOR

2023 DRAFT ANNUAL REPORT

Tara L. Parker, Police Auditor, February 20, 2024

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I. EXECUTIVE SUMMARY

In 2023, the Police Auditor served the City of Olympia in multiple ways. First, between January 1 and December 31, 2023, the Police Auditor reviewed documents and body worn camera (BWC) video footage related to fifty-two incidents involving uses of force by members of the Olympia Police Department (OPD). All of those matters were audited and found to be thorough, objective, free of bias, and consistent with OPD policies.

In 2023, the OPD had 5% increase in the number of calls for service (56,173), yet there were 7% fewer arrests (3,108) compared to 2022. Moreover, the number of use of force incidents (52) went down 24% and only 1.6% of all arrests involved a use of force. The OPD and the Auditor are working to identify and enhance factors that may be contributing to these indications that officers' interactions with the public are improving.

In 2023, there was a 95% increase in the number of juvenile (aged 13-17) arrests (72) compared to 2022, and nine of those arrests involved a use of force. This disturbing trend in rising interactions between juveniles and law enforcement is being closely monitored by the Department and the Auditor and we seek ways to address it, including enhanced youth de-escalation training.

Second, the Police Auditor reviewed twenty completed investigation files regarding allegations of misconduct by OPD employees. The investigations were found to be thorough, objective, free of bias, and consistent with OPD policies. There were no sustained complaints of officers engaging in serious misconduct such as excessive use of force or civil rights violations. There were three sustained complaints of officers engaging in service level unprofessional conduct. And there were five complaint investigations in which BWC video was pivotal: four of the complaints were proven untrue by the video evidence, and one complaint was substantiated by the video.

Third, the Auditor reviewed the OPD's responses to three public demonstration events in 2023. That is fewer than half the number of such events in 2022. The Auditor found that the Department's crowd management operational plans and after-action reports were consistent with the Department's First Amendment Assemblies and Crowd Management Policy and there was not any indication of bias in the Department's plans or responses.

2023 was also the first full year in which the OPD utilized body worn cameras. Although it is impossible to know whether individuals in the community and officers were more motivated to comply with laws and policies knowing they were being video recorded, the data above suggests that is the case. Furthermore, the availability of BWC video greatly enhanced the Auditor's ability to scrutinize all relevant events and view the totality of officers' conduct, including tone of voice, body language, and officers' conversations with other officers, witnesses, victims and bystanders. As such, the Auditor could observe whether any unprofessional, biased or discriminatory conduct occurred.

Fourth, the Auditor reviewed the OPD's trainings and policies related to uses of force, anti-discrimination, crisis response, de-escalation, and BWC use. The Auditor found the Department was complying with applicable laws and policies. The Auditor recommended the OPD obtain training specific to youth de-escalation. The Auditor also recommended the Department adopt additional anti-discrimination policy language, revise its misconduct investigation procedures, systematically include information regarding Crisis Response Unit involvement, and amend its BWC policy.

The Department adopted all of the Auditor's recommendations, except the Auditor's recommendation that the Department revise its BWC policy to prohibit officers from deactivating BWC audio while engaged in law enforcement functions. OPD leadership noted that any change to the body worn camera policy is a mandatory subject of bargaining with the labor unions. OPD reports that they are researching policies from other agencies regarding this issue and will be evaluating any impact to operations this recommendation might create. During this time, the Chief of Police has conveyed the Auditor's concerns to all OPD staff and informed them that muting the audio for operational purposes should be a rare occurrence, and not a normal course of action. The recommendation is therefore renewed and expanded upon in this Report.

Throughout 2023, with respect to all of the activities above, the Police Auditor examined applicable OPD policies and sought clarification and additional information from the Department when necessary. The Department was receptive, responsive, and fully cooperative with the Auditor at all times. The Auditor also benefited from feedback and engagement with the Social Justice and Equity Commission and Olympia City Council members.

II. POLICE AUDITOR ROLE AND RESPONSIBILITIES

The City of Olympia employs a Police Auditor in order to increase public trust and confidence in the Police Department by providing an independent civilian review and audit of the Police Department's uses of force and its internal investigations regarding complaints against the Olympia Police Department and its employees. The Police Auditor's duties and responsibilities include examining uses of force, complaint investigations, and public demonstration responses to determine whether there is any evidence of unlawful bias or civil rights violations, and to ensure that they are aligned with best practices.

1. Evidence of Unlawful Bias

The Police Auditor scrutinizes every use of force and complaint investigation file, including the related body worn camera (BWC) videos. As part of that scrutiny, the Police Auditor observes whether any conduct by law enforcement suggests officers engaged in bias based on community members' race, sex, sexual orientation, disability, or other protected class. The Auditor also observes whether OPD employees' conduct is

consistent with the Department's standards of professionalism and respectfulness towards all.

- a. The following are some of the potential indications of bias or misconduct that the Police Auditor looks for:
 - i. Failure to timely engage in procedural justice steps
 - ii. Interrupting subject
 - iii. Profanity directed at subject
 - iv. Derogatory language, slurs, or offensive terminology
 - v. Argumentative vs. de-escalating language
 - vi. Aggressive/intimidating tone of voice outside of giving necessary commands
 - vii. Aggressive body language in the absence of threats or resistance

2. Best Practices

"Best Practices" is a term of art, which, in the context of police oversight refers to a set of guidelines, methods, and procedures that are considered the most effective and ethical approaches for ensuring transparency, accountability, fairness, and community trust in the policing process. With respect to use of force review, this includes determining whether the Department complies with all policies and applicable laws, as well continually monitoring trends and identifying areas for improvement. Best practices in law enforcement are continually evolving as societal expectations and challenges change.

The Police Auditor examines multiple resources regarding police reform, civil rights, anti-discrimination and impartial investigation practices to discern the practices that best align with the City of Olympia's values and expectations. Accordingly, the values of the City of Olympia set the standards and expectations of its Police Auditor. The City of Olympia's values and expectations of its police department are defined by community members, the City Council, and the Social Justice and Equity Commission. Those values are also reflected In the OPD's General Orders:

"The Olympia Police Department is ethically centered and guided by the fundamental core values of integrity and respect. We are accountable to ourselves and our citizens as we strive to create a community that is safe and welcoming for all."

3. The Civilian Police Auditor will be responsible for the following:

- b. Review of police professional standards investigations relating to complaints about the Police Department or its employees to determine if the

investigations meet Department standards and are complete, thorough, objective, and fair.

- c. Review of all uses of force, complaints, and internal investigations as defined in Olympia Police Department General Orders to determine if they are consistent with Police Department policies, without indication of unlawful bias, protect civil rights, and are in alignment with best practices.
- d. Provide an impartial review of the Police Department's internal investigative process and verification of the Department's compliance with established policy and procedures.
- e. Provide an impartial review of the Department's responses to public demonstrations and crowd management when events result in physical injury, extensive property damage, or is determined by the City Manager to be appropriate for review by the Police Auditor to determine if the response was in alignment with the Police Department's applicable General Orders and Guiding Principles for Demonstrations and Crowd Management.
- f. Review and recommend revisions to Police Department policies, procedures, and training related to complaints, use of force, and the internal investigative process based on audit findings. Revisions will be in alignment with best practices regarding diversity, equity, and inclusion, while ensuring public safety and protection of First Amendment and other constitutional rights.
- g. The Police Auditor will present the mid-year and annual reports at a City Council meeting.
- h. Filing a mid-year and annual written report to the City Council, with a copy to the City Manager and Police Chief. The Auditor's report shall not contain the names of employees, complainants, or witnesses; and will include:

III. Use of Force Files

- a. Summary of use of force statistics, including but not limited to:
 - viii. Types of use of force used
 - ix. Subject Demographics
 - x. Indications of bias
 - xi. Whether the use of force led to serious injury

IV. Misconduct Complaints and Internal Investigations

- a. A finding on each complaint and internal investigation audited indicating either:
 - xii. That the Department's internal investigation met the Department's standards and established investigative best practices; or

- xiii. After response to a request for further investigation, the case failed to meet the above standards, and reasons supporting such finding.
- xiv. A summary of the complaints and internal investigations audited, including:
 - a. Date complaint received
 - b. Classification
 - c. General Description
 - d. Investigative Findings
 - e. Corrective Actions
 - f. Police Auditor Findings
 - g. When additional complaint investigations were requested and OPD's Responses
 - h. Findings on each complaint case audited.

V. Additional Information

- a. Summaries of data in graphic and narrative form
- b. Analysis of key trends and patterns
- c. Recommendations for revisions to policy, procedures, and training
- d. A list of the updated policies, procedures and trainings related to the Police Auditor Scope of Work

III. POLICE AUDITOR METHODOLOGY

The Auditor reviews files after they have been marked "complete" following the Department's multi-level review. For example, a use of force incident may occur on December 1, 2023, undergo review by the Department, and be delivered to the Auditor on January 1, 2024. In that case, the incident would not be included in the Auditor's 2023 Annual Report, but it would be included in the 2024 Mid-Year Report.

The Office of Professional Standards (OPS) sends the Auditor complete use of force files 3-4 times each month.

- 1. Per RCW 10.118.030(2) each file must include the following information:**
 - a. The date and time of the incident;
 - b. The location of the incident;
 - c. The agency or agencies employing the law enforcement officers;
 - d. The type of force used by the law enforcement officer;
 - e. The type of injury to the person against whom force was used, if any;
 - f. The type of injury to the law enforcement officer, if any;
 - g. Whether the person against whom force was used was armed or unarmed;

- h. Whether the person against whom force was used was believed to be armed;
- i. The type of weapon the person against whom force was used was armed with, if any;
- j. The age, gender, race, and ethnicity of the person against whom force was used, if known;
- k. The tribal affiliation of the person against whom force was used, if applicable and known;
- l. Whether the person against whom force was used exhibited any signs associated with a potential mental health condition or use of a controlled substance or alcohol based on the observation of the law enforcement officer;
- m. The name, age, gender, race, and ethnicity of the law enforcement officer, if known;
- n. The law enforcement officer's years of service;
- o. The reason for the initial contact between the person against whom force was used and the law enforcement officer;
- p. Whether any minors were present at the scene of the incident, if known;
- q. The entity conducting the independent investigation of the incident, if applicable;
- r. Whether dashboard or body worn camera footage was recorded for an incident;
- s. The number of officers who were present when force was used; and
- t. The number of suspects who were present when force was used.

2. The Use of Force files must also include:

- a. Arrests or charges
- b. Witness statements
- c. Photos
- d. Videos
- e. Associated case reports
- f. Other documentary evidence
- g. Immediate Supervisor review of reports and determinations
- h. Management review of reports and determinations
- i. Defensive Tactics Use of Force Team reviews and training points, when applicable

3. OPS weekly reports to the Auditor contains updated information regarding all internal and external complaints regarding OPD Officers, including:

- a. Complaint and Internal investigation documents
- b. Classifications
- c. Investigation details and findings

- d. Learning and resolutions

Finally, the weekly OPS reports include all Crowd Management Operational Plans and After-Action Reports regarding public demonstrations.

4. The Police Auditor's process includes:

- a. Tracking all data listed above;
- b. Seeking additional information when necessary;
- c. Consulting with the Chief of Police and the Professional Standards Lieutenant (OPS) regarding observations, policies, practices, and departmental developments;
- d. Examining the data for trends;
 - i. Reviewing all files to determine
 - ii. Completeness
 - iii. Thoroughness
 - iv. Objectiveness
 - v. Fairness
 - vi. Evidence of Bias
- e. Examining Department practices for compliance with OPD policies; and
- f. Noting areas that may be improved by procedural or policy changes.

IV. POLICIES REGARDING COMPLAINTS

OPD Policy 10101 governs how the Department investigates all personnel complaints against OPD employees. It states:

The Olympia Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members. The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any memorandum of understanding or collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

Individuals from the public may make complaints about members of the Olympia Police Department in-person, by telephone, by written documents, and by email. Complaints can also be filed via the complaint form on the City's website.

¹ The full policy can be found at <https://public.powerdms.com/OlympiaPD/tree/documents/1662358>.

All complaint investigations are overseen by the Office of Professional Standards (OPS), which is sometimes referred to as Internal Affairs (IA). Complaints about OPD employees by other OPD employees are typically recorded as “IA” files. All complaints must be thoroughly and fairly investigated in accordance with the standards set forth in OPD Policy.

1. The OPD Policy regarding Personnel Complaints provides the following complaint categories:

- a. **Inquiry** – A matter in which there is a question regarding conduct or performance. Such inquiries generally include clarification regarding policy, procedures, or the response to specific incidents handled by the Department.
- b. **Personnel complaints** - include any allegation of misconduct, or improper job performance against an employee of the police department that, if true, would constitute a violation of department policy or of applicable federal, state, or local law, policy, or rule, or CJTC decertification/suspension/revocation criteria found in section 1010.16 of this policy. Personnel complaints may be generated internally or by the public.
- c. **Informal complaint**- A matter in which there is no expectation, from the complainant, that an investigation will occur, and the supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.
- d. **Formal complaint**- A matter in which a supervisor or manager determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or the Professional Standards Unit, depending on the seriousness and complexity of the investigation.
- e. **Wrongdoing** – (as defined in RCW 10.93.190 – Officer’s Duty to Intervene) means conduct that is contrary to law or contrary to the policies of the witnessing officer's agency, provided that the conduct is not de minimis or technical in nature.) “Wrongdoing” – even if true - may or may not be determined to be misconduct pursuant to City of Olympia policies if such “wrongdoing” involves allegations that a City of Olympia officer violated the policy of a witnessing officer’s agency.
- f. **Preliminary Investigation** – A cursory fact-finding activity where the Office of Professional Standards investigator or a supervisor seeks to determine if

sufficient information exists before deciding whether or not an investigation is feasible or warranted.

2. Internal Affairs investigation reports must include the following information:

- a. The date of the incident;
- b. The name of the employee(s) involved;
- c. The date the case was assigned;
- d. The names and contact information for the complainants or affected individuals in the complaint;
- e. A written report containing:
 - i. A concise but complete synopsis of the allegations;
 - ii. A narrative presenting the details of the investigation, including a chronological summary of the investigation, witness interviews, etc.;
 - iii. The findings of fact - including, by numerical listing, a summary of the findings of fact, including citation of any violations of policy and/or law involved;
 - iv. An investigator's log showing the dates and times of contacts and other key actions related to the investigation.
- f. Appendices containing:
 - i. Transcripts of interviews with the complainant(s) and key witnesses;
 - ii. Letters and written statements from employees, community members, and witnesses;
 - iii. Copies of all related reports;
 - iv. Copies of all memos or formal letters related to the investigation.
- g. Photographs, video tapes, audio tapes and other relevant supporting materials shall also be submitted with the final report;
- h. The date the final report is submitted;
- i. The name and signature of the assigned investigator.

At the conclusion of an investigation, the investigator will reach a finding in accordance with the Department's policies. The standard of proof for all internal investigations is by "a preponderance of the evidence." This is a lower standard than what a criminal case requires which is "proof beyond a reasonable doubt."

3. Complaint Dispositions

Each complaint shall be classified with one of the following dispositions:

- a. **No Finding** – When the investigation shows one of the two following conditions to be present:
 - i. The complainant failed/declined to disclose information to further the investigation.
 - ii. The allegations relate exclusively to another agency, and the complaint and/or the complainant has been referred to that agency.

- b. **Unfounded** - When the investigation shows that the alleged behavior did not occur or was patently false.
- c. **Exonerated** - When the investigation shows the alleged behavior occurred, but also shows such acts to be justified, lawful, and proper.
- d. **Not sustained** - When the investigation fails to disclose sufficient facts to prove or disprove that the alleged behavior occurred.
- e. **Sustained** - When the investigation discloses sufficient facts to prove the alleged behavior occurred.
- f. **Resolved** – Resolved may be used as a disposition for inquiries and informal complaints only.
- g. **Without Merit** – The Professional Standards Lieutenant, with approval of the Chief or Police or designee, may close an investigation if one of the following conditions are demonstrated:
 - i. Positive proof (photos, video, audio tape, etc.) clearly establishes that the allegation is untrue; or
 - ii. The facts indicate that the allegation is clearly inconsequential or frivolous and no tangible harm can be reasonably associated with the behavior; or
 - iii. The facts indicate that the allegation was made maliciously and with wanton disregard for the truth; or
 - iv. The complaint does not involve the Olympia Police Department or its employees.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall recommend appropriate action with regard to any additional allegations.

All investigations and findings are reviewed by the Professional Standards Lieutenant, the Chief of Police, and the Police Auditor. All Service Level complaint investigations must be completed within sixty (60) days from the date the case is received by the Department. All investigations into allegations of Serious Misconduct must be completed within ninety (90) days from the date the case is received by the Department, unless extended by the Professional Standards Lieutenant with the approval of the Chief of Police.

Any sustained complaint is referred to the employee's supervisor or manager for corrective action. The determination of corrective action is based on the severity and repetitiveness of the violation.

- 4. Corrective actions include the following:**
- a. Counseling and coaching
 - b. Oral warning

- c. Written warning
- d. Performance improvement plan
- e. Suspension without pay
- f. Reduction in pay or rank
- g. Last chance agreement
- h. Termination

OPS is responsible for managing the formal accountability system. OPS is managed by the Chief of Police. All records are tracked, stored, and maintained in the Department Records Management System (RMS). The Police Auditor also has independent access to the RMS database.

OPS provides all information regarding external and internal complaints about OPD employees to the Police Auditor on a weekly basis. When investigations involve highly sensitive or complex matters, several months may transpire between the date a complaint is filed and when it is complete and delivered to the Auditor for review. If the Auditor finds the Department's investigation is inconsistent with policy, the Auditor will notify the City Manager and the Chief of Police of their recommendations for further action.

V. OPD POLICIES REGARDING USES OF FORCE

The OPD Use of Force Policy contains many provisions and definitions that specify when and how officers may use physical force, particular law enforcement tools that may be used to compel people to cooperate, as well as detailed requirements regarding how uses of force must be reported.² OPD policies reflect and comply with applicable Washington State law as codified in the Revised Code of Washington (RCW), as well as standards set by state and federal law.

The Auditor is responsible for examining the records for compliance with all aspects of the Use of Force Policy. The policy provisions that are most pertinent for this purpose are as follows:

1. The term “force” in this context refers to physical force:

Any act reasonably likely to cause physical pain or injury or any other act exerted upon a person's body to compel, control, constrain, or restrain the person's movement. Physical force does not include pat-downs, incidental touching, verbal commands, or compliant handcuffing where there is no physical pain or injury (RCW 10.120.010).

Law enforcement officers must “use the least amount of physical force necessary to overcome resistance under the circumstances.” (RCW 10.120.020(3)(b)).

² The full policy may be found at <https://public.powerdms.com/OlympiaPD/tree/documents/1661374>.

- 2. Force is only allowed when it is necessary. Necessary force is defined as follows:**
Under the totality of the circumstances, a reasonably effective alternative to the use of physical force or deadly force does not appear to exist, and the type and amount of physical force or deadly force used is a reasonable and proportional response to affect the legal purpose intended or to protect against the threat posed to the officer or others (RCW 10.120.010).
- 3. Prior to using force, when safe and feasible, officers are required to do the following:**
 - a. Identify themselves as law enforcement officers.
 - b. Determine whether the person has a special need, mental condition, physical limitation, developmental disability, language barrier, or other factor that may impact their ability to understand and comply with officer commands.
 - c. Provide clear instructions and warnings.
 - d. Warn a person that physical force will be used unless their resistance ceases.
 - e. Give the person a reasonable opportunity to comply with any warning.

VI. USE OF FORCE INCIDENTS IN 2023

The Auditor reviewed fifty-two use of force incidents in 2023. Each of the use of force incidents was subject to internal, multi-level review and the Department determined that the officers' actions were within policy.

The Police Auditor reviewed the files of every incident involving the use of force and examined the records to ensure the reports from officers and management were complete, thorough, objective, fair, and without bias. The Auditor also examined whether each use of force met Department standards regarding de-escalation efforts and whether the force used was lawful. The Auditor found that all use of force files in 2023 demonstrated that the Department and its employees' actions were within policy.

- 1. Additional key data regarding the fifty-two use of force files is as follows:**
 - a. Types of Force Used³
 - i. Thirty-eight involved "Takedowns" by means of defensive tactics such as pain compliance techniques, control holds, and physical restraint.
 - ii. Nine incidents involved the deployment of Conductive Energy Weapons (CEW or CED Taser probes).

³ There are fifty-five Types of Force noted in this Report, rather than fifty-two, because, in several instances more than one type of force was used. The types of force are defined and described in more detail in the OPD Policy: <https://public.powerdms.com/OlympiaPD/tree/documents/1661374>.

- iii. Four incidents involved kinetic impact rounds from less lethal shotguns.
- iv. One incident involved pepper spray.
- v. One incident involved an officer pointing their service weapon.
- vi. One incident involved a K9.
- vii. One incident involved use of the Bola Wrap remote restraint device.

b. Subject Demographics⁴

- i. Thirty incidents involved white male subjects.
- ii. Five incidents involved a white female subject.
- iii. Six incidents involved a Black male subject.
- iv. Two incidents involved Black female subjects.
- v. One incident involved an Asian male subject.
- vi. Two incidents involved a single Indigenous male subject.
- vii. One incident involved a male subject whose race was not clearly identified.

| Subject's Age-Range | Number |
|---------------------|--------|
| 14-17 | 7 |
| 18-29 | 14 |
| 30-39 | 20 |
| 40-49 | 5 |
| 50-59 | 4 |
| 60-69 | 2 |

c. Additional Key Data

- i. There was a 24% decrease in the number of officers' use of force in 2023 compared to 2022. The Police Auditor and the Department are continuing to examine this trend and others in an effort to determine factors that may have contributed to this positive development.
- ii. None of the incidents led to serious injuries.
- iii. Forty-three (83%) of the incidents involved subjects who appeared to be severely mentally ill and/or impaired by alcohol or drugs and did not respond to de-escalation efforts.
- iv. Seventeen (33%) of the incidents involved subjects who were unhoused.⁵

⁴ Officers rely on their perceptions, subjects' representations, and available records to discern subjects' racial identities.

⁵ The number of unhoused subjects is likely higher. The OPD does not specifically record that data and the Auditor only began tracking it in 2023. A person was noted as unhoused by the Auditor where their address was recorded as "transient," the subject asserted that they were "homeless," or the incident circumstances demonstrated that the person was sleeping at a shelter or in a non-permanent structure like a tent or car.

- v. Seven of the incidents involved juveniles between the ages of 14 and

VII. KEY TRENDS AND PATTERNS

A. There was a Decrease in Arrests and Use of Force

In 2023, the OPD had 5% increase in the number of calls for service (56,173), yet there were 7% fewer arrests (3,108) compared to 2022. Moreover, the number of use of force incidents (52) went down 24% and only 1.6% of all arrests involved a use of force.

| Year | Calls for Service | Arrests | Use of Force Incidents | Percent of Arrests Involving a Use of Force |
|------|-------------------|---------|------------------------|---|
| 2021 | 49,012 | 2,224 | 59 | 2.6% |
| 2022 | 53,355 | 3,348 | 68 | 2.0% |
| 2023 | 56,173 | 3,108 | 52 | 1.6% |

B. There was a Large Increase in Incidents Involving Juveniles

In 2023, there was a 95% increase in the number of juvenile (aged 13-17) arrests (72) compared to 2022, and nine of those arrests involved a use of force. Only seven of those arrests are included in the 2023 numbers above because those were the completed files received and audited by the Auditor in 2023. However, to assess this trend, two 2023 juvenile arrests that were completed and audited in early 2024 are included in the chart below. All of the uses of force were audited and found to have met Department standards.

This disturbing trend in rising juvenile criminal activity is being closely monitored by the Department and the Auditor as we seek ways to address it, including enhanced youth de-escalation training. This is further discussed in the “Key Developments” section of this Report below.

| Year | Juvenile Arrests | Percent Change from Previous Year | Juvenile Arrests Involving a Use of Force |
|------|------------------|-----------------------------------|---|
| 2021 | 38 | [no data] | 1 |
| 2022 | 37 | -3% | 2 |
| 2023 | 72 | +95% | 9 |

C. The Vast Majority of Instances Necessitating Uses of Force Involved Individuals in Crisis

Forty-three (83%) of the incidents where officers used force to subdue and arrest individuals involved subjects who were suffering from mental illness and/or severely impaired by drugs or alcohol. The records show that those individuals did not respond to officers' de-escalation efforts, nor did they comply with orders to cease conduct that posed serious dangers to themselves and others. The records of these encounters often indicate that the OPD called for Crisis Response Unit (CRU) assistance and that the officers refrained from intervening until multiple officers and CRU professionals arrived, except when there was an active threat of injury to a subject or others. The need for consistent recording and tracking CRU involvement is addressed in the Recommendations section of this Report.

It is important to note that the numbers of individuals impacted by substance abuse and/or mental illness are probably higher than those recorded. Officers record such factors based on their observations, but it is often a subjective determination. However, the Auditor found multiple instances where officers did not record mental illness or substance use in their reports but there were other indications of those elements in the records. For example, the evidence file may show possession of drug paraphernalia indicating recent use, or the subjects may be observed on BWC video making delusional statements.

This trend indicates that the Department should continue to invest in training and resources that assist in identifying people in crisis and the de-escalation efforts that are most effective with people who are impaired due to mental illness or substance abuse. This type of training continues to be a priority for the Department and is embedded into their annual training plan.

D. The Adoption of Body Worn Cameras Enhances Transparency

The Department has greatly enhanced its transparency and accountability through the adoption of body worn cameras (BWC) since November 2022. Officers must activate their BWCs during all law enforcement functions unless it would jeopardize their safety. To the extent feasible, officers must inform all persons whom they encounter that an audio and video recording is being made. BWC video must be uploaded in the Department video storage system and documented in related reports.

The OPS and the Auditor review the BWC video related to all use of force reports and misconduct investigations. This equipment enhances the Department's reporting, transparency, accountability, opportunities to learn, and capacity to capture criminal acts and information relevant to prosecutions. Department supervisors and the Auditor are able to see and analyze officer conduct, the conduct of others, uses of force, and surrounding circumstances in great

detail. Furthermore, the Auditor is able to observe officers' interactions with each other and members of the community in order to discern broadly whether officers are performing their duties without bias and in ways that protect civil rights and meet best practices.

Three additional aspects of the BWC video reviews are noteworthy. First, reviewing the video footage requires a significant amount of time. Use of force incidents typically involve 3-6 officers, each of whom engage in the incident at distinctive times and capture distinctive footage, all of which needs to be taken into consideration to understand the full scope of how an incident unfolded. Reviewing the relevant video footage takes the Auditor approximately 1-4 hours per incident.

Second, the video generally contains highly disturbing footage of individuals – the victims, bystanders, the subjects and the officers – engaged in dynamic, volatile events that involve sensitive information and significant personal suffering.

And third, although the Auditor's review of BWC video has not found any instances of officer misconduct, the Auditor has occasionally observed officer behavior that warranted discussion with the Department. This has included exceptionally effective and exemplary conduct, as well as situations where the Auditor determined that an officer's verbal conduct was poor. This has allowed the Auditor to provide the Department with constructive feedback from a civilian perspective throughout the year.

E. There Was No Evidence of Racial Bias in the Use of Force Files

The 10 incidents where officers used force to arrest people of color were thoroughly scrutinized by the Auditor and found to have been justified and within policy. There was no evidence that the officers' interactions with those individuals differed from their interactions with white subjects.

Furthermore, the records involving people of color were typically more detailed and more thorough than reports regarding white people. The records contained detailed descriptions of de-escalation efforts and often involved other law enforcement agencies, CRU personnel, and statements from witnesses who saw the uses of force. Collectively, the records indicate that OPD officers are attentive to their need to demonstrate the utmost care in their interactions with marginalized people and their willingness to have such interactions scrutinized.

As noted above, the addition of BWC video provides exceptional visibility into the totality of officers' interactions, including tone of voice, body language, and officers' conversations with other officers, witnesses, victims and bystanders. Any unprofessional conduct, biased or discriminatory language, or microaggressions would be observed.

1. The following are some of the specific, potential indications of bias or misconduct that the Police Auditor looks for:

- a. Failure to timely engage in procedural justice steps
- b. Interrupting subject
- c. Profanity directed at subject
- d. Derogatory language, slurs, or offensive terminology
- e. Argumentative vs. de-escalating language
- f. Aggressive/intimidating tone of voice outside of giving necessary commands
- g. Aggressive body language in the absence of threats or resistance

The Auditor acknowledges serious concerns about potential racial bias in policing. Here, eight, or 15% of the fifty-two use of force incidents in 2023 involved Black individuals; yet the most recent available census data states only 3% of Olympians are Black. However, this data set of eight files is not sufficient, on its own, to provide meaningful quantitative analysis. It is well established by criminologists and social scientists that population benchmarks (comparing a group's population to its representation in law enforcement encounters) is not a legitimate measure of racial bias in policing. This is because there are numerous social, historical and structural dynamics that unequally contribute to rates of poverty, substance use disorders, mental illness, access to education, healthcare and housing – all of which can disproportionately affect one's likelihood of being involved in the criminal justice system.

Therefore, a meaningful examination into whether officers' racial bias contributed to disparities in law enforcement interactions requires a complex analysis of demographics related to who initiated the crime reports, the types of crime reported, police responses to the reports, police-initiated interactions, rate of arrests, whether officers had discretion to make arrests, and comparisons with incidents that do not result in arrests.

F. The Department is Receptive to Scrutiny and Recommendations for Improvement

Throughout the year, the Auditor has met with Department leadership to discuss observations such as those above, as well as recommendations, which are detailed elsewhere in this Report. In 2023, the Auditor and the Chief of Police established a quarterly meeting to discuss ongoing observations and concerns. The Police Auditor has found the Department to be very responsive, cooperative, and welcoming of the Auditor's inquiries, feedback and recommendations.

VIII. MISCONDUCT COMPLAINTS AND INVESTIGATIONS

The Auditor reviewed twenty completed investigations into allegations of misconduct by OPD employees in 2023.⁶ All of the completed complaint investigations were audited and determined to have met Department standards.

There were no sustained complaints of officers engaging in serious misconduct such as excessive force or civil rights violations. There were, however, three sustained complaints of officers engaging in service level unprofessional conduct, resulting in documented warnings and/ or coaching and counseling.

There were five complaint investigations in which BWC video was pivotal: four of the complaints were proven untrue by the video evidence, and one complaint was substantiated by the video.

Upon investigation, three of the complaints were shown to involve law enforcement officers who are not employed by the OPD. Two investigations were determined to be unfounded because the complainants could not be contacted to provide essential information. And three complaints involved procedural or administrative concerns that were resolved when the Department addressed them to the complainants' satisfaction.

⁶ The OPS also submitted records and updates related to three misconduct investigations that were not complete, thus not audited, as of the date of this report. These matters are reflected in the table below without findings.

2023 Misconduct Complaint and Investigation Summaries

| | Record #/ Date Filed | General Description | Investigative Findings | Corrective Actions | Police Auditor Findings |
|---|---|--|------------------------|-------------------------|---------------------------|
| 1 | 1095 1/30/23 | Child Protective Services inquired about enforcement of court order and City Prosecutor confirmed agency position. | Resolved | N/A | Met Department standards. |
| 2 | 1096 1/30/23 | Complaint alleging excessive use of force was contradicted by BWC video. | Without merit | N/A | Met Department standards. |
| 3 | 1098 3/30/23 | Complaint that the Department posted improper information on social media to identify a missing person was confirmed and immediately rectified. OPD implemented processes to ensure such errors would not reoccur and complainant was satisfied. | Resolved | N/A | Met Department standards. |
| 4 | 1099 (re same matter as 1098) 3/30/23 | Complaint that the Department posted improper information on social media to identify a missing person was confirmed and immediately rectified. OPD implemented processes to ensure such errors would not reoccur and complainant was satisfied. | Resolved | N/A | Met Department standards. |
| 5 | 1100 3/28/23 | Officer closed call after attempts to contact complainant were automatically blocked by complainant's cell phone. Department determined officer should have made additional efforts to contact complainant. | Sustained | Documented oral warning | Met Department standards. |
| 6 | 1101 6/6/23 | Complainant's allegations did not involve any OPD or city staff. | Resolved | N/A | Met Department standards. |
| 7 | 1102 6/6/23 | Complaint did not involve OPD and Department provided contact information for appropriate law enforcement agencies. | Resolved | N/A | Met Department standards. |
| 8 | 1103 6/6/23 | Complaint re Department not providing polygraph services. Department provided information about alternative resources. | Resolved | N/A | Met Department standards. |
| 9 | 1104 7/3/23 | Complaint did not involve OPD and Department provided contact information for appropriate law enforcement agencies. | Resolved | N/A | Met Department standards. |

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|----|------------------|---|----------------------------|------------------------------------|---------------------------|
| 10 | 1105 6/14/23 | Multiple complaints and comments from individuals critical of Department actions based on YouTube videos. Department review of related records to date have shown no policy violations occurred. | Investigation not complete | | |
| 11 | 1106 7/3/23 | Anonymous complainant re neighbor dispute. Complainant could not be reached for information necessary for investigation. | Unfounded | N/A | Met Department standards. |
| 12 | 1107 7/21/23 | Complainant requested officer receive training on trauma-informed communications. Complainant was satisfied when informed the officer was counseled. | Resolved | N/A | Met Department standards. |
| 13 | 1108 7/21/23 | Complainant alleged officer conducted improper investigation. Complainant satisfied when informed that records demonstrated that the officer did not act as alleged. | Resolved | N/A | Met Department standards. |
| 14 | 1111 8/17/23 | Complainant's email alleged unlawful detention and seizure of firearm. Records show the vehicle involved was connected to a suspected crime. Complainant could not be reached for follow-up. | Unfounded | N/A | Met Department standards. |
| 15 | 1112 8/17/23 | Complainant dissatisfied with officer's investigation and report. | Sustained | Documented coaching and counseling | Met Department standards |
| 16 | 1113 9/6/23 | Unintelligible complaint filed by individual who was involuntarily committed. Records and BWC video demonstrated that there were no policy violations. | Resolved | N/A | Met Department standards. |
| 17 | 1114 9/6/23 | Complainant witnessed events leading to arrest and alleged that law enforcement actions were excessive. Records and BWC video demonstrated that there were no policy violations. | Resolved | N/A | Met Department standards |
| 18 | 1115 10/20/23 | Complainant alleged discourteous and unprofessional conduct by officer. Supervisor reviewed BWC video and determined officer's interaction and communications with Complainant were not consistent with OPD policy. | Sustained | Documented coaching and counseling | Met Department standards. |

| | | | | | |
|----|------------------|---|---------------------------|--|---------------------------|
| 19 | 1116 10/20/23 | Complainant alleged officer assault. Complainant then recanted and BWC video demonstrates allegation was false. | Without merit | N/A | Met Department standards. |
| 20 | 1117 11/17/23 | Complainant alleged officer falsified information and that the Department failed to produce public records. BWC video demonstrated that there were no policy violations. | Resolved and Unfounded | N/A | Met Department standards. |
| 21 | IA 2022-003 | Officer’s use of deadly force on March 31, 2022, after subject assaulted two officers with a machete was investigated by the Capital Metro Independent Investigations Team (CMIIT). The CMIIT found the officer’s use of force was lawful and justified. The Pierce County Prosecutor concurred with the CMIIT. On November 7, 2022, the OPD Use of Force Review Board found that the use of force was within OPD policy. Additionally, the Board recommended training related to threat assessment and operations. | Exonerated | Directives were issued re proper utilization of SWAT threat assessments and operational/ tactical plans. OPD implemented curriculum and staff training re “last room protocol” and tactics. | Met Department standards. |
| 22 | IA 2023-001 | Olympia Fire Department employee complained about unprofessional conduct and inadequate investigation by officer. | Still under investigation | | |
| 23 | IA 2023-002 | OPD employee complained about unprofessional conduct by colleague. | Still under investigation | | |

IX. PUBLIC DEMONSTRATION RESPONSES IN 2023

The Auditor reviewed the OPD’s responses to three public demonstration events in 2023. That is fewer than half the number of such events in 2022. None of the events involved any arrests, uses of force, or significant property damage. The Auditor found that the Department’s responses and After-Action Reports were consistent with the Department’s First Amendment Assemblies and Crowd Management Policy and there were no indications of bias in the Department’s plans or responses.

X. KEY DEVELOPMENTS

1. Significant Decrease in Uses of Force

As noted above, in 2023, there were 24% fewer uses of force than in 2022. Meanwhile, compared to 2023, calls for police services went up approximately 5% and there were 240 fewer arrests. The OPD and the Auditor are seeking to identify and enhance factors that may be contributing to these very positive indications that officers' interactions with the public are improving.

2023 was the first full year that the OPD utilized BWC equipment, thus it is likely to be contributing to improved performance and outcomes. The availability of BWC video greatly enhanced the Auditor's ability to scrutinize all relevant events including the subjects' and officers' tone of voice and body language, as well as officers' conversations with other officers, witnesses, victims and bystanders. As such, the Auditor could observe whether any unprofessional, biased or discriminatory conduct occurred. Although it is impossible to know whether individuals in the community and officers are more motivated to comply with laws and policies knowing they were being video recorded, the data above and common sense suggest that is the case.

2. Youth De-escalation Training

As noted above, 2023 saw a very troubling 95% increase in juvenile arrests compared to 2022. There were nine use of force incidents in 2023 that involved subjects who were adolescents between the ages of fourteen and seventeen. This differed dramatically from previous years, where only one or two such incidents were audited. Moreover, there are reports indicating an increase in youth criminal activity in the Puget Sound region, suggesting this unfortunate trend may continue.

All of the OPD's uses of force were thoroughly scrutinized and found to be within policy. The Auditor observed some officers engaging with juvenile suspects in very positive and effective ways. However, the Auditor also observed some officers' communications with adolescents were typical of communications with non-impaired adults, thus they were less effective.

Many law enforcement experts recognize the importance of specialized training in de-escalation techniques when interacting with juveniles due to the unique vulnerabilities and developmental capacities of young people who are in the process of growing intellectually and emotionally.

The Auditor inquired whether the Department engaged in training that is focused specifically on youth de-escalation and learned that the primary source of OPD trainings, the Washington Criminal Justice Training Commission (WCJTC), does not offer that

specific training. The OPD agreed that the Department would benefit from specific training on youth de-escalation.

The Auditor identified several potential resources for obtaining such training, including experts affiliated with the WCJTC, state agencies that serve youths in crisis, universities, and community centers. All of these resources employ individuals with expertise in culturally-sensitive and developmentally-appropriate communication and de-escalation techniques with young people.

The Department has now identified resources for OPD training on youth de-escalation and is scheduled to conduct such training in 2024. The Department and the Auditor will continue to closely monitor arrests involving juveniles and seek to identify ways to best ensure that officers' interactions with young people are age-appropriate and as peaceful as possible.

3. Centering Anti-Discrimination in OPD Policies

OPD Policy 320, Standards of Conduct, sets forth the Department's expectations of its employees. The OPD General Order regarding employment clearly states that OPD employees are prohibited, per RCW 49.60, from discriminating against any person on the basis of race, creed, color, national origin, sex, marital status, age (40+), disability, retaliation, sexual orientation/gender identity, honorably discharged veteran or military status, or use of a trained dog guide or service animal by a person with a disability.

However, in 2023, the Auditor noted that the prohibition against unlawful discrimination was not stated in the Policy 320 regarding Standards of Conduct, which is central to guiding Olympia's expectations regarding how officers are expected to treat all members of the community. The Auditor also determined that the inclusion of more anti-discrimination language in OPD policies should result in heightened training and enforcement of the Department's prohibition against any discriminatory conduct by its employees.

The Auditor recommended policy changes that would accomplish these goals and the Department agreed. Accordingly, in the fall of 2023, the Department adopted Policy 401.2:

The Olympia Police Department is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly, objectively and without discrimination toward any individual or group.

Additionally, OPD leadership has committed to ensuring that Department trainings and operations will continue to emphasize Olympia's commitment to providing law enforcement services that are respectful, free of bias, and uphold the civil rights of all community members.

4. Categorization of Misconduct Complaints

The OPD has historically categorized personnel complaints into two categories: "service level" and "serious." These categories have functioned to determine who was initially tasked with investigating the matters, with service-level complaints being assigned to first line supervisors and serious complaints assigned to the Office of Professional Standards (OPS).

The Auditor has observed that, in practice, this form of categorization does not consistently represent how complaint investigations are assigned and it may erroneously lead some people to believe that some complaints are not considered "serious." The Police Auditor has found that the Department considers all complaints to be serious, and every complaint is subjected to thorough review by the OPS and the Auditor.

Conversations between the Police Auditor and Department leadership led to the agreement that the current complaint categorization terminology is outdated and should be replaced. The Auditor recommended that policy be revised to adopt neutral and appropriate language that accurately reflects the Department's processes.

In response, the Department removed the language regarding complaint categories and adopted OPD Policy 1010. It states:

The Olympia Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members. The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any memorandum of understanding or collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

XI. RECOMMENDATIONS

Throughout 2023, the Police Auditor communicated with the Department, the Social Justice and Equity Commission, and the City Council regarding ways the OPD could enhance the transparency, accountability and efficacy of the Department. These matters have resulted in the following recommendations.

1. Critical Incident Audits and Reporting

Tragically, there were three officer-involved shootings in 2022. These events have not only deeply impacted individuals throughout the Olympia community, they have also revealed unfortunate procedural aspects of the current civilian oversight process. Specifically, the time delays in reporting on these matters by the Auditor is viewed by some community members to be inconsistent with the goals of transparency and accountability.

The first critical incident occurred on March 31, 2022. On that date, Jerry Fordyce was seriously injured when an officer fired his service weapon during his arrest. It was found lawful and justified by the Capitol Metro Independent Investigation Team (CMIIT), with which the Peirce County Prosecuting Attorney and the Olympia Use of Force Review Board concurred. The Auditor reviewed all of the records and found that the OPD investigation met Department standards. That incident is referred to as IA 2022-003 in the Investigation Summary chart above.

Because the Auditor is tasked with reviewing completed files, and only reports findings twice per year, the matter did not appear in an Auditor report until nearly two years after the incident occurred. Additionally, when there is a critical incident, the Department assigns it an investigation number in its records management system and the subsequent reporting on that incident is termed an “investigation” rather than a use of force, which may cause some confusion.

Second, on August 22, 2022, there was an officer involved shooting that tragically ended the life of Timothy Green. Following the CMIIT investigation, the matter was reviewed by the Clark County Prosecuting Attorney, who, on December 1, 2023, issued their determination that the officers’ use of force was lawful and justified. After the Olympia Use of Force Board completes its investigation, the matter will be sent to the Auditor for review. At this time, the Auditor cannot predict when the audit will be complete and reported to the public.

A third officer involved shooting occurred on December 29, 2022. An OPD officer, working on a Thurston County SWAT team deployment, discharged their firearm at the suspect. The incident was investigated by the Region 3 Independent Investigative Team

(IIT), which found no violations of law or policy by the OPD officer. The Lewis County Prosecutor's Office reviewed the IIT investigation and determined no charges would be filed on the officers that discharged their firearms. On December 4, 2023, the OPD Use of Force Review Board determined that the officer did not violate any law or policy. In February 2024, the Department notified the Auditor that the investigation was complete, and it is currently being audited.

Many members of the community are understandably frustrated by these delays and the lack of information about these matters from the Police Auditor. The Auditor therefore recommends that the City of Olympia consider ways to expedite civilian audits and reports regarding critical incidents. One option would be to amend the current Auditor's duties to include the responsibility to report such findings immediately, rather than in the Mid-Year or Annual Report. That processes would likely provide the community with more timely critical incident audit reports.

2. Recording CRU Involvement

As discussed in Section VII C of this Report, 83% of the incidents where officers used force to arrest individuals involved subjects who were suffering from mental illness and/or severely impaired by drugs or alcohol. Those individuals did not comply with officers' commands or heed warnings that force would be used if they did not allow officers to take them into custody peacefully. The records of many of those incidents show - either in officers' written reports or on the BWC video - that designated crisis responders were involved.

However, under current OPD policy, the Department has not specifically required officers to record how and when Crisis Response Unit (CRU) resources are deployed. Accordingly, the Auditor recommends that the Department direct officers to include information regarding CRU involvement in their use of force reports. This will provide the Department and the Auditor with consistent, necessary data to track and learn from the most effective ways to utilize CRU resources. OPD leadership has agreed to adopt this recommendation and is determining the best way to implement it.

3. Body-Worn Camera Audio Deactivation

In the course of reviewing use of force incident files, the Police Auditor frequently observes officers deactivating the audio of their BWCs during periods in which the officers are not engaging with any members of the public. Each of these incidents involved periods before or after uses of force and arrests, in which officers appeared to be communicating with one another. Officers noted these periods of audio deactivation in their reports, referencing OPD Policy 422.3.2, which allows officers to do so "when

exchanging information with other members or when engaging in an operational or tactical discussion with other members.”

The Police Auditor determined that these periods of muting infringed on the Auditor’s ability to thoroughly observe officers’ characterizations of events to one another, which is critical to understanding the totality of the circumstances. Additionally, even if the officers on mute were not discussing anything related to the use of force and arrest circumstances, a reviewer’s inability to discern that may create the appearance that material information is being withheld. Furthermore, the exclusion of any information is contrary to the goals of transparency and accountability that underlie the use of BWC and employment of a Police Auditor.

- a. Upon inquiry, the Police Auditor made the following findings:
 - i. Any information captured by BWC that could compromise the safety or privacy rights of officers or community members would be subject to redaction under Washington’s Public Disclosure laws.
 - ii. Deactivating audio recordings may hinder the transparency and accountability that BWC use aims to achieve.
 - iii. Deactivating audio recording may allow abuse or misconduct, or create the appearance of abuse or misconduct, particularly because it makes it difficult to verify what was stated when audio was deactivated.
 - iv. Allowing officers to deactivate BWC audio may erode public trust if it is perceived as a way for officers to hide information.
 - v. The circumstances surrounding arrests are often dynamic and unpredictable, so officers’ BWC may capture material information at any moment, and they should not risk failing to do so; accordingly, it is best practices to keep BWC fully activated throughout the entirety of the law enforcement events.
 - vi. Several authorities and organizations focused on law enforcement accountability recommend that BWC policies do not give officers discretion to deactivate their equipment for all of the reasons above. These authorities include the International Association of Police Chiefs, U.S. Department of Justice, the American Civil Liberties Union, the Police Executive Research Forum, and Campaign Zero.

- vii. Regional standards for BWC policies indicate that officers should not be allowed discretion to deactivate audio, as the analogous policies for the Pierce County Sheriff's Department, King County Sheriff's Department and Seattle Police Department do not include any such provision.

In the Mid-Year Report, the Auditor recommended that the OPD BWC policy be revised to eliminate Policy 422.3.2(b). Subsequent conversations with Department leadership regarding this recommendation have been productive and are continuing. The Auditor recognizes that adopting this recommendation would be subject to bargaining between the City of Olympia and the Olympia Police Guild and will therefore take time.

OPD leadership noted that any change to the body worn camera policy is a mandatory subject of bargaining with the labor unions. OPD reports that they are researching policies from other agencies regarding this issue and will be evaluating any impact to operations this recommendation might create. During this time, the Chief of Police has conveyed the Auditor's concerns to all OPD staff and informed them that muting the audio for operational purposes should be a rare occurrence, and not a normal course of action.

The Auditor will continue to pay close attention to this issue and encourages all Department staff to be mindful of the risks noted above and refrain from deactivating their BWC audio.

XII. CONCLUSION

The Department's uses of force and investigations of complaints in 2023 all met Department standards, were free of bias, and complied with best practices as defined by the City of Olympia's values and applicable authorities. Furthermore, the Department has consistently demonstrated a commitment to transparency through its use of BWCs and cooperation with the Police Auditor.

The Police Auditor recommends that the City of Olympia identify a mechanism to provide more timely critical incident audits and reports. The Auditor also recommends that the Department direct officers to include information regarding CRU involvement in their use of force reports. Finally, the Auditor renews their recommendation to revise OPD's BWC policy to eliminate officers' discretion to deactivate audio, and to voluntarily refrain from that practice while the recommendation is under review.

In closing, it is an honor and a privilege to serve as the City of Olympia's Police Auditor. It is always a pleasure to work with the City Council, the City Manager, the Olympia Police Department, and the many Olympia community members who are working to make Olympia a safe, inclusive, and wonderful place to live, work and visit.

