

1 [Administrative Code - Restrictions on Police Use of Specific Types of Force as a Crowd-
2 Control Tactic~~During Lawful Assemblies and in Certain Other~~]

3 **Ordinance amending the Administrative Code to prohibit the Police Department from**
4 **deploying, using, deploying, launching, or firing of extended impact weapons, kinetic**
5 **impact projectiles, chemical agents, disorientation devices, and military grade**
6 **equipment as a crowd-control tactic, except in certain during lawful assemblies and in**
7 **other circumstances; and requiring the Police Department to prepare public reports**
8 **following any permitted use of such equipment or devices. (curfew violations, verbal**
9 **threats directed at an officer, noncompliance with an officer's order).**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. The Administrative Code is hereby amended by adding Chapter 10A,
19 consisting of Sections 10A.1 through 10A.6, to read as follows:

20 **CHAPTER 10A. RIGHT TO PROTEST SAFELY**

21 **SEC. 10A.1. TITLE.**

22 *This Chapter 10A shall be known as the "Right to Protest Safely Ordinance."*

23 **SEC. 10A.2. BACKGROUND, POLICY, AND FINDINGS.**

24 **(a) The Rights to Assembly and Free Expression, Exercised in Recent Protests in Response**
25 **to Police Brutality and Anti-Black Racism, Have Been Suffered by George Floyd and Others.**

1 **Undermined by Extreme, Inappropriate and Dangerous Force Used by Law Enforcement in**
2 **Response to Such Protests.**

3 (1) Respect for freedom of expression and assembly is one of the key indicators of a
4 government's respect for human rights and one of the pillars of modern participatory democracy.

5 (2) In response to recent protests demanding equal rights, expressing opposition
6 to foreign wars, and more recently, against anti-black racism and police brutality sparked by the
7 killing of George Floyd by Minneapolis police in May 2020, law enforcement officers across the United
8 States have deployed military grade equipment and crowd-control weapons and devices, such as
9 chemical agents, rubber bullets, extended impact weapons, and kinetic energy projectiles as part of
10 crowd-control strategies. While these weapons and devices are often referred to as "non-lethal" or
11 "less than lethal" alternatives to use of a firearm, research and investigations have shown that crowd-
12 control weapons often can cause severe injury, acute medical conditions and, in some cases, even
13 death.

14 (3) There has been an increase in law enforcement presence throughout the country
15 during the recent rise of protests beginning in May 2020 in which people have taken to the streets to
16 express grievances against incidents that involve police brutality, officer involved shootings, and anti-
17 black racism.

18 (4) In many cases Across the nation, police and sheriffs law enforcement
19 agencies have responded in ways that profoundly undermine the fundamental rights to freedom of
20 peaceful assembly and freedom of expression, often leading to escalations in violence through
21 unwarranted, inappropriate, or disproportionate uses of force with the use of military-style equipment.

22 (5) Law enforcement's response to protests with crowd-control weapons and devices
23 is potentially dangerous and life-threatening. The Across the country, the proliferation of crowd-
24 control weapons without adequate regulation, training, monitoring, and accountability has led to the

1 widespread and routine use and misuse of these weapons, resulting in injury, disability, and even
2 death.

3 (6) Historically, the San Francisco Police Department (“SFPD”) has facilitated
4 thousands of peaceful protests and continue to respond in ways that protect and respect the
5 sanctity of life.

6 (7) While protesters may use harsh or undesirable language directed at law
7 enforcement officers, we expect our San Francisco Police Officers to facilitate all First
8 Amendment activities in accordance with applicable SFPD policies and orders.

9 **(b) Use of Kinetic Impact Projectiles on Protesters Can Cause Serious Injury or Death.**

10 (1) Kinetic impact projectiles, often called rubber or plastic bullets, are regularly used
11 in crowd-control settings around the world but not in San Francisco. SFPD does not possess
12 these types of projectiles. These weapons, initially designed by the military, were developed for
13 crowd-control settings. to allow law enforcement on the scene to keep physical distance
14 between themselves and the crowd they are trying to control.

15 (2) Kinetic impact projectile weapons transfer energy from a weapon into a person, to
16 influence behavior by inflicting physical pain and incapacitating an individual without penetrating into
17 the body. However, use of kinetic impact projectile weapons has resulted in serious injury, permanent
18 disability, and, in some cases, death.

19 (3) Law enforcement agencies use various projectiles delivered or launched
20 from kinetic impact weapons. Projectiles used for kinetic impact weapons are made of rubber,
21 plastic, or other hardening materials such as metals including lead and steel, wood, hard foam, or wax.
22 A projectile may also be a “bean bag,” where small lead pellets are stitched into a synthetic cloth bag.
23 Some projectiles are designed to be launched as a single projectile, while others are launched as a
24 group of pellets, where many small- to medium-sized pellets are launched at a crowd.

(4) A recent worldwide American Civil Liberties Union (“ACLU”) and Physicians for Human Rights (“PHR”) study entitled “Lethal in Disguise, The Health Consequences of Crowd-Control Weapons” (“ACLU and PHR study”) evaluated literature released between January 1, 1990 and March 31, 2015, which and identified 1,925 people with injuries from kinetic impact projectiles: 53 of these individuals died from their injuries and 294 suffered permanent disabilities. Of the injuries, 70% were considered severe. The ACLU and PHR study rely on medical literature that indicates kinetic impact projectiles cause serious injury, disability, and death.

(5) Due to the fluid and often fast-moving nature of protests and demonstrations, the use of kinetic impact weapons often leads to inaccurate targeting, causing unintended injuries to bystanders. Law enforcement departments must continuously train their officers and examine the best practices in the use of kinetic impact weapons to reduce the unintended consequences. Launching kinetic impact projectiles from afar leads to inaccurate targeting, which may strike vulnerable body parts, as well as cause unintended injuries to those not targeted.

(c) Use of Chemical Agents and Irritants on Protesters Causes Immediate Health Hazards.

(1) Use of chemical agents known as chloroacetophenone tear gas, commonly known as CN tear gas, 2-chlorobenzalmalononitrile gas, commonly known as CS gas, Oleoresin Capsicum Spray, commonly known as OC Spray, OC Gel, pepper spray, and mace, are intended to cause irritation and temporarily incapacitate a person.

(2) When chemical agents OC spray enters the lungs, it they acts by activating mast cells in the airway, which then release histamine. This release can cause bronchoconstriction, with possible tightness of the chest, dilation of local blood vessels, and mucus formation.

(3) OC spray, like other chemical agents, makes an individual feel like they cannot breathe. According to the ACLU and PHR study, the medical literature documents the health impact

1 of different chemical irritants, including pepper spray. Out of 9,261 documented injuries, 8.7% were
2 severe enough that to required medical management was required.

3 (4) While respiratory issues are a primary concern during the current COVID-19
4 pandemic, there are also a number of serious, non-pulmonary effects of OC spray, including temporary
5 blindness, corneal abrasion, blistering of skin, nausea, vomiting, and other systemic effects including
6 disorientation, panic, and loss of control of motor activity.

7 **(d) Use of Disorientation Devices Such as Flash Bangs and Stun Grenades on Protesters**
8 **Can Lead to Serious Injuries and Amputation.**

9 (1) Disorientation devices, also known as flashbang or stun grenades, create a loud
10 explosion and may deliver a very bright flash of light. They are made of both metal and plastic parts
11 that may fragment during the explosion and carry a risk of blast injuries.

12 (2) Explosions that occur in close proximity to protesters can lead to amputation,
13 fractures, and other serious injuries.

14 (3) The use of disorientation devices has resulted in injuries and deaths not only to
15 protesters but also to law enforcement officers handling the devices. These weapons have no place
16 in effective crowd intervention, management, or control.

17 **(e) Military Grade Equipment, Water Cannons, Acoustic Weapons and Directed Energy**
18 **Weapons Should Never Be Used for Crowd Control.**

19 (1) SFPD supports members of the public having a right to protest peacefully
20 without fear of law enforcement using military grade equipment, water cannons, acoustic weapons, and
21 directed energy weapons to threaten a crowd during a lawful assembly.

22 (2) According to experts and research, police deploying militarized equipment,
23 ballistic armor, or tank-like vehicles, such as the bearcat, during lawful assemblies could create lasting
24 damage to relationships with community members because such weapons and tactics are not meant for
25 an urban setting. Perceptions and power dynamics between the community and law enforcement are

1 magnified under these conditions and lead to further deterioration of the community's trust in law
2 enforcement.

3 (3) When police use militarized equipment and crowd-control weapons that have been
4 traditionally used by the military, and fail to communicate with the communities they serve,
5 residents may perceive communities of color see the police as acting as an occupying force
6 instead of a community-centered force promoting public safety.

7 (4) Water cannons deliver project a continuous stream of water to deter individuals
8 and crowds and are inherently indiscriminate, particularly at long distances. They can make
9 communicating with protesters very difficult. Their intimidating size and appearance may cause panic
10 and lead to stampedes among protesters. SFPD has not utilized water cannons as a crowd-
11 control device.

12 (5) Acoustic weapons, sometimes called sound cannons or sonic cannons, emit painful,
13 loud sounds that have the potential to cause significant harm to the eardrum and may cause hearing
14 loss in some people. SFPD has not utilized acoustic weapons as a crowd-control device.

15 (6) Directed energy weapons are electromagnetic heating devices that deliver very
16 high-frequency millimeter wavelength electromagnetic rays that heat skin on contact and cause a
17 painful, burning sensation. SFPD has not utilized energy weapons as a crowd-control device.

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19 **SEC. 10A.3. DEFINITIONS.**

20 For purposes of this Chapter 10A, the following terms have the following meanings:

21 “Chemical Agents” means chloroacetophenone tear gas (commonly known as CN tear gas), 2-
22 chlorobenzalmalononitrile gas (commonly known as CS gas), Oleoresin Capsicum Spray (commonly
23 known as “OC Spray”), pepper spray, mace, or any other tear gas or chemical agent that is designed
24 to cause physical pain or irritation or to temporarily incapacitate a person.

25 “Disorientation Devices” means any device that is intended to create a loud explosion and/or a

1 very bright flash of light with the purpose of overstimulating the nervous system through the use
2 of sound, light, heat, and pressure waves, including devices often known as flashbang or stun
3 grenades that may be made of metal and/or plastic parts that may fragment during the explosion.

4 “Extended Range Impact Weapon” means any device that projects, delivers, deploys, or
5 launches, fires or delivers a kinetic impact projectiles designed to temporarily incapacitate a
6 person.

7 “Kinetic Impact Projectiles” means any object used in an Extended Range Impact Weapon or
8 similar device, such as rubber or plastic bullets, beanbag rounds, or foam rounds, or any other
9 object designed for the same purpose, and including pepper balls that use chemical agents that
10 may incapacitate individuals by inflicting pain or irritation, but excluding beanbag rounds.

11 “Military Grade Equipment” means mine-resistant ambush protected vehicles, heavily armored
12 military-style vehicles, bearcat vehicles, assault rifles, submachine guns, Disorientation Devices,
13 bayonets, grenade launchers, sniper rifles, acoustic weapons, sonic weapons, water cannons, directed
14 energy weapons, and any other weapon, device, or equipment that was developed for use in the
15 military.

16 “Riot” shall have the same definition as in California Penal Code Sections 404 et. seq.

17 “SFPD” shall mean the San Francisco Police Department.

18 **SEC. 10A.4. RIGHT OF ASSEMBLY**

19 (a) Except as provided in subsection (b), SFPD shall not deploy, use, deploy, launch, or fire
20 deliver (“collectively defined as “use”) Extended Range Impact Weapons, Kinetic Impact Projectiles,
21 Chemical Agents, Disorientation Devices, or Military Grade Equipment as a crowd-control tactic.
22 either (1) during a lawful assembly protected by the First Amendment under the United States
23 Constitution, except in response to a Riot, to the extent specified in subsection (b); or (2) in
24 response to a violation of a curfew, a verbal threat directed at an officer, or noncompliance
25 with a law enforcement order or directive.

1 (b) SFPD may not use tear gas, CS gas, or any other tear gas or chemical agent that
2 is designed to cause physical pain or irritation or to temporarily incapacitate a person, or
3 Extended Range Impact Weapons with Kinetic Impact Projectiles as a crowd-control tactic.
4 SFPD may use all other permissible Chemical Agents and Extended Range Impact Weapons
5 with bean bag rounds, as a crowd-control tactic in the following circumstances and subject to
6 the restrictions in this subsection (b): b) SFPD may use, deploy, launch, or fire equipment identified
7 in subsection (a) during a Riot only to target a specific person or persons who the SFPD reasonably
8 perceives to present a clear and imminent threat to themselves, officers, or other persons only after
9 providing a dispersal order. However, in no event may officers use, deploy, launch, or fire such
10 equipment at a person's head or neck area.

11 (1) Before using any permissible Chemical Agents or Extended Range Impact
12 Weapons, an officer must determine that lower levels of force are not feasible in accordance
13 the Department's Use of Force Policy, as that policy may be amended from time to time;

14 (2) Before using any permissible Chemical Agents or Extended Range Impact
15 Weapons, an officer must determine that there is an immediate threat of death or serious
16 bodily injury to one or more persons and that the use of Chemical Agents or Extended Range
17 Impact Weapons with bean bags rounds are necessary to restore safety;

18 (3) Officers must ensure that the use of permissible Chemical Agents and Extended
19 Range Impact Weapons complies with SFPD's Use of Force Policy, as that policy may be
20 amended from time to time, including but not limited to de-escalation and time-and-distance
21 tactics, and applicable mandatory first aid and medical assessment requirements; and

22 (4) Officers must make reasonable efforts to target permissible Chemical Agents and
23 Extended Range Impact Weapons at individuals the officers have identified as being engaged
24 in violent criminal conduct and target them only, and may not target permissible Chemical

1 Agents or Extended Range Impact Weapons indiscriminately at people who are not engaged
2 in violent criminal conduct; and

3 (5) Officers may use permissible Chemical Agents or Extended Range Impact
4 Weapons during a Riot as defined by Cal. Penal Code 404 et. seq.

5 (c) Military-Style Vehicles. SFPD may use mine-resistant ambush protected
6 vehicles, heavily armored military-style vehicles, or bearcat vehicles for rescue operations
7 only. All other uses are prohibited.

8 (d) Mutual Aid. SFPD shall make efforts to ensure any other jurisdictions providing
9 mutual aid assistance or resources to assist SFPD responding to crowd-control situations,
10 comply with the requirements of this Chapter 10A.

11 (e) Reporting Requirements for Use of Chemical Agents or Extended Impact
12 Weapons. SFPD shall provide a written report to the Police Commission within 10 days
13 following any use of Chemical Agents or Extended Range Impact Weapons as a crowd-
14 control tactic or during a Riot, as defined in Cal. Penal Code 404 et. seq. Such report shall
15 include:

16 (1) The factual circumstances surrounding the use of Chemical Agents or Extended
17 Range Impact Weapons;

18 (2) A detailed description of de-escalation, time and distance, and any other tactics
19 used prior to the use of the Chemical Agents or Extended Range Impact Weapons, and an
20 assessment of how those alternatives worked or failed;

21 (3) A description of whether law enforcement agencies other than SFPD provided
22 mutual aid, and if so, whether the agencies' conduct was consistent with the requirements of
23 this Chapter 10A; and

24 (4) Any other information requested or required by the Police Commission.

1 SFPD and the Police Commission shall make these reports publicly available on
2 SFPD's and the Police Commission's website. Following the receipt of each such report, the
3 Police Commission shall hold a public hearing to discuss the report and make findings and
4 recommendations as needed.

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6 **SEC. 10A.5. UNDERTAKING FOR THE GENERAL WELFARE.**

7 *In enacting and implementing this Chapter 10A, the City is assuming an undertaking only to*
8 *promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an*
9 *obligation for breach of which it is liable in money damages to any person who claims that such breach*
10 *proximately caused injury.*

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12 **SEC. 10A.6. SEVERABILITY.**

13 *If any section, subsection, sentence, clause, phrase, or word of this Chapter 10A, or any*
14 *application thereof to any person or circumstance, is held to be invalid or unconstitutional by a*
15 *decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining*
16 *portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have*
17 *passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not*
18 *declared invalid or unconstitutional without regard to whether any other portion of this Chapter or*
19 *application thereof would be subsequently declared invalid or unconstitutional.*

20

21 Section 2. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: */s/ Jon Givner*
4 JON GIVNER
Deputy City Attorney

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