

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Kiely Hosmon, Director, Youth Commission

FROM: John Carroll, Assistant Clerk,
Public Safety and Neighborhood Services Committee

DATE: August 4, 2020

SUBJECT: LEGISLATIVE MATTER INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following ordinance, introduced by Supervisor Haney on July 21, 2020. This item is being referred for comment and recommendation.

File No. 200784

Ordinance amending the Administrative Code to prohibit the Police Department from using, deploying, launching, or firing of extended impact weapons, kinetic impact projectiles, chemical agents, disorientation devices, and military grade equipment during lawful assemblies and in other circumstances (curfew violations, verbal threats directed at an officer, noncompliance with an officer's order).

Please return this cover sheet with the Commission's response to John Carroll, Assistant Clerk, Public Safety and Neighborhood Services Committee.

RESPONSE FROM YOUTH COMMISSION Date: _____

- No Comment
- Recommendation Attached

Chairperson, Youth Commission

[Administrative Code - Restrictions on Police Use of Specific Types of Force During Lawful Assemblies and in Certain Other Circumstances]

Ordinance amending the Administrative Code to prohibit the Police Department from using, deploying, launching, or firing of extended impact weapons, kinetic impact projectiles, chemical agents, disorientation devices, and military grade equipment during lawful assemblies and in other circumstances (curfew violations, verbal threats directed at an officer, noncompliance with an officer’s order).

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

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

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

CHAPTER 10A. RIGHT TO PROTEST SAFELY

SEC. 10A.1. TITLE.

This Chapter 10A shall be known as the “Right to Protest Safely Ordinance.”

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

(a) The Rights to Assembly and Free Expression, Exercised in Recent Protests in Response to Police Brutality and Anti-Black Racism, Have Been Undermined by Extreme and Dangerous Force Used by Law Enforcement in Response to Such Protests.

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

1 (2) In response to recent protests against anti-black racism and police brutality sparked
2 by the killing of George Floyd by Minneapolis police in May 2020, law enforcement officers across the
3 United States have deployed military equipment and crowd-control weapons, such as chemical agents,
4 rubber bullets, extended impact weapons, and kinetic energy projectiles. While these weapons are
5 often referred to as “non-lethal” or “less than lethal” alternatives to use of a firearm, research and
6 investigations have shown that crowd control weapons often cause severe injury and, in some cases,
7 even death.

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

11 (4) In many cases, police and sheriffs have responded in ways that profoundly
12 undermine the fundamental rights to freedom of peaceful assembly and freedom of expression, often
13 leading to escalations in violence through unwarranted, inappropriate, or disproportionate uses of
14 force with the use of military-style equipment.

15 (5) Law enforcement’s response to protests with crowd-control weapons is dangerous
16 and life-threatening. The proliferation of crowd-control weapons without adequate regulation,
17 training, monitoring, and accountability has led to the widespread and routine use and misuse of these
18 weapons, resulting in injury, disability, and death.

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

20 (1) Kinetic impact projectiles, often called rubber or plastic bullets, are regularly used
21 in crowd-control settings around the world. These weapons, initially designed by the military, were
22 developed to allow law enforcement on the scene to keep physical distance between themselves and the
23 crowd they are trying to control.

24 (2) Kinetic impact projectile weapons transfer energy from a weapon into a person, to
25 influence behavior by inflicting physical pain and incapacitating an individual without penetrating into

1 the body. However, use of kinetic impact projectile weapons has resulted in serious injury, permanent
2 disability, and, in some cases, death.

3 (3) Projectiles used for kinetic impact weapons are made of rubber, plastic, or other
4 hardening materials such as metals including lead and steel, wood, hard foam, and wax. A projectile
5 may also be a “bean bag,” where small lead pellets are stitched into a synthetic cloth bag. Some
6 projectiles are designed to be launched as a single projectile, while others are launched as a group of
7 pellets, where many small- to medium-sized pellets are launched at a crowd.

8 (4) A recent ACLU study entitled “Lethal in Disguise, The Health Consequences of
9 Crowd-Control Weapons”(“ACLU study”) evaluated literature released January 1, 1990 and March
10 31, 2015, which identified 1,925 people with injuries from kinetic impact projectiles; 53 of these
11 individuals died from their injuries and 294 suffered permanent disabilities. Of the injuries, 70% were
12 considered severe. The ACLU study relies on medical literature that indicates kinetic impact
13 projectiles cause serious injury, disability, and death.

14 (5) Launching kinetic impact projectiles from afar leads to inaccurate targeting, which
15 may strike vulnerable body parts, as well as cause unintended injuries to those not targeted.

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

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

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

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

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

3 (4) While respiratory issues are a primary concern during the current pandemic, there
4 are also a number of serious, non-pulmonary effects of OC spray, including temporary blindness,
5 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 in
16 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) Members of the public have a right to protest peacefully without fear of law
20 enforcement using military grade equipment, water cannons, acoustic weapons, and directed energy
21 weapons to threaten a crowd during a lawful assembly.

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

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

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

6 (4) Water cannons project a continuous stream of water to deter individuals and crowds
7 and are inherently indiscriminate, particularly at long distances. They can make communicating with
8 protesters very difficult. Their intimidating size and appearance may cause panic and lead to
9 stampedes among protesters.

10 (5) Acoustic weapons, sometimes called sound cannons or sonic cannons, emit painful,
11 loud sounds that have the potential to cause significant harm to the eardrum and may cause hearing
12 loss in some people.

13 (6) Directed energy weapons are electromagnetic heating devices that deliver very
14 high-frequency millimeter wavelength electromagnetic rays that heat skin on contact and cause a
15 painful, burning sensation.

16 **SEC. 10A.3. DEFINITIONS.**

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

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

22 "Disorientation Devices" means any device that is intended to create a loud explosion and/or a
23 very bright flash of light, including devices often known as flashbang or stun grenades that may be
24 made of metal and/or plastic parts that may fragment during the explosion.

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

3 “Kinetic Impact Projectiles” means any object used in an Extended Range Impact Weapon or
4 similar device, such as rubber or plastic bullets, beanbag rounds, or foam rounds, and including
5 pepper balls that use chemical agents that may incapacitate individuals by inflicting pain or irritation.

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

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

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

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

13 (a) Except as provided in subsection (b), SFPD shall not use, deploy, launch, or fire Extended
14 Range Impact Weapons, Kinetic Impact Projectiles, Chemical Agents, Disorientation Devices, or
15 Military Grade Equipment either (1) during a lawful assembly protected by the First Amendment under
16 the United States Constitution, except in response to a Riot, to the extent specified in subsection (b); or
17 (2) in response to a violation of a curfew, a verbal threat directed at an officer, or noncompliance with
18 a law enforcement order or directive.

19 (b) SFPD may use, deploy, launch, or fire equipment identified in subsection (a) during a Riot
20 only to target a specific person or persons who the SFPD reasonably perceives to present a clear and
21 imminent threat to themselves, officers, or other persons only after providing a dispersal order.
22 However, in no event may officers use, deploy, launch, or fire such equipment at a person’s head or
23 neck area.

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

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

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

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

14
15 Section 2. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor's veto of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: /s/ Jon Givner
23 JON GIVNER
24 Deputy City Attorney

25
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LEGISLATIVE DIGEST

[Administrative Code - Restrictions on Police Use of Specific Types of Force During Lawful Assemblies and in Certain Other Circumstances]

Ordinance amending the Administrative Code to prohibit the Police Department from using, deploying, launching, or firing of extended impact weapons, kinetic impact projectiles, chemical agents, disorientation devices, and military grade equipment during lawful assemblies and in other circumstances (curfew violations, verbal threats directed at an officer, noncompliance with an officer's order).

Existing Law

Currently, City law does not specifically address the Police Department's use of certain weapons and military grade equipment during lawful assemblies and in other circumstances.

Amendments to Current Law

The proposed ordinance would prohibit the Police Department from using, deploying, launching, or firing Extended Range Impact Weapons, Kinetic Impact Projectiles, Chemical Agents, Disorientation Devices, or Military Grade Equipment, as such terms are defined in the ordinance, either (1) during a lawful assembly protected by the First Amendment under the United States Constitution, except in response to a Riot after officers have provided a dispersal order; or (2) in response to a violation of a curfew, a verbal threat directed at an officer, or noncompliance with a law enforcement order or directive.

Background Information

The Police Department's use of force is largely governed by Department General Order 5.01, Use of Force Policy, which was overhauled in 2016 and generally allows the use of certain weapons. In July 2020, the Police Commission amended portions of the Use of Force Policy but those amendments did not address the use of certain weapons. The Department General Order 8.03, Crowd Control, and Department General Order 8.10, Guidelines for First Amendment Activities, specifically address police officers' conduct and investigations during lawful assemblies, but these orders do not prohibit or regulate the use of certain weapons or military grade equipment during lawful assemblies.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Haney, Ronen, Walton

Subject:

Administrative Code - Restrictions on Police Use of Specific Types of Force During Lawful Assemblies and in Certain Other Circumstances

The text is listed:

Ordinance amending the Administrative Code to prohibit the Police Department from using, deploying, launching, or firing of extended impact weapons, kinetic impact projectiles, chemical agents, disorientation devices, and military grade equipment during lawful assemblies and in other circumstances (curfew violations, verbal threats directed at an officer, noncompliance with an officer's order)

Signature of Sponsoring Supervisor:

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