



Cheryl Davila
Councilmember
District 2

ACTION CALENDAR

March 30, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Introduce an Ordinance permanently banning the use of less lethal weaponry, chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices and ultrasonic cannons used by the police on civilians.

RECOMMENDATION

Direct the City Manager and City Attorney to prepare the attached ordinance: "Prohibition On The Use Of Certain Munitions Ordinance" for first reading for the October 27, 2020 Regular City Council Meeting.

POLICY COMMITTEE RECOMMENDATION

On March 1, 2021, the Public Safety Policy Committee moved to send the item back to Council with a negative recommendation and recommend that Council take no action. Vote: All Ayes.

BACKGROUND

At the June 9, 2020 City Council Special Meeting, the Council considered an [Urgency Item: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic](#). The item was to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray, or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. The Council voted to prohibit the use of tear gas (CS) permanently.

Police officers in Berkeley and other jurisdictions use other chemicals and munitions against civilians such as: less-lethal weaponry (e.g. hard foam, rubber bullets, and pepper spray), chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices, ultrasonic cannons, or any other device that is designed to be used on multiple individuals for crowd control and is designed to cause pain or discomfort.

The 1993 Chemical Weapons Convention banned international militaries from using riot control agents, and chemical weapons, on each other during war. It is unethical for police to use an outlawed chemical weapon on its own civilians. The police should not have the ability to use chemicals that can create life-threatening health consequences on fellow Americans, especially innocent civilians.

The proposed ordinance "Prohibition On The Use Of Certain Munitions" contains the following provisions:

Definitions:

1. "City" means the City of Berkeley, California.
2. "Prohibited Munitions" means less-lethal weaponry, chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices, and ultrasonic cannons.

Prohibition On The Use Of Certain Munitions:

It shall be a violation of this Ordinance for any City staff to use Prohibited Munitions on any individual.

Enforcement:

- A. Any violation of this ordinance constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in the Superior Court of the State of California to enforce this ordinance.
- B. Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (b) above, for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be liable for a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider prior violations of this ordinance by the City department that committed the violation.
- C. Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.

FINANCIAL IMPLICATIONS

By banning the use of chemicals and less-lethal weaponry, this resolution would avoid future legal costs to the city.

ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

CONTACT PERSONS

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ATTACHMENTS:

1. Ordinance
2. City Inventory of less than lethal weapons and munitions

REFERENCES:

1. [Urgency Item: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic](#)
2. City Inventory of less than lethal weapons and munitions
https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2016/PRC%20Pkt.%2004-27-16.pdf

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, TO PERMANENTLY BAN THE USE OF LESS LETHAL WEAPONRY, CHEMICAL IRRITANTS, SMOKE PROJECTILES, ACOUSTIC WEAPONS, DIRECTED ENERGY WEAPONS, WATER CANNONS, DISORIENTATION DEVICES AND ULTRASONIC CANNONS USED BY THE POLICE ON CIVILIANS.

WHEREAS, At the June 9, 2020 City Council Special Meeting, the Council considered an [Urgency Item: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic](#) . The item was to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray, or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. The Council voted to prohibit the use of tear gas (CS) permanently.

WHEREAS, Police officers in Berkeley and other jurisdictions use other chemicals and munitions against civilians such as: less-lethal weaponry (e.g. hard foam, rubber bullets, and pepper spray), chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices, ultrasonic cannons, or any other device that is designed to be used on multiple individuals for crowd control and is designed to cause pain or discomfort.

WHEREAS, The 1993 Chemical Weapons Convention banned international militaries from using riot control agents, and chemical weapons, on each other during war. It is unethical for police to use an outlawed chemical weapon on its own civilians. The police should not have the ability to use chemicals that can create life-threatening health consequences on fellow Americans, especially innocent civilians.

NOW, THEREFORE, the Council of the City of Berkeley does ordain as follows:

Section 1. Title

This ordinance shall be known as the Prohibition On The Use Of Certain Munitions Ordinance.

Section 2. Definitions

1. "City" means the City of Berkeley, California.
2. "Prohibited Munitions" means less-lethal weaponry, chemical irritants, smoke projectiles, acoustic weapons, directed energy weapons, water cannons, disorientation devices, and ultrasonic cannons.

Section 3. Prohibition On The Use Of Certain Munitions

It shall be a violation of this Ordinance for any City staff to use Prohibited Munitions on any individual.

Section 4. Enforcement

- A. Any violation of this ordinance constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in the Superior Court of the State of California to enforce this ordinance.
- B. Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (b) above, for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be

liable for a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider prior violations of this ordinance by the City department that committed the violation.

- C. Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.

Section 5. Severability

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 6. Construction

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

Section 7. Effective Date

This Ordinance shall take effect on [DATE].

ATTACHMENT 2:

City Inventory of less than lethal weapons and munitions



Police Department

March 15, 2016

To: Katherine J. Lee, PRC Officer

From: Michael Meehan, Chief of Police

Re: Inventory of Less-than-lethal Weapons and Munitions

The Berkeley Police Department conducted an inventory of less-than-lethal weapons and munitions on February 19, 2016. The 37 mm launchers have smooth bores and are currently used for training purposes only. One 40 mm launcher is out of service while being repaired. An estimate of when it may be back in service is not available.

MAKE	MODEL	Caliber	Type	Year	Comments	#
CTS	4300	40 mm	Liquid Barricade/Training Rounds	2008		3
CTS	4300	40 mm	Liquid Barricade/Training Rounds	2010		17
CTS	4330	40 mm	Liquid CS Barricade Rounds	2008		31
CTS	4330	40 mm	Liquid CS Barricade Rounds	2010		8
CTS	3230	37 mm	Riot CS Smoke Projectile	2003	Training only	11
CTS	4230	40 mm	Riot CS Smoke Projectile	2010		6
CTS	3233	37 mm	Riot CS Smoke Multi-Projectile	2003	Training only	11
CTS	4210	40 mm	White Smoke Projectile	2008		24
CTS	4210	40 mm	White Smoke Projectile	2010		5
CTS	4630	40 mm	Riot CS Powder, Muzzle Blast	2010		16
CTS	4630	40 mm	Riot CS Powder, Muzzle Blast	2014		15
CTS	4557	40 mm	Foam Baton	2014/2015		191
CTS	T4557	40 mm	Training, reloadable Foam Baton	n/a		75
Fed Labs		37 mm	single round launcher		Training only	7
Penn Arms	GL1	40 mm	single round launcher			5
Penn Arms	PGL65	40 mm	multi-round launcher		*1 launcher out of service for repairs	2*
FN Herstal	FN-303	18 mm	multi-round launcher			2

cc: Firearm and Tactics Unit, Specialty Weapons Coordinator