

**Council Member Doesschate, Conti, Farrell, Frederick, and Hoey introduced the following:**

**LOCAL LAW C of 2021 (As Amended 04/05/2021)**

**A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF PART I (ADMINISTRATIVE LEGISLATION) OF THE ALBANY CITY CODE WITH REGARD TO THE USE OF CHEMICAL WEAPONS AND KINETIC ENERGY MUNITIONS ON CIVILIAN POPULATIONS**

**BE IT ENACTED by the Common Council of the City of Albany as follows:**

**Section 1.** Article VIIB (Albany Police Department Interactions) of Part 1 (Department of Police) of Chapter 42 (Departments and Commissions) of Part I (Administrative Legislation) of the Albany City Code is hereby amended by adding a new section 42-54.3 to read as follows:

**Section 42-54.3. Use of Chemical Weapons and Kinetic Energy Munitions**

**A. Use of Chemical Weapons and Kinetic Energy Munitions Policy.**

(1) The Chief of Police, or if there is one, the Commissioner of Public Safety, shall establish a written policy to prohibit the use of Chemical Weapons and Kinetic Energy Munitions by any member of the Albany Police Department on civilian populations, except for:

(a) The use of pepper spray as defined herein; or

(b) In circumstances where a person is being restrained against their will, as defined in Penal Law §135.00, where significant bodily injury is clearly threatened against such individual, and the Chief of Police or a Deputy Chief of Police present on the site determined that there is no alternative to the use of chemical weapons to secure the safety of the person being so restrained and adequate notice is given to individuals occupying indoor or outdoor spaces in the vicinity to allow them to protect themselves against exposure.

(2) Prior to the establishment of such policy, the Chief of Police, or if there is one, the Commissioner of Public Safety, shall present such policy to the Community Police Review Board and shall consider any modifications as recommended by such Board.

(3) Such policy shall be consistent with the limitations in this section and shall be established within 60 days of the enactment of this law.

**B. Definitions.** For the purposes of this section, the following terms shall have the following meaning:

(1) Chemical Weapons. Any type of device containing toxic chemicals designed to be launched or thrown as a projectile or otherwise released in the area of civilian populations, in order

to cause temporary or permanent incapacitation, injury or trauma to the intended target, through the action of such chemicals as an eye, throat, respiratory, and/or skin irritant. The term specifically includes, but is not limited to, any item commonly referred to as or having similar effects to “tear gas.”

- (a) The term “chemical weapon” shall not apply to the use of pepper spray contained in liquid spray canisters of a volume no greater than 0.75 ounces when used to temporarily control a specific individual a police officer reasonably believes to be in the process of committing a crime that endangers other people and only when such agent is released in compliance with department policies and New York State law relating to the use of force and under circumstances that reasonably assure others in the vicinity are not affected by the use of such spray.

(2) Kinetic Energy Munitions. Any type of device designed to be launched from any device as a projectile, in order to cause temporary pain, injury, irritation, disability, incapacitation or trauma to the intended target. The term specifically includes, but is not limited to, any item commonly referred to as “impact rounds” or “rubber bullets.”

**Section 2. This local law shall take effect upon final passage, public hearing and filing with the Secretary of State.**

**APPROVED AS TO FORM THIS  
5<sup>TH</sup> DAY OF APRIL, 2021**

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**Corporation Counsel**

**To:** Danielle Gillespie, City Clerk  
**From:** Judy L. Doesschate, Common Council Member  
**Re:** Request for Common Council Legislation  
Supporting Memorandum  
**Date:** February 15, 2021

**SPONSOR(S)** Council Members Doesschate, Conti, Farrell, Frederick, and Hoey

## **LOCAL LAW C of 2021**

### **TITLE**

A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF PART I (ADMINISTRATIVE LEGISLATION) OF THE ALBANY CITY CODE WITH REGARD TO THE USE OF CHEMICAL WEAPONS AND KINETIC ENERGY MUNITIONS ON CIVILIAN POPULATIONS

### **GENERAL PURPOSE OF LEGISLATION**

To prohibit the use of Chemical Weapons and Kinetic Energy Munitions by any member of the Albany Police Department on civilian populations except for the use of pepper spray in certain situations.

### **NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW**

On June 12, 2020 Governor Cuomo signed Executive Order 203, entitled “Police Reform and Reinvention Collaborative,” that required the City of Albany and other municipalities to conduct a comprehensive review of its deployments, strategies, policies, procedures, and practices to address the needs of the communities serviced by its police agencies and promote community engagement *to foster trust, fairness and legitimacy, and to address any racial bias and disproportionate policing of communities of color.* The Executive Order expressly directed municipalities to examine use of force policies, racial justice in policing, de-escalation training and practices, conflict resolution, problem-oriented policing, and violence prevention and reduction interventions.

The use of chemical weapons and the militarization of our police force does not foster trust between the police and the community, increase fairness or the legitimacy of the police and does not encourage de-escalation strategies. In fact, the increasing militarization of our police is far more like to undermine trust in the police and their legitimacy.

Rather than de-escalating tense situations, tear gas usually causes panic and further chaos. As we saw last spring, rather than control the crowd, the use of tear gas not only harmed innocent residents in their homes, but also served to further anger protesters and disperse a angry crowd to do more damage across the City. Unfortunately, the damage spread mostly to areas of the City

inhabited predominantly by people of color and businesses owned by or serving communities of color.

There have been thousands of protests and demonstrations in the City of Albany over the years. The anti-war demonstrations of the 60's and 70's, huge student protests, and the Springboks protest in 1981 did not result in the use of tear gas. But tear gas has not been used previously on protestors until this past May 30<sup>th</sup> through June 1<sup>st</sup> – ironically, at a time when people were calling attention to the atrocities and unfairness in the way police across the country have treated communities of color.

The use of tear gas last spring occurred in the South End and other areas of the City predominantly inhabited by people of color. Many residents had their windows open and no way to escape the fumes; or were peaceful protesters or bystanders and residents (including babies and children). **It is well established that many of these residents have asthma and other pre-existing conditions that are especially prone to severe reactions to tear gas.**

Common side effects from inhaling tear gas include pain in the eyes, skin, lungs, mouth, coughing, nausea, vomiting, chest tightness, wheezing, and shortness of breath. Long-lasting exposure can cause blindness, glaucoma, potentially fatal respiratory failure and immediate death from chemical burns to the throat and lungs according to the CDC. Infants and children are more vulnerable to tear gas and there is no way to control tear gas once it is released, so it can often harm individuals other than the intended target. Tear gas is banned from use in war by international law, but is often used as a method of crowd control against US residents.

The City of Albany Policing Reform and Reinvention Collaborative Recommendations on “Police Department Functions;” section 7, entitled “Interactions with Members of the Community,” Goal 1 specifically recommends

“Ban the use of tear gas and decrease the use of military style weaponry by the Albany Police Department.”

The report notes “the use of military equipment and force can actually endanger not only those who the police are seeking to control but those in neighborhoods, particularly neighborhoods with a significant concentration of people of color.”

The report also notes the “police have many tools at their disposal for crowd control and should rely on de-escalation techniques rather than tear gas and battle armor.”

There can be no doubt that tear gas has been used in the City of Albany in ways that have unfairly and disproportionately adversely affected communities of color, including residents in their homes, businesses, and innocent bystanders. The use of tear gas and kinetic energy munitions against residents that have the potential to cause short and long term serious health impacts should not be tolerated. By banning the use of tear gas and kinetic energy munitions, the police will be forced to adopt de-escalation policies and strategies that will lead to a less militaristic approach to policing and help foster trust between communities of color and the police as intended by Governor Cuomo's Executive Order 203.

This legislation is intended to implement a significant recommendation of the City of Albany Policing Reform and Reinvention Collaborative, encourage the demilitarization of our police force, and increase the potential to foster trust between affected communities and the police.

**EXPLANATION OF DEADLINE OR REQUESTED TIME FRAME FOR PASSAGE**

Pursuant to Governor Cuomo’s Executive Order 203, the City of Albany is under an obligation to complete a comprehensive review of its deployments, strategies, policies, procedures, and practices to address the needs of the communities serviced by its police agencies and promote community engagement to foster trust, fairness and legitimacy, and to address any racial bias and disproportionate policing of communities of color and to develop a plan to address the needs of the community and promote “improved police agency and community relationships based on trust, fairness, accountability, and transparency, and which seek to reduce any racial disparities in policing, and such plan shall be adopted by April 1, 2021. The draft report of the City of Albany Policing Reform and Reinvention Collaborative Recommendations on “Police Department Functions,” section 7, entitled “Interactions with Members of the Community,” Goal 1 specifically recommends “Ban the use of tear gas and decrease the use of military style weaponry by the Albany Police Department.” It is thereby requested that this legislation be passed by April 1, 2021 or as soon thereafter as feasible.

**FISCAL IMPACT(S)**

None.