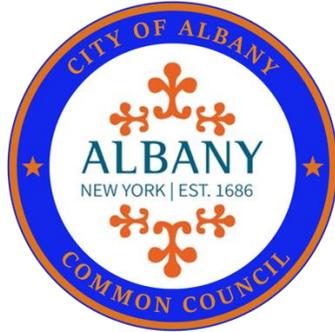


1. 5:30 P.M. Public Safety Committee Agenda

Documents:

[PUBLIC SAFETY COMMITTEE 071321.PDF](#)

2. Supporting Document
3. Minutes
4. Public Comment



**COMMON COUNCIL COMMITTEE MEETING**

**PUBLIC SAFETY COMMITTEE**

**Kelly Kimbrough, Chair**

**DATE:** Tuesday, July 13, 2021

**TIME:** 5:30 PM

**LOCATION:** COMMON COUNCIL CHAMBER, City Hall, 2<sup>nd</sup> floor

**TOPIC OF DISCUSSION:**

**LOCAL LAW L of 2021**

**A LOCAL AMENDING CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO CREATING A PUBLIC SAFETY COMMISSION**

**LOCAL LAW M OF 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**

**PUBLIC COMMENT PERIOD:** Yes

**Council Members Johnson, Anane, Hoey with the support of Council President Ellis, introduced the following:**

## **LOCAL LAW L of 2021**

### **A LOCAL AMENDING CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO CREATING A PUBLIC SAFETY COMMISSION**

*The City of Albany, in Common Council convened, does hereby ordain and enact:*

**Section 1.** Article XI (General Provisions) of Part 3 (Department of Public Safety) of Chapter 42 (Departments and Commissions) of Part I (Administrative Legislation) of the Code of the City of Albany is hereby amended to read as follows:

#### **Section 42-69 Legislative Intent.**

The City of Albany envisions a Commission of Public Safety that decouples public safety from policing, centers community voices, and ends systemic racism. The Commission embraces the four pillars of Procedural Justice: treating people with dignity and respect; giving citizens a voice during encounters; being open and transparent in decision-making; and conveying trustworthy motives. The Commission of Public Safety will ensure the elevation of the concepts of community policing into the practice of public safety. A guiding principle of the public safety commission is Sanctity of Life: that at the core of an officer's responsibilities is the duty to protect all human life and physical safety.

#### **Section 42-70 Definitions**

##### **Commission of Public Safety**

Shall mean the public body tasked with overseeing and running the Department of Public Safety.

##### **Commissioner(s)**

Shall mean a member of the Commission of Public Safety.

##### **Chief of Police**

Shall mean the Chief of Police of Albany Police Department

#### **Section 42-71 Commission Established; appointment of members; Qualification.**

- A. There is hereby established a Commission of Public Safety comprised of nine (9) members, five of whom shall be appointed by the Common Council and four of who shall be appointed by the Mayor. Members shall serve for a term of three years. All Commission members must be residents of the City of Albany.

- B. Candidates for the Commission of Public Safety shall be subject to a public hearing prior to commencement of their term. Reappointments shall be subject to a public hearing. Candidates shall be present at the public hearing.
  - 1. Notice of such public hearing shall circulate to the media no less than ten (10) calendar days prior to the scheduled public hearing. Such notice shall state and include the time, place, and that all are welcome to submit comments and questions regarding the candidacy of the nominee(s).
- C. Commissioners shall receive compensation that shall be set in the budget.
- D. Current employees of the City of Albany and their immediate relatives shall not be eligible to serve as a Commissioner.
- E. Former employees and their immediate relatives of the Albany Police Department shall not be eligible to serve as a Commissioner.

#### **Section 42-71.1 Powers and Duties**

##### The Commission of Public Safety:

- A. Shall recommend a budget to Mayor that the Mayor will consider for inclusion in the general budget annually, as prescribed by the Charter of the City of Albany.
- B. May establish advisory committees, standing, or ad-hoc committees, panels, and/or host forums and public hearings as the Commission deems necessary.
- C. Shall set departmental practices in recruiting, hiring, promoting and disciplining, all in accordance with statutory authority, and may make recommendations to the Mayor and Common Council regarding practices, procedures, policy and planning.
- D. Shall require individual Commissioners to excuse themselves from participating in discussions or decision-making in which any item, in the execution of their duties, presents a personal, professional, or financial conflict of interest.
- E. Shall work in conjunction with Community Police Review Board (CPRB) in accordance of Part 33 of Chapter 42 of this Code.
- F. Shall work collaboratively with the Chief of Police.
- G. Shall implement the reforms and recommendations of the Albany Policing Reform and Reinvention Collaborative Plan as adopted by the Common Council in Resolution 26.31.21R and any subsequent amendments thereto.

**Section 2.** This Local Law shall go into effect upon passage, public hearing, and filing with the Secretary of State.

**APPROVED AS TO FORM THIS  
27<sup>TH</sup> DAY OF MAY, 2021**

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**Corporation Counsel**

**To:** Danielle Gillespie, City Clerk

**From:** John-Raphael Pichardo, Esq., Research Counsel

**Re:** Common Council Legislation  
Supporting Memorandum

**Date:** May 27, 2021

**SPONSOR** Council Members Johnson, Anane, and Hoey with the support of Council President Ellis

**LOCAL LAW L of 2021**

**TITLE**

A LOCAL AMENDING CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO CREATING A PUBLIC SAFETY COMMISSION

**GENERAL PURPOSE OF LEGISLATION**

This local law is the start of a creating a Commission to oversee the new Department of Public Safety, as recommended by the Albany Collaborative.

**NECESSITY FOR LEGISLATION AND CHANGES TO EXISTING LAW**

The proposed legislation is only designed to create and establish the entity of the Public Safety Commission within the Department of Public Safety and to designate its authority to address issues of public safety and policing in the City of Albany. This local law will be amended further for more substantive amendments as policing is constantly being reimagined.

**FISCAL IMPACT(S)**

To be determined

**Council Member Kimbrough introduced the following:**

**LOCAL LAW M OF 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;
  - (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;
  - (c) Circumstances in which the Chief of Police or Deputy Chief of Police is on site at a situation in which eleven or more persons are present and such Chief of Police or Deputy Chief of Police confirms that:

    - (i) such persons are engaging in actions that meet the elements of section 240.06 (1) of the New York State Penal Law;
    - (ii) no alternative to the use of Chemical Weapons and/or Kinetic Energy Munitions is available to enable the Albany Police

Department to secure the safety of people in the immediate vicinity of the riot;

(iii) when deployed in a residential area, the use of Chemical Weapons and/or Kinetic Energy Munitions is absolutely necessary to protect lives;

(iv) the Albany Police Department has provided two notifications to the public in the immediate vicinity that Chemical Weapons and/or Kinetic Energy Munitions are about to be deployed; and

(v) at least one Emergency Medical Technician is present at the scene of the situation.

(d) However, neither Chemical Weapons nor Kinetic Energy Munitions shall be deployed against any individual or group of individuals who are engaging in First Amendment Activities, as defined in paragraph (3) of subsection (B) of this section.

(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 sixty (60) days of the enactment of this law.

(4) Whenever either Chemical Weapons or Kinetic Energy Munitions are deployed by any member of the Albany Police Department, the Chief of Police shall submit a Use of Force Report to the Public Safety Committee of the Common Council within five (5) business days of such use of Chemical Weapons or Kinetic Energy Munitions. The Public Safety Committee shall convene as soon as practicable after the submission of such Use of Force Report to review the use of such weapons and/or munitions. The following shall apply to all meetings of the Public Safety Committee of the Common Council at which Use of Force Reports dealing with the use of Chemical Weapons and/or Kinetic Energy Munitions are discussed:

(a) The Chief of Deputy Chief who authorized the use of Chemical Weapons or Kinetic Energy Munitions at issue shall attend the meeting at which the Public Safety Committee reviews the Use of Force report to explain the decision to deploy Chemical Weapons or Kinetic Energy Munitions.

(b) The Public Safety Committee may make a finding as to whether Chemical Weapons and/or Kinetic Energy Munitions were deployed, in the instance at issue, in a manner consistent with or in violation of the policy laid out in this section. If the Public Safety Committee determines that Chemical

Weapons or Kinetic Energy Munitions were deployed in a manner inconsistent with such policy, the Public Safety Committee can make a recommendation to the Common Council to ban such Chemical Weapons and/or Kinetic Energy Munitions completely.

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.”

(3) First Amendment Activities. Any demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons.

**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  
27<sup>TH</sup> DAY OF MAY, 2021**

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**Corporation Counsel**

**To:** Danielle Gillespie, City Clerk

**From:** Brett Williams, Senior Assistant Corporation Counsel

**Re:** Request for Common Council Legislation  
Supporting Memorandum

**Date:** May 27, 2021

**Sponsor:** Council Member Kimbrough

## **LOCAL LAW M 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 REGARDING TO THE USE OF CHEMICAL WEAPONS AND KINETIC ENERGY MUNITIONS ON CIVILIAN POPULATIONS

### **GENERAL PURPOSE OF LEGISLATION**

This local law will greatly limit the circumstances in which the Albany Police Department may deploy chemical weapons such as tear gas and kinetic energy munitions such as rubber bullets against civilian populations, and outright bans the use of such substances and devices against individuals engaging in activities protected by the First Amendment.

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

This local law bans the use of chemical weapons and kinetic energy munitions in all but very limited situations, which are spelled out in the legislation. Under this local law, the Albany Police Department may only use chemical weapons or kinetic energy munitions when the Chief of Police or a Deputy Chief is on the scene of an incident at which there are eleven or more people and such Chief or Deputy Chief confirms that:

- The individuals are are engaging in actions that meet the elements of section 240.06 (1) of the New York State Penal Law;
- The Police Department has no alternative to the use of chemical weapons and/or kinetic energy munitions available to secure the safety of people in the immediate vicinity of the riot;
- The use of such devices, if deployed in a residential area, is absolutely necessary to protect lives;
- The Police Department has provided two notifications to the public in the immediate vicinity that such are about to be deployed; and
- At least one Emergency Medical Technician is present at the scene before such devices are deployed.

The local law also allows for the use of chemical weapons and/or kinetic energy munitions in hostage situations and in circumstances in which individuals are being restrained against their will, and then only after adequate warning has been given.

The legislation also requires the Chief of Police to develop a departmental policy on the use of such devices, consistent with this local law, within 60 days of the enactment of this local law, which must be presented to the Community Police Review Board for their review and recommendation.

The local law bans, outright, the use of such devices against one or more persons engaging in activities protected by the First Amendment of the United States Constitution, such as demonstrating, picketing, speechmaking, marching, holding vigils or religious services, and all other like forms of conduct that involve the communication or expression of views or grievances.

**FISCAL IMPACT(S)**

None.