



COMMON COUNCIL MEETING
Public Safety
Thomas Hoey, Chair

DATE: WEDNESDAY, SEPTEMBER 28 2022

LOCATION: Council Chambers-2nd Floor. City Hall

TIME: 6:30 PM or directly after caucus

PUBLIC COMMENT PERIOD: YES

TOPICS OF DISCUSSION:

- **Local Law K of 2022**

A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSION) OF THE CODE OF THE CITY OF ALBANY IN REACTION TO PROHIBITING THE ALBANY POLICE DEPARTMENT FROM PURCHASING, STOCKPILING, AND USING CHEMICAL WEAPONS

- **Local Law F of 2022**

A LOCAL LAW AMENDING PART 3 (DEPARTMENT OF PUBLIC SAFETY) OF CHAPTER 42 (BOARDS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY

- **LOCAL LAW L of 2022**

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

Council Member Romero introduced the following:

LOCAL LAW K of 2022

A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSION) OF THE CODE OF THE CITY OF ALBANY IN REALTION TO PROHIBITING THE ALBANY POLICE DEPARTMENT FROM PURCHASING, STOCKPILING, AND USING CHEMICAL WEAPONS

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 Code of the City of Albany is hereby amended by adding a new section 42-54.4 to read as follows:

§ 42-54.4. Chemical Weapons and Kinetic Energy Munitions

A. For purposes of this section, the following terms shall have the following meanings:

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. This term specifically includes, but is not limited to, any item commonly referred to as or having similar effects to “tear gas.” The definition of “chemical weapon” herein shall not include “pepper spray” as that term is defined herein.

Pepper Spray

Oleoresin capsicum (OC) spray, or what is commonly referred to as “pepper spray” contained in liquid spray canisters of a volume no greater than 0.75 ounces when used to temporarily control a specific individual whom 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 that others in the vicinity are not affected by the use of such spray.

Tear Gas

Any liquid, gaseous, or solid substance intended to produce temporary physical discomfort or permanent injury to a human being through being vaporized or otherwise dispersed in the air, provided that the term “tear gas” as defined herein shall not include “pepper spray” as that term is defined in this subsection.

B. All City of Albany departments and agencies are prohibited from owning, purchasing, renting, storing, and/or deploying chemical weapons and/or tear gas, except for the use of pepper spray as that term is defined in subsection (A) of this section.

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
8TH DAY OF JULY, 2022**

Corporation Counsel

To: Danielle Gillespie, City Clerk

From: Gabriella Romero, Council Member, 6th Ward

Re: Common Council Legislation
Supporting Memorandum

Date: July 8, 2022

Sponsor: Council Member Romero

LOCAL LAW K of 2022

TITLE

A LOCAL LAW AMENDING ARTICLE VIIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSION) OF THE CODE OF THE CITY OF ALBANY IN REACTION TO PROHIBITING THE ALBANY POLICE DEPARTMENT FROM PURCHASING, STOCKPILING, AND USING CHEMICAL WEAPONS

GENERAL PURPOSE OF LEGISLATION

Of all of the protests our city has seen, tear gas has been only used on Black Lives Matter protestors in the South End and Arbor Hill. In Albany, and in other parts of the United States, tear gas have been used to stifle dissent and scare citizens away from exercising their right to assemble and express themselves.

In our city, and across the nation, people expressing their opposition to abortion bans and police brutality have been permanently injured by tear gas, including those elected to our city government. These so-called “less than lethal” munitions can severely injure and kill people. According to the CDC, in addition to the risk of death, exposure to tear gas can lead to blindness, glaucoma, severe chemical burns to the throat and lungs, and respiratory failure. Moreover, there is growing research that points to tear exposure leading to disruptions in menstrual cycles.

The indiscriminate nature of tear gas is the main reason it must be banned. The fact that the use of tear gas amounts to collective punishment has been affirmed by multiple court decisions, including in *Tamara K. Alsaada v. the City of Columbus, OH*, 536 F.Supp.3d 216 (S. D. OH 2021).

In the summer of 2020, children woke up gasping for air as tear gas deployed by the Albany Police Department entered their homes.

Tear gas is a chemical weapon banned in war. To say that without tear gas, our police would resort to shooting protestors with live ammunition is a argument in bad faith. The Albany Police Departments have multiple other tools to control crowds, including deescalation techniques, and other forms of forceful crowd control.

Further, 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 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.”

In the aftermath of the George Floyd protests, numerous states and localities have rolled back the use and outright banned the use of tear gas, including but not limited to the states of California and Virginia, and localities of Philadelphia, Charlotte, and DC.

This legislation is intended to implement a significant recommendation of the City of Albany Policing Reform and Reinvention Collaborative - to encourage the demilitarization of our police force. This bill is intended to save our city money, prevent harm from being inflicted on our most marginalized communities, and increase the potential to foster trust between affected communities and the police.

NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXSITING LAW

The City Code does not currently codify APD or any other department’s use of tear gas, chemical weapons, or pepper spray. This local law does so.

FISCAL IMPACT

None.

Council Member Hoey introduced the following:

LOCAL LAW F OF 2022

A LOCAL LAW AMENDING PART 3 (DEPARTMENT OF PUBLIC SAFETY) OF CHAPTER 42 (BOARDS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO THE ESTABLISHMENT OF THE DEPARTMENT OF PUBLIC SAFETY

Be it enacted by the Common Council of the City of Albany as follows:

Section 1. Sections 42-69, 42-70, and 42-71 of 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 are amended to read as follows:

§ 42-69 (~~Reserved~~) Establishment.

There is hereby established a department known as the “Department of Public Safety.”

§ 42-70 (~~Reserved~~) Commissioner of Public Safety.

There shall be appointed by the Mayor a Commissioner of Public Safety who shall head the Department of Public Safety and carry out the functions and duties thereof. The Commissioner shall serve and hold such office at the pleasure of the Mayor. The Commissioner shall appoints such deputies, directors and other subordinates as shall be authorized by the Board of Estimate and Apportionment and who shall serve at the Commissioner’s pleasure.

§ 42-71 (~~Reserved~~) Scope, powers and duties of Commissioner

The Commissioner of Public Safety shall collaborate with the Chiefs of the Departments of Police and Fire to manage the selection, appointment, training and development of police and civilian staff. The Commissioner shall additionally have cognizance, jurisdiction, supervision, and control of disciplinary proceedings within such departments with the authority to impose appropriate sanctions including reprimand, treatment of training, forfeiture of pay, demotion and dismissal, and other disciplinary measures as determined by analyzing pre-established rules and guidelines. In carrying out such responsibilities, the Commissioner may obtain review and evidence, including disciplinary reports and shall prepare written decisions and instructions regarding findings, cases, claims and dispute related to discipline. The Commissioner shall also prepare and submit plans and credentials necessary to gain or retain state accreditation of such departments, and design and conduct performance appraisals. In addition, the Commissioner shall possess such other powers and perform such other duties as may be prescribed by local law or ordinance of the Common Council.

Section 2. This local law shall take effect upon passage, public hearing, and filing with the Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

**APPROVED AS TO FORM THIS
6TH DAY OF MAY, 2022**

Corporation Counsel

To: Danielle Gillespie, City Clerk
From: John-Raphael Pichardo, Research Counsel
Re: Common Council Legislation
Supporting Memorandum
Date: May 6, 2022
Sponsor: Council Member Hoey

LOCAL LAW F OF 2022

TITLE

A LOCAL LAW AMENDING PART 3 (DEPARTMENT OF PUBLIC SAFETY) OF CHAPTER 42 (BOARDS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO THE ESTABLISHMENT OF THE DEPARTMENT OF PUBLIC SAFETY

GENERAL PURPOSE OF LEGISLATION

Establishes the Department of Public Safety

NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW

In the early 2000s, the Department of Public Safety was repealed. The Local Law allows for the position of Commissioner of Public Safety as proposed by the Mayor in the 2022 Budget to be housed within the Department of Public Safety.

FISCAL IMPACT

None, as the position of Commissioner of the Department of Public Safety has already been budgeted for in the 2022 budget.

Council Members Love and Kimbrough introduced the following:

LOCAL LAW L of 2022

A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY 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 in subsection (B)(1)(a) of this section;

(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;

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
26TH DAY OF AUGUST, 2022**

Corporation Counsel

To: Danielle Gillespie, City Clerk

From: Brett-Williams, Senior Assistant Corporation Counsel

Re: Common Council Legislation
Supporting Memorandum

Date: August 26, 2022

Sponsors: Love & Kimbrough

LOCAL LAW L of 2022

TITLE

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

GENERAL PURPOSE OF LEGISLATION

The City of Albany recognizes that use chemical weapons and kinetic energy munitions by the Albany Police Department should be regulated and that the Department should deploy such implements only as a last resort.

In accordance with the recommendations of the Policing Reform Collaborative, APD adopted limitations and restrictions on the use of chemical weapons and kinetic energy munitions through their own department general orders. However, in order to ensure that future administrations uphold and adhere to these standards, this Local Law enshrines into law significant restrictions on the circumstances in which the Albany Police Department may deploy chemical weapons and kinetic energy munitions, and establishes procedures the Department must follow both before and after the use of such implements.

The local law requires the Chief of Police to develop and promulgate written procedures for the use of chemical weapons and kinetic energy munitions. Such procedures must be consistent with this local law, presented to the Community Police Review Board for review, and ultimately established within 60 days from the effective date of this local law.

Under this local law, chemical weapons and kinetic energy munitions may only be deployed in three narrow circumstances.

First, APD may deploy pepper spray, in an amount no greater than 0.75 ounces, only in compliance with all relevant federal, state, and local statutes, on a specific individual reasonably believed to be in the process of committing a crime that endangers other people, and only when the deploying officer can be reasonably sure that others in the vicinity will not be affected by the use of the pepper spray.

Next, chemical weapons and/or kinetic energy munitions may be deployed in the limited circumstance where an individual is being held against his or her will, and the Chief of Police or a Deputy Chief, present on the site, determines that the use of such implements is the only means to secure the safety of the person being held against his or her will, and then only when adequate notice has been provided to individuals, both indoors and out, in the vicinity to allow them to protect themselves against exposure.

Finally, the Chief of Police or a Deputy Chief may order the use of chemical weapons and/or kinetic energy munitions only when he or she is on site, and then only when: i) eleven or more people are engaging in tumultuous and violent conduct which intentionally or recklessly creates a grave risk of causing public alarm and/or injury to bystanders; ii) no alternatives exist to the use of chemical weapons and/or kinetic energy munitions which would ensure the safety and security of people in the vicinity; iii) APD has notified the public in the vicinity at least three times that deployment of such implements may be imminent; and iv) at least one Emergency Medical Technician is present at the scene.

In addition to these limitations, chemical weapons may not be deployed: i) against individuals engaging in activities protected by the first amendment of the United States Constitution, including, but not limited to, demonstrations, picketing, speechmaking, marching, holding vigils or religious services; or ii) in a residential neighborhood unless each of the above elements are met *and* the Chief of Police or Deputy Chief on site determines that such use is absolutely necessary to protect lives, not merely property.

Whenever such implements are deployed, APD must submit a written use of force report to the Common Council's Public Safety Commission within five days of such use, and the Committee shall determine whether such use was consistent or inconsistent with department policy and this local law.

NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW

Most police conduct – including police department interactions with community members – is governed by departmental rules, regulations, procedures, and practices, particularly the department's General Orders. This Local Law enshrines limitations on and procedures for the use of chemical weapons and kinetic energy munitions into City Code.

FISCAL IMPACT(S)

None.