

Offered by Councilors Ricardo Arroyo and Andrea Campbell, Edwards, Breadon, Mejia and Wu



CITY OF BOSTON IN CITY COUNCIL

ORDINANCE RESTRICTING THE USE OF CHEMICAL CROWD CONTROL AGENTS AND KINETIC IMPACT PROJECTILES

WHEREAS: Law enforcement agencies have increasingly used devices designed to cause severe discomfort and/or pain to control or disperse crowds of people engaged in lawful protests and demonstrations; *and*

WHEREAS: While these devices are thought to be less dangerous to their targets than firearms, in fact, all of them entail significant risks of causing serious bodily harm; *and*

WHEREAS: Chemicals in crowd control weapons like tear gas and pepper spray are powerful sensory irritants, which cause blurred vision, difficulty swallowing, coughing, rashes, vomiting, dermal pain, respiratory distress, and psychological effects of disorientation and agitation; *and*

WHEREAS: Exposure, especially prolonged, to a large dose of such chemical irritants can cause permanent injuries, including blindness, glaucoma, or death from chemical burns to the throat and lungs or from respiratory failure; *and*

WHEREAS, The dangerous and injurious effects of the use of such chemical weapons for crowd control has been extensively documented by the U.S. Centers for Disease Control and Physicians for Human Rights; *and*

WHEREAS: The use of such chemical irritants can also have a significant environmental impact as the residue settles upon trees, bushes, grass, sidewalks and streets, lingering for days before breaking down; *and*

WHEREAS: Chemical crowd control agents are indiscriminate weapons by design: they are targeted against groups, which makes it difficult to limit the exposure of specific individuals or small groups, increasing the risk of affecting bystanders and individuals other than the intended targets; *and*

WHEREAS: The use of such weapons for crowd control poses an increased risk to children, the elderly, and people with certain pre-existing medical conditions, including chronic lung disease and certain eye conditions; *and*

WHEREAS: The use of these types of chemicals in warfare is specifically prohibited by the Geneva Protocol of 1925, but is not currently prohibited for use by law enforcement agencies on U.S. citizens; *and*

WHEREAS: Kinetic impact weapons like rubber bullets, beanbag rounds, and plastic bullets are specifically designed to cause trauma and incapacitate individuals; *and*

WHEREAS: These weapons are generally intended to be aimed at an individual's lower body and can cause serious injury or disability if they hit particularly vulnerable areas of the body or be lethal if they hit an individual's head; *and*

WHEREAS: The use of explosive disorientation military-type weapons, such as flashbangs and concussion grenades, can cause severe injury or death due to the explosion and fragmentation of objects; *and*

WHEREAS: These so-called "less-lethal" weapons have the real risk of causing permanent injury or death, both to intended targets and bystanders, as a result of misplaced or ricocheting shots, indiscriminate use, pre-existing medical conditions, inadequate user training, repetitive applications, intentional misuse, and panic and chaos caused by panicked crowds, raising significant doubts that these weapons can be used in a manner that is simultaneously safe and effective; *and*

WHEREAS: The Boston Police Department has access to chemical crowd agents and kinetic impact projectiles, and most recently used them on May 31, 2020; *and*

WHEREAS: Lawsuits have already been filed in Los Angeles, Seattle, Denver, and Minneapolis to severely restrict or ban the use of chemical crowd control agents and kinetic impact projectiles; **NOW**

Therefore be it ordained by the City Council of Boston, as follows:

That the City of Boston Code, Ordinances be amended in Chapter XI by adding the following after 11-1.9:

11-1.10: RESTRICTING THE USE OF CHEMICAL CROWD CONTROL AGENTS AND KINETIC IMPACT PROJECTILES

(a) PURPOSE

The purpose of this Ordinance is to restrict the use of chemical crowd control agents and kinetic impact projectiles in order to protect residents of Boston from the indiscriminate, dangerous, and even fatal impacts of such devices, especially during lawful protests and/or demonstrations. These devices can have significant impacts on both the physical and mental well-being of residents that choose to exercise their First Amendment rights by participating in demonstrations, as well as innocent bystanders.

(b) DEFINITIONS

1. *Boston Police Officers* shall mean all cadets, patrolmen, officers, detectives, and superintendents of the Boston Police Department.
2. *BPD* shall mean the Boston Police Department.
3. *Other Law Enforcement Officers* shall mean any law enforcement officers who are not Boston Police Officers but who are engaged in law enforcement activities within the city of Boston.
4. *Kinetic Impact Projectile* shall mean an item or instrument fired from a gun or launcher intended to disorient and/or incapacitate and inflict pain without penetrating the skin, including, but not limited to, rubber bullets, sponge grenades, stun grenades, concussion grenades, flash grenades or flash-bangs, beanbag rounds, Super-Sock rounds, wax bullets, and plastic bullets.
5. *Chemical Crowd Control Agent* shall mean chemical compounds in any form that cause irritation to the eyes, mouth, throat, lungs, or skin, including, but not limited to, tear gas, pepper spray, mace, inert smoke, pepper pellets, and pepper balls. These chemical compounds may include, but are not limited to, chloroacetophenone (CN), chlorobenzylidenemalononitrile (CS), chloropicrin (PS), bromobenzylcyanide (CA), dibenzoxazepine (CR), oleoresin capsicum (OC), and combinations thereof.

(c) RESTRICTION ON THE USE OF CHEMICAL CROWD CONTROL AGENTS AND KINETIC IMPACT PROJECTILES

1. Subject to the limitations set forth in Paragraph 2 below, Boston Police Officers and Other Law Enforcement Officers working in the City of Boston shall not use a Kinetic Impact Projectile or a Chemical Crowd Control Agent against any person or persons engaged in a protest, demonstration, or other gathering of any kind involving more than ten persons.
2. Exceptions and Exemptions:
 - a. Kinetic Impact Projectiles and/or Chemical Crowd Control Agents may be deployed if:
 - i. an on-scene supervisor at the rank of Deputy Superintendent or higher specifically authorizes such use in response to specific ongoing acts of violence or destruction of property that the on-scene supervisor has personally witnessed and has determined cannot be controlled or quelled through any other methods, and has determined that no other reasonable methods of de-escalation will be successful in preventing or controlling such acts, *and*

- ii. the on-scene supervisor witness who authorizes such use, or an officer of equal or higher rank, has given at least two separate warnings over a loudspeaker system (a) directing the persons involved in the gathering to disperse, after ensuring that people have a way to exit after a warning is issued, (b) notifying all who could be affected that a failure to disperse will result in the use of a specific Kinetic Impact Projectile or Chemical Crowd Control Agent that must be announced, and (c) notifying all who could be affected that the specific Kinetic Impact Projectile or Chemical Crowd Control Agent will be deployed within a clearly defined period of time. Such warnings must be at least two minutes apart, and there must be two minutes after the second warning has been fully read before any use of the specifically announced Kinetic Impact Projectile and/or Chemical Crowd Control Agent.

(d) ENFORCEMENT

1. The Boston Police Department shall take appropriate steps to implement this Ordinance forthwith, including, but not limited to, (1) posting a copy of this Ordinance in a prominent and visible location in all police stations within the city of Boston, (2) notifying all other law enforcement agencies that may operate within the City of Boston about this Ordinance and supplying a copy of the Ordinance to each of said agencies, and (3) incorporating the limitations on the use of force set forth in Section (c) of this Ordinance into officer training regarding the use of less lethal and non-lethal force in policing.
2. Any violation of this Ordinance constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandamus in any court of competent jurisdiction to enforce this Ordinance. An action instituted under this paragraph shall be brought against the City of Boston and, if necessary to effectuate compliance with this Ordinance, any other governmental agency subject to this Ordinance.
3. In any civil or criminal action brought under any state or federal statute or constitutional provision arising out of the use of force by any law enforcement officer within the City of Boston, the prohibition contained in Section (c) of this Ordinance shall be deemed to be the clearly established law of the City of Boston, and any violation of that prohibition may be considered unlawful.
4. Any person injured or harmed as a result of a violation of this Ordinance may bring an action in any court of competent jurisdiction seeking damages, reasonable attorneys' fees, court costs, and any other relief that the court may deem appropriate. A prevailing plaintiff injured or harmed by a violation of this Ordinance shall be entitled to recover damages in the amount of three times their actual damages. Nothing in this section shall be construed to limit any individual's rights under State or Federal law.

5. All violations of this Ordinance by any offending member of law enforcement shall be reported in writing, including the name of the offending member of law enforcement, to all City of Boston government agencies and departments which have any oversight responsibilities for the Boston Police Department, and to all state agencies which have any oversight responsibilities for law enforcement agencies or departments. Such reports shall be a matter of public record to be published at least annually by the City of Boston and all such reports shall be made freely available upon request by any member of the public.

(e) SEVERABILITY

1. If any portion or provision of this ordinance is declared invalid or unenforceable by a court of competent jurisdiction or by the Office of the Attorney General, the remaining provisions shall continue in full force and effect.

(f) EFFECTIVE DATE

The provisions of this ordinance shall take effect 90 days after passage.