

NO. _____

ORDINANCE

An ordinance amending and supplementing the Allegheny County Code of Ordinances, Division 5, entitled "Health and Sanitation," through the creation of a new Chapter 600, entitled "Less Lethal Devices," in order to protect the public health by clarifying County policy regarding the use of certain devices by the Allegheny County Police Officers.

Whereas, over the past several decades, numerous devices have become available which are specifically designed to cause discomfort and/or pain to the individual(s) upon whom they are used, while being less lethal than traditional firearms; and

Whereas, some of the most commonly used variants of these devices are tear gas, concussion grenades, "rubber bullets," and flexible baton rounds (commonly referred to as "bean bag rounds"); and

Whereas, while all of these devices are generally regarded as less dangerous to their targets than firearms, all entail significant risks if used improperly and/or under certain conditions; and

Whereas, because different parts of the human body vary in terms of vulnerability, and because individuals also vary in weight and fitness, any weapon powerful enough to incapacitate may be capable of killing under certain circumstances, and even the application of "non-lethal force" does have some risk of causing death or permanent injury; and

Whereas, devices which rely on kinetic energy transfer - commonly referred to as "rubber bullets" and "bean bag rounds," for example - are specifically designed to cause trauma and incapacitate individuals at whom they are aimed, are generally intended to be aimed at an individual's lower body, and can cause significant and/or permanent injury if aimed at particularly vulnerable areas of the body (e.g. the neck, eyes, or abdominal regions) or be lethal if aimed at an individual's head; and

Whereas, explosive devices - often referred to as "concussion grenades," "stun grenades," "flashbang grenades," or "sting grenades" - are designed to disorient intended targets, but by definition involve the deployment of explosive charges (in the case of "sting grenades," with accompanying untargeted rubber shrapnel) against individuals; and

Whereas, less than lethal chemical weapons such as tear gas specifically rely upon inducing unpleasant effects upon their intended targets through chemical action, but studies have shown long term detrimental health impacts from such lachrymator agents, the use of these types of chemicals in warfare is specifically prohibited by the Geneva Protocol of 1925; instances of long term nerve damage, amputation, and head injury (often from being hit by tear gas canisters) have also been reported (*see, e.g.*, Wani AA, Zargar J, Ramzan AU, Malik NK, Qayoom A, Kirmani AR, et al. (2010). "Head injury caused by tear gas cartridge in teenage population". *Pediatric Neurosurgery*. 46 (1): 25–8), and individuals with preexisting yet common respiratory conditions such as asthma are at elevated risk for complications and comparatively often require hospitalization and even ventilation after exposure to these chemical agents (Carron PN, Yersin B (June 2009). "Management of the effects of exposure to tear gas". *BMJ*. 338: b2283); and

Whereas, while fatalities caused by less lethal weapon usage are relatively infrequent, causes of death in the instances in which it has happened are varied: misplaced or ricocheting shots, pre-existing medical conditions, inadequate user training, repetitive applications, and intentional misuse have all been implicated in different cases where death has occurred; and

Whereas, because significant variations exist in individuals against whom these devices may be deployed in terms of preexisting health conditions and physiological condition, and because these variations may not be identifiable by merely looking at a particular individual, it is the judgment of Council that the risks occasioned by the use of certain less than lethal weapon technologies outweigh their benefits; and

Whereas, it is accordingly also the judgment of Council that the policy of the County regarding the use of certain types of less than lethal weapon technologies should be clarified for the Allegheny County Police;

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1. Incorporation of the Preamble.

The provisions set forth in the preamble to this Ordinance are incorporated by reference in their entirety herein.

SECTION 2. Amendment of the Code.

The Allegheny County Code of Ordinances is hereby amended through the creation of a new Chapter 600, entitled "Less Lethal Devices" and comprised as follows:

Chapter 600
Less Lethal Devices

§600.01. Definitions.

For the purposes of this Chapter, the following terms shall have the definitions specified herein unless the context clearly indicates to the contrary, provided, however, that no definition contained herein shall be deemed to include any device defined as "ammunition" for the purposes of the Pennsylvania Uniform Firearms Act, specifically 18 Pa.C.S.A. §6120:

- A. "Chemical Device" shall mean any type of device designed as Less Lethal, to be launched or thrown as a projectile, in order to cause injury or trauma to the intended target through the action of chemicals as an eye, throat, respiratory, and/or skin irritant, as a means of crowd control. For the purpose of this Chapter, the term shall include any item commonly referred to as or having similar effects to "tear gas."
- B. "Explosive Device" shall mean any type of device designed as Less Lethal, to be launched or thrown as a projectile, in order to disorient the intended target through noise, light, or concussive shock for the purpose of crowd control. For the purpose of this Chapter, the term shall include, but not be limited to, "concussion grenades," "stun grenades," "flashbang grenades," and "sting grenades."
- C. "Kinetic Device" shall mean any type of device designed as Less Lethal, to be launched from any device as a projectile, in order to cause injury or trauma to the intended target as a means of crowd control or dispersal.
- D. "Less Lethal" shall mean designed to reduce the risk of causing fatal injury to the individual(s) upon whom they are used, when compared to the use of firearms or other deadly force.

§600.02. Delineation of County Policy.

No Allegheny County Police Officer shall intentionally aim, deploy, or otherwise use against any other individual a Chemical Device, Explosive Device, or Kinetic Device, as defined under the terms of §600.01.

§600.02. Violations and Enforcement.

Any person(s) violating the terms of §600.02 shall be guilty of a summary offense, and upon conviction shall be subject to a fine of not more than \$300 and/or a term of imprisonment not to exceed 30 days. For the purposes of this Section, each device used

in violation of the terms of §600.02 shall constitute a separate offense. The terms of this Chapter may be enforced by any police department with legal jurisdiction in the municipality in which the violation took place.

SECTION 4. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

SECTION 5. Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

PRIMARY SPONSOR: COUNCIL MEMBERS HALLAM and BENNETT

CO-SPONSORS:

Enacted in Council, this _____ day of _____, 2020,

Council Agenda No. _____

Patrick Catena
President of Council

Attest: _____
Jared E. Barker, Chief Clerk
Allegheny County Council

Chief Executive Office _____, 2020

Approved: _____
Rich Fitzgerald
Chief Executive

Attest: _____
Sonya Dietz
Executive's Secretary