



CITY OF OAKLAND

AGENDA REPORT

DATE: June 11, 2020
TO: City Council and Members of the Public
FROM: Councilmember Nikki Fortunato Bas
Councilmember Sheng Thao
Council President Rebecca Kaplan
SUBJECT: Resolution Urging The City To Halt The Use of Tear Gas

Dear Colleagues on the City Council and Members of the Public,

We respectfully request that the City Council: Adopt A Resolution Urging The City Of Oakland To Immediately Halt The Use Of Tear Gas For Crowd Control During The COVID-19 Pandemic And Requesting The Oakland Police Commission To Immediately Review And Propose Changes To The Oakland Police Department's Policy In Order To Halt Such Use.

We are extremely concerned that using tear gas for crowd control during the COVID-19 pandemic increases the spread of the coronavirus (a respiratory illness), placing countless people at risk. Tear gas has been banned for use in warfare, but is legal for police to use in the U.S. Yet experts agree, and the Oakland Police Department's own Crowd Control and Crowd Management Policy states, that it should be a weapon of last resort for crowd control and for addressing violent behavior of specific individuals because it affects everyone in the area including peaceful protestors.

African Americans are disproportionately impacted by COVID-19 in Oakland and Alameda County. In addition, many black Americans disproportionately have pre-existing conditions like asthma that could make tear gas lethal. Public health experts have expressed increasing alarm at the use of tear gas during the COVID-19 pandemic.

Many Oakland residents have been impacted and stated that tear gas reached the 14th floor of their building and seeped into their apartment, and a tear gas canister landed on their rooftop and caught grass on fire. Another resident said tear gas was sprayed on the side of his car, trapped in its air vents, and then sprayed in his face when he turned on the engine the next day.

Councilmembers Nikki Fortunato Bas and Sheng Thao and Council President Rebecca Kaplan
Subject: Halting the Use of Tear Gas

Furthermore, in the first two weeks of June, government officials in an increasing number of jurisdictions across the United States, including Berkeley, Pittsburgh, New Orleans, Portland, Seattle, and Washington, D.C., have proposed or passed bans or limits on the use of tear gas, and in Denver, a U.S. District Judge imposed restrictions on the use of chemical and less-lethal weapons by police, saying officers there had failed to police themselves when it came to using them.

Again, we respectfully request that the City Council: Adopt A Resolution Urging The City Of Oakland To Immediately Halt The Use Of Tear Gas For Crowd Control During The COVID-19 Pandemic And Requesting The Oakland Police Commission To Immediately Review And Propose Changes To The Oakland Police Department's Policy In Order To Halt Such Use.

For questions regarding this item, please contact Miya Saika Chen, Chief of Staff, Office of Councilmember Nikki Fortunato Bas, at mchen@oaklandca.gov.

Respectfully Submitted,



Nikki Fortunato Bas
Councilmember, District 2



Rebecca Kaplan
Council President, At-Large



Sheng Thao
Councilmember, District 4



City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS BAS AND THAO, AND COUNCIL PRESIDENT
KAPLAN

RESOLUTION URGING THE CITY OF OAKLAND TO IMMEDIATELY HALT THE USE OF TEAR GAS FOR CROWD CONTROL DURING THE COVID-19 PANDEMIC AND REQUESTING THE OAKLAND POLICE COMMISSION TO IMMEDIATELY REVIEW AND PROPOSE CHANGES TO THE OAKLAND POLICE DEPARTMENT'S POLICY IN ORDER TO HALT SUCH USE

WHEREAS, infectious disease specialists are calling on police to stop using tear gas to disperse crowds, and instead to use “public health best practices” during demonstrations and have warned cities that all types of gas used to disperse crowds attack the respiratory system; and

WHEREAS, national media outlets are reporting that, “[a]long with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people’s lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas can also incite coughing, which can further spread the virus from an infected person”; and

WHEREAS, according to an article in the New York Times on June 3, 2020, researchers are concerned that the use of tear gas in crowds “might catalyze a new wave of Covid-19”; and

WHEREAS, African Americans are disproportionately impacted by COVID-19 in Oakland and Alameda County, and according to a 2016 study titled, “Tear gas: an epidemiological and mechanistic reassessment,” published in the U.S. National Library of Medicine, National Institutes of Health, “many black Americans disproportionately have pre-existing conditions like asthma that could make tear gas lethal”; and

WHEREAS, tear gas was banned for warfare by the Geneva Protocol since 1925 and the Chemical Weapons Ban Treaty since 1993; and

WHEREAS, according to the American Civil Liberties Union, tear gas has been banned for use in warfare by almost every country in the world, but is legal for police to use in the

United States. Yet, experts say it should be a weapon of last resort for crowd control and for addressing violent behavior of specific individuals because it affects everyone in the area including peaceful protestors; and

WHEREAS, the Oakland Police Department's (OPD's) training bulletin (V-F.2. July 26, 2006) states that "Breathing CS (gas) may create a feeling of tightness in the chest, shortness of breath, coughing and/or sneezing." These are reactions that can spread COVID-19 and may make the victim less immune at the same time they are being exposed due to temporary damage to the lungs; and

WHEREAS, the OPD's Training Bulletin III-G, revised October 4, 2013, states "Chemical agents can produce serious injuries or even death. The elderly person or infant in the crowd or the individual with asthma or other breathing disorder may have a fatal reaction to chemical agents even when those agents are used in accordance with the manufacturer's recommendations and the Department's training. Thus, crowd control chemical agents shall only be used if other techniques, such as encirclement and multiple simultaneous arrest or police formations have failed or will not accomplish the policing goal as determined by the incident Commander;" and

WHEREAS, the use of tear gas for crowd control adversely affects individuals who live within a large radius of exposure, seeping into homes of medically vulnerable people who may have, in addition to asthma, experienced recurrences of Post Traumatic Stress Disorder; and

WHEREAS, OPD has not yet provided after-action reports about its use of tear gas at demonstrations between May 29 and June 1, 2020, and numerous members of the public have expressed concern about its use and in particular deploying it twenty minutes prior to the Alameda County and Oakland-ordered curfew on a crowd of youth protestors on June 1, 2020; and

WHEREAS, in the first two weeks of June 2020, government officials in an increasing number of jurisdictions across the United States, including Berkeley, Pittsburgh, New Orleans, Portland, Seattle, and Washington, D.C., have proposed or passed bans or limits on the use of tear gas, and in Denver, a U.S. District Judge imposed restrictions on the use of chemical and less-lethal weapons by police, saying officers there had failed to police themselves when it came to using them; and

WHEREAS, Charter Article VI, Section 604(b)(4) provides that the Oakland Police Commission has the power to "[p]ropose changes, including modifications to the Department's proposed changes, to any policy, procedure, custom, or General Order of the Department which governs . . . First Amendment assemblies . . ." and that all such proposed changes and modifications "shall be submitted to the City Council for approval or rejection;" now therefore be it

RESOLVED: That the City Council urges the City of Oakland to immediately halt the use of tear gas for crowd control during the COVID-19 pandemic and hereby requests that the

Oakland Police Commission immediately review and propose changes to OPD's policy regarding the use of tear gas for crowd control in order to halt such use and to prevent excessive damage; and be it

FURTHER RESOLVED: That the Oakland Police Commission, in accordance with Charter Article VI, Section 604(b)(4), shall schedule and submit its proposed recommendations and changes to the Department's policies for the use of tear gas to the Council for consideration; and be it

FURTHER RESOLVED: That the City Council urges the Alameda County Sheriff, California National Guard Troops, and any other law enforcement agency deployed in the City of Oakland to refrain from using tear gas for crowd control purposes during the COVID-19 pandemic.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR,
THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
ASHA REED
Acting City Clerk and Clerk of the
Council of the City of Oakland, California