



City of Madison

City of Madison
Madison, WI 53703
www.cityofmadison.com

Master

File Number: 61265

File ID: 61265

File Type: Resolution

Status: Passed

Version: 3

Reference:

Controlling Body: Attorney's Office

File Created Date : 07/07/2020

File Name: Prohibiting Use of Tear Gas

Final Action: 10/06/2020

Title: AMENDED SUBSTITUTE. ~~Prohibiting the use of tear gas as of February 2, 2021,~~
and ~~R~~requesting a study of alternatives by the Madison Police Department.

Notes: L. Veldran updated title from Substitute to Amended Substitute and crossed-out the February 2, 2021 date in the title (2/23/21) - per Lemmer amendment that was adopted 10/6/20.

Sponsors: Patrick W. Heck, Shiva Bidar and Keith Furman

Effective Date: 10/13/2020

Attachments: References, 8/4/20: Ald. Henak Email Re 61265.pdf, 61265 v1.pdf, Ald. Lemmer amendment, Ald. Abbas amendment, v2.pdf

Enactment Number: RES-20-00707

Author: Michael Haas

Hearing Date:

Entered by: smautz@cityofmadison.com

Published Date:

Approval History

Version	Date	Approver	Action
1		Ryan Pennington	Delegate
1		Elizabeth York	Approve
2		Elizabeth York	Approve

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Attorney's Office	07/07/2020	Referred for Introduction				
	Action Text:		This Resolution was Referred for Introduction				
	Notes:		Public Safety Review Committee; Equal Opportunities Commission; Common Council Executive Committee				
1	COMMON COUNCIL	07/14/2020	Refer	PUBLIC SAFETY REVIEW COMMITTEE		09/16/2020	Pass
	Action Text:		A motion was made by Carter, seconded by Abbas, to Refer to the PUBLIC SAFETY REVIEW COMMITTEE. The motion passed by voice vote/other.				

	Notes: Additional Referrals to Equal Opportunities Commission, Common Council Executive Committee				
1	PUBLIC SAFETY REVIEW COMMITTEE	07/14/2020	Referred	COMMON COUNCIL EXECUTIVE COMMITTEE	08/18/2020
	Action Text: This Resolution was Referred to the COMMON COUNCIL EXECUTIVE COMMITTEE				
	Notes:				
1	PUBLIC SAFETY REVIEW COMMITTEE	07/14/2020	Referred	EQUAL OPPORTUNITIES COMMISSION	09/10/2020
	Action Text: This Resolution was Referred to the EQUAL OPPORTUNITIES COMMISSION				
	Notes:				
1	COMMON COUNCIL EXECUTIVE COMMITTEE	08/04/2020	Re-refer	COMMON COUNCIL EXECUTIVE COMMITTEE	08/18/2020
	Action Text: Re-refer to future August 2020 COMMON COUNCIL EXECUTIVE COMMITTEE meeting.				
1	PUBLIC SAFETY REVIEW COMMITTEE	08/12/2020	Re-refer	PUBLIC SAFETY REVIEW COMMITTEE	09/16/2020 09/16/2020
	Action Text: Konkell suggested to discuss items #8 and 12 at the same time and to refer to the September meeting however to come up with questions on the information the committee would want to know such as how often tear gas is used and what they are used for? It was suggested to invite the police departments Use of Force coordinator. There was also discussion on inviting the manufactures to the committee to share information. Anglim would like to know how many people had serious injuries from protests and tear gas. Mitnick inquired on agenda item 8 with the impact of the police department responding to the situations and the policy and protocols and for item 12 on the differences on when certain things would be used. Acting Chief Wahl shared he captured the questions and will plan on attending the September meeting to provide information. Mitnick made a motion to refer and Alder Albouras seconded the motion. There was unanimous consent.				
1	EQUAL OPPORTUNITIES COMMISSION	08/13/2020	Table		Pass
	Action Text: A motion was made by Moreland, seconded by Wallace, to Return to Lead with the Recommendation for Approval to the COMMON COUNCIL. The motion failed by voice vote/other.				
	A motion was made by Andrae, seconded by Neugent, to Table/Postpone Item 61265 and Item 61250 until the next meeting and request the authors of the resolutions be present. The motion passed by voice vote/other.				
1	COMMON COUNCIL EXECUTIVE COMMITTEE	08/18/2020	Return to Lead with the Following Recommendation(s)	PUBLIC SAFETY REVIEW COMMITTEE	09/16/2020 Fail
	Action Text: A motion was made by Ald. Syed Abbas, seconded by Ald. Barbara Harrington-McKinney, to approve. The motion failed by the following vote:				
	Notes: Motion to Recommend Approval FAILED: 5:1:2 - Noes: Abbas, Harrington-McKinney, Henak, Skidmore, Tierney; Ayes: Kemble; Non-Voting: Carter, Bidar				
	Ayes: 1 Rebecca Kemble				
	Noes: 5 Syed Abbas; Barbara Harrington-McKinney; Paul E. Skidmore; Zachary Henak and Michael J. Tierney				
	Non Voting: 2 Shiva Bidar and Sheri Carter				
1	EQUAL OPPORTUNITIES COMMISSION	09/10/2020	Return to Lead with the Recommendation to Place on File	COMMON COUNCIL	10/06/2020 Pass

Action Text: A motion was made by Andrae, seconded by Schieve, to take Items 4 & 5 jointly. The motion passed by voice vote/other.

A motion was made by Wallace, seconded by Schieve, to vote separately on Items 4 & 5. The motion passed by voice vote/other.

A motion was made by Wallace, seconded by Schieve, to Return to Lead with the Recommendation to Place on File to the COMMON COUNCIL. The motion passed by voice vote/other.

1 PUBLIC SAFETY REVIEW 09/16/2020 RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER Pass

Action Text: Alder Heck shared item number 2 is a resolution rather than an ordinance change as there is an ask from the police department on a study of the history on the use of tear gas use only by November 17on what it is used for and to explore alterative methods on de-escalation techniques that they see other law enforcement agencies use. The report would be returned to council in October to finish the report and in November they would ban tear gas. Alder Harrington-McKinney inquired with Alder Heck the sponsor of the resolution to clarify the decision on banning tear gas when there is a request to study tear gas and that there should be consideration of the study before a ban. Alder Heck shared the primary motivation of the study is for the police department to adopt new de-escalation techniques rather than using tear gas and not to help guide on whether to ban tear gas. Alder Harrington-McKinney inquired about the timeline. Alder Heck responded the timeline is slow moving and for the resolution the sponsors are open to extend the study from the police department and the tear gas enactment date as they have recognized there is four weeks to the original deadline and would want to give the police department ample time to work on other de-escalation techniques rather than tear gas. They also would like to see the results from the Quatrone Center report from when tear gas was used during the protests at the end of May and early June and that it would be important to have that information. Alder Heck made a motion to place item number 2 on the table. Alder Harrington-McKinney seconded the motion. There was unanimous consent. Alder Heck made a motion to take item number 1 off the table and Mitnick seconded the motion. There was unanimous consent. Alder Harrington- McKinney made a motion to approve and to add mace and impact projectiles to the report and the report would be due back by January 1 and to remove the ban of tear gas until after the study. Anglim seconded the motion but wanted to add pepper spray and tear gas. Alder Harrington-McKinney clarified her motion to table item number 1 and that it was not indefinitely but to be discussed at today’s meeting. Acting Chief Wahl shared if there is research being discussed on broadening the study on more than just tear gas there would need to be a longer timeframe to accomplish this and he would need to have more specific requests from the committee. Alder Heck shared as an author of the resolution he finds it confusing to combine item number 1 and 2 and he respects the desire to have the entire use of force related to the items but feels it is complex to come up with the framework and would like to take the agenda items separate. Alder Heck made a substitute motion to pass item number 2 as written except the study due date is changed to January 5, 2020 and to keep the ban of tear gas and that would be for February 2, 2020. Mitnick seconded the motion. There was unanimous consent. Motion passes. Alder Harrington- McKinney made an amendment to remove the finally be resolved clause. Rickey seconded the motion. Konkel shared this would be the removal of the Madison Common Council prohibiting the use and purchase of tear gas. There were objections to this amendment and a roll call vote was taken. Konkel – No, Alder Heck- No, Alder Harington- McKinney – Aye, Rickey – Yes, Anglim – No, Mitnick – No, Myadze- Abstention. Motion failed. Konkel shared now the vote is for original motion; Alder Heck made a substitute motion to pass item number 2 as written except the study due date is changed to January 5, 2020 and to keep the ban of tear gas and that would be for February 2, 2020. Mitnick seconded the motion. Motion to approve passes: 5:2 roll call vote. Konkel – Aye, Alder Heck – Aye, Anglim - Aye, Mitnick - Aye, Myadze - Aye Noes: Alder Harrington- McKinney – No, Rickey – No.

Notes: Roll Call Vote: 5:2:1 - Ayes: Konkel, Heck, Anglim, Mitnick, Myadze; Noes: Harrington-McKinney, Rickey; Absent: Albouras

Absent: 2 Gideon W. Amoah and Christian A. Albouras

Ayes: 5 Patrick W. Heck; Brenda K. Konkel; Matthew D. Mitnick; Mary T. Anglim and Charles Myadze

Noes: 2 Allen M. Rickey and Barbara Harrington-McKinney

2 COMMON COUNCIL 10/06/2020 Amend the Substitutue Pass

Action Text: A motion was made by Lemmer, seconded by Harrington-McKinney, to Amend the Substitutue. The motion passed by the following vote:

Ayes: 11 Michael E. Verveer; Paul E. Skidmore; Zachary Henak; Arvina Martin; Tag Evers; Sheri Carter; Michael J. Tierney; Samba Baldeh; Christian A. Albouras; Barbara Harrington-McKinney and Lindsay Lemmer

Noes: 8 Shiva Bidar; Marsha A. Rummel; Syed Abbas; Grant Foster; Rebecca Kemble; Keith Furman; Max Prestigiaco and Patrick W. Heck

Non Voting: 1 Satya V. Rhodes-Conway

2 COMMON COUNCIL 10/06/2020 Amend the Substitutue Fail

Action Text: A motion was made by Abbas, seconded by Carter, to Amend the Substitutue. The motion failed by the following vote:

Notes:

Ayes: 3 Paul E. Skidmore; Syed Abbas and Sheri Carter

Noes: 16 Shiva Bidar; Marsha A. Rummel; Zachary Henak; Arvina Martin; Tag Evers; Grant Foster; Michael J. Tierney; Samba Baldeh; Rebecca Kemble; Keith Furman; Christian A. Albouras; Max Prestigiaco; Barbara Harrington-McKinney; Patrick W. Heck; Lindsay Lemmer and Michael E. Verveer

Non Voting: 1 Satya V. Rhodes-Conway

2 COMMON COUNCIL 10/06/2020 Adopt Substitute As Amended Pass

Action Text: A motion was made by Carter, seconded by Abbas, to Adopt Substitute As Amended. The motion passed by the following vote:

Ayes: 16 Marsha A. Rummel; Paul E. Skidmore; Zachary Henak; Arvina Martin; Syed Abbas; Tag Evers; Sheri Carter; Grant Foster; Michael J. Tierney; Samba Baldeh; Keith Furman; Christian A. Albouras; Barbara Harrington-McKinney; Lindsay Lemmer; Michael E. Verveer and Shiva Bidar

Noes: 3 Rebecca Kemble; Max Prestigiaco and Patrick W. Heck

Non Voting: 1 Satya V. Rhodes-Conway

Text of Legislative File 61265

Fiscal Note

The proposed resolution prohibits the use of tear gas as of February 2, 2021 and requests a study of alternatives by the Madison Police Department (MPD). The resolution defines tear gas as various chemical agents. Costs fluctuate from year to year in correspondence with usage, training needs or expiration. In 2019, the department spent approximately \$3,600 on chemical sprays. While there would be savings associated with not purchasing these items, an alternative could consume some or all of these savings or require additional funding from the Common Council. Staff time (including overtime) would be involved in order to produce this study. With the major events impacting MPD's overtime budget (shots fired incidents, COVID, protests), the Department will likely need an additional appropriation to cover overtime costs.

An ordinance prohibiting the MPD from using tear gas, mace and impact projectile devices, Legistar file ID #61250, is also being introduced.

Title

AMENDED SUBSTITUTE. ~~Prohibiting the use of tear gas as of February 2, 2021, and~~

Requesting a study of alternatives by the Madison Police Department.

Body

WHEREAS, the use of lachrymatory chemicals, often referred to as tear gas or riot control agents, in war has been banned for almost a century by the UN Geneva Protocol of 1925, as well as by the Chemical Weapons Convention of 1993; and

WHEREAS, the Centers for Disease Control list a variety of chemical compounds in the category of riot control agents, including "chloroacetophenone (CN) and chlorobenzylidenemalononitrile (CS)... chloropicrin (PS)...bromobenzylcyanide (CA); dibenzoxazepine (CR); and combinations of various agents"; and

WHEREAS, that for the purposes of this resolution, the term "tear gas" is defined as chloroacetophenone (CN), chlorobenzylidenemalononitrile (CS), chloropicrin (PS), bromobenzylcyanide (CA), dibenzoxazepine (CR), and combinations of these and related agents, and that oleoresin capsicum (OC) spray is not included in that definition; and

WHEREAS, the Centers for Disease Control list "chest tightness, coughing, choking sensation, noisy breathing (wheezing), shortness of breath" as effects of tear gas on the lungs; and

WHEREAS, studies have shown, "tear gas can cause long-term harm, by making people more susceptible to contracting influenza, pneumonia and other illnesses"; and

WHEREAS, an open letter signed by over 1,200 healthcare professionals opposes, "any use of tear gas, smoke, or other respiratory irritants, which could increase risk for COVID-19 by making the respiratory tract more susceptible to infection, exacerbating existing inflammation and inducing coughing"; and

WHEREAS, the American Thoracic Society is calling for a moratorium on the use of tear gas by law enforcement officers on participants in protests due to the dangers it poses to those who are exposed to it, including medics and bystanders as well as protestors; and

WHEREAS, United States Representatives Ocasio-Cortez, Takano, and Garcia have introduced the "Prohibiting Law Enforcement Use of Chemical Weapons Act", which will ban the use of tear gas by law enforcement and the City of Seattle has recently banned tear gas; and

NOW THEREFORE, BE IT RESOLVED, that the Madison Common Council requests that the Madison Police Department submit a study by ~~October 20, 2020~~ January 6, 2021 that includes:

- a history of the Department's tear gas usage from 1990 up to and including August 1, 2020, that includes analyses of usage by year;
- incident type, including, but not limited to, crowd control, special operations, and smaller scale uses; estimated number of persons impacted; amount of tear gas used;
- justifications and efficacies of its usage compared to available alternatives; other pertinent information, and summaries thereof;
- MPD or non-MPD de-escalation alternatives to the use of tear gas, and that alternatives include, but not be limited to, response options from other agencies, organizations, health care entities, and suggested recommendations by the Quattrone Center's analysis of the MPD's May 30-June 1, 2020 response; and

BE IT FURTHER RESOLVED that the Madison Common Council is committed to support de-escalation alternatives to the use of tear gas; and

BE IT FINALLY RESOLVED, ~~that starting on November 17, 2020 February 2, 2021, the Madison Common Council prohibits the use and purchase of tear gas by the Madison Police Department and/or any City department or entity.~~ upon receiving this study from the Madison Police Department, the Madison Common Council will review the findings, with careful attention on available de-escalation alternatives, and use this information to determine whether to ban tear gas and if so, will determine an appropriate timeline.