

From: Henak, Zachary
Sent: Tuesday, August 04, 2020 3:25 PM
To: Kristen Roman; Mahoney, David
Cc: Hook, Jeff
Subject: Re: Impact of less than lethal force bans

I wanted to include you all on the responses I received from two of the Departments in our area(thank you for your quick reply). All Alders are BCC'd as this is for information purposes only.

Alder Zachary Henak
District 10
Madison Common Council
608.471.2900

Alderman Henak,

I appreciate your outreach. For decades, the UWPD Special Events Team has assisted the Madison Police Department with events such as Freakfest, Mifflin St. Block Party, and other large-scale events, demonstrations/protests and our SET team is similarly equipped with CS, OC, and non-lethal munitions.

I have served the Madison community for 30 years, 27 at various ranks and assignments with the Madison Police Department and just over 3 now as Chief of the UWPD. Based on my years of experience and as a former SET commander, I can state unequivocally that I share the concerns to which Sheriff Mahoney pointed and the reasoning behind them.

UWPD prioritizes de-escalation and its grounding in the practice of always seeking to obtain voluntary compliance through the least amount of force necessary. More tools create more options, and more options lead to more efficacious applications, which lead to better outcomes. As Dave noted, there are myriad examples where less lethal options have saved lives and without which deadly force would've been the only alternative.

To your specific questions about the impact of the proposed bans on MPD's ability to provide or request mutual aid, the short answer is that it would eliminate it. I would not send my officers into a situation in which they did not have all the tools necessary and available for best possible outcomes, nor would I call for assistance from officers whose limited options increase the potential for escalation. Clear protocols, policy, expectations, and training as to the application of these tools is the key to their ethical, effective utilization. Their removal only increases risk for injury and death.

I'm happy to talk further or answer other questions you may have.

Regards,
Chief Kristen Roman



CHIEF KRISTEN ROMAN | UW-Madison Police Department

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Alderman Henak,

Thank you for reaching out first of all, we as an agency train and believe in all measures of de-escalation to seek voluntary compliance with lawful orders whether in our jail, patrol or crowd control capacity. The Sheriff's Office does possess a Special Events Team (SET) which in the past and continuing into the future has been utilized by surrounding agencies in Dane County. The City of Madison has utilized this team of deputies and supervisors during Mifflin Street Days, Freak Fest and other special events where crowd control is anticipated including the most recent protests in Madison following the George Floyd incident in Minneapolis. The tools this team has at its disposal currently and will in the future consist of some of the chemical and non-lethal impact munitions you have listed.

CS, OC and non-lethal impact munitions are currently available for use by our specially trained staff for use during crowd control events. As well some of these munitions are readily available to trained supervisors during normal duties and as part of our de-escalation in the event their use can be deployed as an alternative to the use of deadly force.

As the Sheriff of Dane County and as a City of Madison resident I feel it's important to point out that should the Madison Common Council pass a miss guided ordinance limiting the use of chemical and non-lethal impact munitions, the council will have tied the hands of Madison Police in the use of munitions that are part of a host of de-escalation alternatives to deadly force. In my 41 years with the Sheriff's Office and 14 as Dane County Sheriff I have seen and participated in a number of incidents where the deployment of less than lethal munitions resulted in the saving of a life and where without that tool deadly force would have been the only alternative.

I would ask that you and other alders think very hard and seek the insight of Acting Chief Wahl before rushing to pass a feel good ordinance that very well could tie the hands of your very highly trained, educated and competent police force.

As always I stand ready and available to answer questions and provide insight on issues of concern.



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#234

Chief Roman and Sheriff Mahoney,

I hope you are both well. Madisons common council has two pieces of legislation coming to us as linked below. I have detailed a few questions below to get a broader sense of what the impact would be of these bans. Your insight would be very helpful.

How would these bans impact MPD's ability to provide or request mutual aid? Do you have any insight as to alternatives or the effect a ban such as this would have if implemented for your department?

Thank you and please feel free to contact me with any questions.

We are discussing the topics tomorrow evening. If you are not available until after that it would still be helpful to hear from you.

Thank you both for your service,

Alder Zachary Henak

District 10

Madison Common Council

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Prohibiting Tear Gas

<https://madison.legistar.com/LegislationDetail.aspx?ID=4587350&GUID=BFB28CA2-85B7-4702-9209-6CF005D8990A&FullText=1>

Fiscal Note

The proposed resolution prohibits the use of tear gas as of November 17, 2020 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

Prohibiting the use of tear gas as of November 17, 2020 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 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, the Madison Common Council prohibits the use and purchase of tear gas by the Madison Police Department and/or any City department or entity.

Prohibit MPD from using tear gas, mace and impact projectile devices

<https://madison.legistar.com/View.ashx?M=F&ID=8670842&GUID=6095FD49-13C1-4371-B67B-794231D48100>

Text of Legislative File 61250

Fiscal Note

Fiscal note pending.

Title

SUBSTITUTE - Creating Section 5.17 of the Madison General Ordinances to prohibit the Madison Police Department from using tear gas, mace and impact projectile devices as crowd control measures.

Body

DRAFTER'S ANALYSIS: This ordinance prohibits all Madison Police Department commissioned officers while on duty, and any commissioned officers employed by any other law enforcement agency responding to a request for mutual aid by the Madison Police Department, from using tear gas, mace, pepper mace, pepper gas or projectile devices as crowd control measures.

***** The Common Council of the City of Madison do hereby ordain as follows:

1. Section 5.17 entitled “Prohibition of Tear Gas, Mace and Impact Projectile Devices” of the Madison General Ordinances is created to read as follows:

“5.17 PROHIBITION OF TEAR GAS, MACE AND IMPACT PROJECTILE DEVICES.

(1)

While on duty, all commissioned officers employed by the Madison Police Department and any commissioned officers employed by any other law enforcement agency responding to a request for Mutual Aid by the Madison Police Department are prohibited from using the following as crowd control measures:

- (a) Tear gas, the active ingredient of which is either Chloroacetophenone (CN) or o-Chlorobenzylidene malononitrile (CS).
- (b) Other chemical agents commonly known as mace, pepper mace, or pepper gas.
- (c) Impact projectile devices, including 40mm sponge rounds and small beanbags.”