

INTRODUCED: July 1, 2020

A RESOLUTION No. 2020-R048

To request that the Chief Administrative Officer cause the Department of Police to revise its policies to ban the use of certain non-lethal weapons to control unlawful assemblies.

Patrons – Mrs. Lynch and Mr. Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: AUG 3 2020 AT 5 P.M.

WHEREAS, pursuant to section 18.2-405 of the Code of Virginia (1950), as amended, “[a]ny unlawful use, by three or more persons acting together, of force or violence which seriously jeopardizes the public safety, peace or order is a riot;” and

WHEREAS, pursuant to section 18.2-406 of the Code of Virginia (1950), as amended, an unlawful assembly, in part, is an assembly of three or more persons who “share the common interest to advance some lawful or unlawful purpose by the commission of an act or acts of unlawful force or violence likely to jeopardize seriously public safety, peace and order;” and

WHEREAS, section 18.2-411 of the Code of Virginia (1950), as amended, provides, in part, that, “[w]hen any number of persons . . . are unlawfully or riotously assembled . . . [e]very

AYES: 7 NOES: 2 ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: OCT 12 2020 _____

endeavor shall be used, both by . . . officers and by the officer commanding any other force, which can be made consistently with the preservation of life, to induce or force those unlawfully assembled to disperse before an attack is made upon those unlawfully assembled by which their lives may be endangered;” and

WHEREAS, upon information and belief of the Council, non-lethal and “less lethal” weapons used to disperse unlawful and riotous assemblies include bean bag rounds, flash-bang grenades, pepper balls, rubber bullets, and tear gas; and

WHEREAS, in an article published by the Scientific American entitled “What ‘Less Lethal’ Weapons Actually Do,” Kelsey D. Atherton asserts that “less lethal” weapons, such as rubber bullets and tear gas, to “disperse crowds and subdue individuals” are not harmless; and

WHEREAS, the Council believes that it is in the best interests of the citizens of the City of Richmond that the Council request that the Chief Administrative Officer cause the Department of Police to revise its policies to ban the use of the aforementioned non-lethal weapons to control unlawful and riotous assemblies;

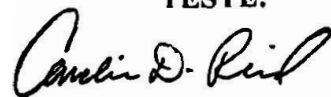
NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF RICHMOND:

That the Council hereby requests that the Chief Administrative Officer cause the Department of Police to revise its policies to ban the use of bean bag rounds, flash-bang grenades, pepper balls, rubber bullets, tear gas, and other non-lethal weapons to control unlawful and riotous assemblies.

A TRUE COPY:

TESTE:



City Clerk



Richmond City Council

The Voice of the People

Richmond, Virginia

Office of the Council Chief of Staff

Ordinance/Resolution Request

TO Haskell C. Brown, III, Interim Richmond City Attorney
Richmond Office of the City Attorney

THROUGH Lawrence R. Anderson
Council Chief of Staff

FROM William E. Echelberger, Jr, Council Budget Analyst

COPY Stephanie A. Lynch, 5th District Representative
Michael J. Jones, 9th District Representative
Tabrica C. Rentz, Interim Deputy City Attorney
Meghan K. Brown, Deputy Council Chief of Staff
Amy E. Robins, 5th District Liaison
Summer A. Morris, 9th District Liaison

DATE June 24, 2020

PAGE/s 1 of 2

TITLE Ban Use of Less Lethal Agents for Control of an Unlawful Assembly

RECEIVED
By Barbara Fore at 3:37 pm, Jun 24, 2020

This is a request for the drafting of an **Ordinance** **Resolution**

REQUESTING COUNCILMEMBER/PATRON

Stephanie A. Lynch, 5th District
Representative
Michael J. Jones, 9th District
Representative

SUGGESTED STANDING COMMITTEE

Public Safety Committee

ORDINANCE/RESOLUTION SUMMARY

The Patron requests a resolution to request that the Chief Administrative Officer require the Richmond Police Department develop revisions to its policy governing the use of certain non-lethal and less-lethal weapons to ban the use of such weapons for control of unlawful assemblies.

BACKGROUND

Summary:

- Sections 18.2-405, and 18.2-406, Code of Virginia, distinguish between a riot, and an unlawful assembly
 - “§ 18.2-405, What constitutes a riot; punishment**
Any unlawful use, by three or more persons acting together, of force or violence which seriously jeopardizes the public safety, peace or order is riot. Every person convicted of participating in any riot shall be guilty of a Class 1 misdemeanor. If such person carried, at the time of such riot, any

firearm or other deadly or dangerous weapon, he shall be guilty of a Class 5 felony."

o **"§ 18.2-406. What constitutes an unlawful assembly; punishment.**

Whenever three or more persons assembled share the common intent to advance some lawful or unlawful purpose by the commission of an act or acts of unlawful force or violence likely to jeopardize seriously public safety, peace or order, and the assembly actually tends to inspire persons of ordinary courage with well-grounded fear of serious and immediate breaches of public safety, peace or order, then such assembly is an unlawful assembly. Every person who participates in any unlawful assembly shall be guilty of a Class 1 misdemeanor. If any such person carried, at the time of his participation in an unlawful assembly, any firearm or other deadly or dangerous weapon, he shall be guilty of a Class 5 felony.

- Section 18.2-411, Code of Virginia, Dispersal of unlawful or riotous assemblies; duties of officers, requires, in part, that:

"Every endeavor shall be used, both by such sheriff or other officers and by the officer commanding any other force, which can be made consistently with the preservation of life, to induce or force those unlawfully assembled to disperse before an attack is made upon those unlawfully assembled by which their lives may be endangered."

- Recent information, such as that set out in "What 'Less Lethal' Weapons Actually Do", Kelsey D. Atherton, Scientific American, June 23, 2020, shows that these weapons can cause serious injury and death.

- It is sometimes stated that the use of chemical agents is banned in warfare, it should be noted that Article II (9) (d) of the of the 1993 Chemical Weapons Convention states, in part that:

"Law enforcement including domestic riot control purposes" is "not prohibited under this convention,"

- An article published by the Tampa Bay Times on June 5, 2020, titled "A guide to non-lethal and less-lethal weapons used in local, national protests" listed seven such weapons:

1. Bean bag rounds.
2. Flash-bang grenades.
3. Pepper balls
4. Pepper spray.
5. Rubber bullets.
6. Tasers, and
7. Tear gas.

- The patrons believe that a ban on the use of less lethal weapons for control of an unlawful assembly will protect the lives and safety of individuals, who may or may not be active participants in an unlawful assembly.

FISCAL IMPACT STATEMENT

Fiscal Impact Yes No

Budget Amendment Required Yes No

Estimated Cost or Revenue Impact

The proposed resolution has no fiscal impact.

Attachment/s Yes No

Richmond City Council Ordinance/Resolution Request Form/updated 10.5.2012 /us