

CHEMICAL CROWD CONTROL AGENTS AND KINETIC IMPACT PROJECTILES ORDINANCE

AS AMENDED AND RECOMMENDED BY LEGISLATIVE MATTERS
COMMITTEE 4/1/2021

SECTION 1. RESTRICTING THE USE OF CHEMICAL CROWD CONTROL AGENTS AND KINETIC IMPACT PROJECTILES

(a) PURPOSE

The purpose of this Ordinance is to ban the use of Tear Gas and to restrict the use of other chemical crowd agents and kinetic impact projectiles in order to protect residents of Somerville from the indiscriminate, dangerous, and even fatal impacts of such devices, especially during lawful protests and/or demonstrations. These devices can have significant impacts on both the physical and mental well-being of residents who choose to exercise their First Amendment rights by participating in demonstrations, as well as on innocent bystanders and the environment.

(b) DEFINITIONS

1. *Somerville Police Officers* shall mean all sworn officers of the Somerville Police Department.
2. *SPD* shall mean the Somerville Police Department.
3. *Other Law Enforcement Officers* shall mean, except to the extent prohibited by law, any law enforcement officers who are not Somerville Police Officers but who are engaged in law enforcement activities within the City of Somerville.
4. *Kinetic Impact Projectile* shall mean an item or instrument fired from a gun or launcher intended to disorient and/or incapacitate and inflict pain without penetrating the skin, including, but not limited to, rubber bullets, sponge grenades, stun grenades, concussion grenades, flash grenades or flash-bangs, beanbag rounds, Super-Sock rounds, wax bullets, and plastic bullets.
5. *Tear Gas* shall mean a chemical crowd control or riot control agent whose defining chemical component is 2-chlorobenzalmalononitrile, orthochlorobenzalmalononitrile, o-chlorobenzylidene malononitrile, and shall not include Pepper Spray.

6. *Pepper Spray* shall mean oleoresin capsicum spray, OC spray, capsaicin spray, capsicum spray, or any other similar lachrymatory agent, in spray or aerosol form, containing oils derived from cayenne pepper irritating to the eyes and respiratory passages and used as a disabling weapon that is intended to irritate the eyes, to cause a burning sensation, pain, or temporary blindness and to cause inflammation of the nose, throat and skin.

7. *Chemical Crowd Control Agent* shall mean a chemical compound, other than Tear Gas or Pepper Spray as defined in this section, in any form that are meant to cause a burning irritation or sensation to the eyes, mouth, throat, lungs, or skin, including, but not limited to, mace, inert smoke, pepper pellets, and pepper balls. These chemical compounds may include, but are not limited to, chloroacetophenone (CN), chloropicrin (PS), bromobenzylcyanide (CA), dibenzoxazepine (CR), and combinations thereof.

(c) **RESTRICTION ON THE USE OF TEAR GAS, CHEMICAL CROWD CONTROL AGENTS, KINETIC IMPACT PROJECTILES, AND PEPPER SPRAY**

1. The use of Tear Gas by the SPD or any Other Law Enforcement Officers shall be prohibited.

2. Subject to the provisions of paragraph 3 below, the use of Chemical Crowd Control Agents and Kinetic Impact Projectiles by Somerville Police Officers and Other Law Enforcement Officers shall be limited to being weapons of last resort, to be used only if all other reasonable methods of de-escalation have been unsuccessful.

3. Exceptions and Exemptions:
 - a. Kinetic Impact Projectiles and/or Chemical Crowd Control Agents may only be deployed if:
 - i. an on-scene supervisor of the rank of Captain or higher, or Shift Commander, specifically authorizes such use in response to specific ongoing acts of violence or destruction of property that the on-scene supervisor has personally witnessed and has determined cannot be controlled or quelled through any other methods, and has determined that no other reasonable methods of de-escalation will be successful in preventing or controlling such acts, *and*

- ii. the on-scene supervisor witness who authorizes such use, or an officer of equal or higher rank, has given at least two separate warnings over a loudspeaker system, including, but not limited to, a vehicle P.A. system or an amplified bullhorn, (a) directing the persons involved in the gathering to disperse, after ensuring that people have a reasonable and sufficient way to disperse after a warning is issued, (b) notifying all who could be affected that a failure to disperse will result in the use of a specific Kinetic Impact Projectile or Chemical Crowd Control Agent, which must be identified in such warning, and (c) notifying all who could be affected that the specific Kinetic Impact Projectile or Chemical Crowd Control Agent will be deployed within a clearly defined period of time. Such warnings must be at least two minutes apart, and there must be no less than two minutes after the second warning has been fully read before any use of the specifically announced Kinetic Impact Projectile and/or Chemical Crowd Control Agent.
4. The use of Pepper Spray by the SPD or any Other Law Enforcement Officers shall not be permitted unless (i) an emergency exists that requires the immediate use of Pepper Spray to prevent serious bodily injury or death; or (ii) an Officer (a) personally witnesses on-going and illegal acts of violence, property destruction, imminent threats of violence, or imminent threats of property destruction involving a weapon, (b) is unable to arrest or detain an individual using a lower level of force, and (c) provides a clear verbal warning of the imminent deployment of Pepper Spray prior to its use and affords a reasonable opportunity for the individual(s) to cease and/or comply.

(d) ENFORCEMENT

1. The Somerville Police Department shall take appropriate steps to implement this Ordinance forthwith, including, but not limited to, (1) by posting a copy of this Ordinance in a prominent and visible location in all police stations within the City of Somerville, (2) notifying all other law enforcement agencies that may operate within the City of Somerville about this Ordinance and supplying a copy of the Ordinance to each of said agencies, and (3) by incorporating the limitations on the use of Tear Gas, Pepper Spray, Chemical Crowd Control Agents, and Kinetic Impact Projectiles set forth in Section (c) of this Ordinance into officer training regarding the use of less lethal and non-lethal force in policing.
2. Any violation of this Ordinance constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance. An action instituted under this paragraph shall be brought against the City of Somerville and, if necessary to effectuate compliance with this Ordinance, any other governmental agency subject to this Ordinance.

3. In any civil or criminal action brought under any state or federal statute or constitutional provision arising out of the use of force by any law enforcement officer within the City of Somerville, the prohibitions contained in Section (c) of this Ordinance shall be deemed to be the clearly established law of the City of Somerville, and any violation of those prohibitions shall be considered unlawful.
4. The City of Somerville will address alleged violations of this section in accordance with its usual practices, applicable law, and contractual obligations.
5. Nothing in this section shall be construed to limit any individual's rights under state or federal law.
6. All violations of this Ordinance by any Somerville Police Officer or Other Law Enforcement Officers shall be reported in writing, including the names of the offending Somerville Police Officers or Other Law Enforcement Officers, to all City of Somerville government agencies and departments which have any oversight responsibilities for the Somerville Police Department, and to all state agencies which have any oversight responsibilities for law enforcement agencies or departments. Such reports shall be a matter of public record to be published at least annually by the City of Somerville, and all such reports shall be made freely available upon request by any member of the public.

(e) SEVERABILITY

1. If any portion or provision of this ordinance is declared invalid or unenforceable by a court of competent jurisdiction or by the Office of the Attorney General, the remaining provisions shall continue in full force and effect.

(f) EFFECTIVE DATE

This Ordinance, being necessary for the immediate preservation of the public peace, health and safety, and security of the public shall be effective sixty (60) days after passage.