

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, DIRECTING THE CITY MANAGER TO IMPOSE A MORATORIUM ON USE BY THE OLYMPIA POLICE DEPARTMENT OF LESS-THAN-LETHAL AGENTS SUCH AS TEAR GAS (CS GAS), PEPPER SPRAY, SMOKE, MACE, OR OTHER AGENTS USED AS LESS LETHAL TOOLS BY LAW ENFORCEMENT FOR CROWD CONTROL PURPOSES, DURING THE PERIOD OF THE CORONAVIRUS COVID-19 PANDEMIC

WHEREAS, the killing of George Floyd by a police officer in Minneapolis on May 25, 2020, has generated anger and outrage across the United States resulting in mass demonstrations and public protests; and

WHEREAS, the City of Olympia supports the people's right of free speech and peaceful assembly guaranteed by the Constitution of the United States of America and the Constitution of the State of Washington; and

WHEREAS, demonstrations over the killing of George Floyd in Olympia have largely been nonviolent; and

WHEREAS, as persons march in support of justice and compassion for persons of color within their communities and call for change to eliminate systemic racism; and

WHEREAS, the City of Olympia is currently in a declared state of emergency regarding the outbreak of a coronavirus, causing the respiratory disease COVID-19. COVID-19 is an acute respiratory illness that affects the lungs in addition to other symptoms. The severity of these symptoms increases based on underlying health conditions including asthma, heart and lung problems, diabetes, and other medical conditions; and

WHEREAS, public health experts have concluded that less lethal agents like tear gas and pepper spray may make people more susceptible to COVID-19 and increase its community-wide spread. Along with the immediate pain, tear gas can cause watering eyes, burning throats, and mucus generation, possibly causing damage to people's lungs and make them more susceptible to a respiratory illness, according to studies on the risks of exposure. It is also recognized by public health experts that gas, smoke, pepper spray and mace can also incite coughing, which can further spread the virus from an infected person; and

WHEREAS, the Olympia City Council recognizes that the use of tear gas (CS gas), pepper spray, mace and smoke are currently authorized less-than-lethal uses of force by law enforcement, which can be deployed in crowd control situations under Olympia Police Department policy, with specific conditions; and

WHEREAS, the Olympia Police Department has deployed tear gas and other forms of less-than-lethal crowd control agents to disperse demonstrators who do not obey a lawful order to disperse or who engage in behaviors that are an immediate threat to persons or property. This use has raised concerns over police use of tear gas during public demonstrations and protests, and the indiscriminate impact on all people in the area and the chilling effect it has on people engaging in First Amendment activity, and the health impacts of tear gas or other less-than-lethal agents such as pepper spray, mace, and smoke during a time of a declared public health emergency; and

WHEREAS, on March 17, 2020, the Olympia City Council enacted Ordinance No. 7233 declaring a state of public health emergency, and that the Olympia City Council will take all actions within its powers and resources to protect the public peace, health, safety and welfare of the citizens and businesses of the City of Olympia during the novel coronavirus COVID-19 pandemic to mitigate the consequences of the illness and public health emergency taking place and to maintain essential public services such as police, fire, public works and public utilities such as water and solid waste collection; and

WHEREAS, the COVID-19 pandemic is still a serious threat to public health and safety and the Olympia City Council has before it an ordinance to extend the declaration of the COVID-19 public health emergency caused by said virus; and

WHEREAS, during the COVID-19 state of emergency, there is a heightened risk of persons contracting the virus if they are exposed to tear gas, pepper spray, mace or smoke which can cause mucus generation and coughing. Such exposure will put people's safety and lives at risk. As a public health strategy, the deployment of tear gas, pepper spray, smoke and mace must be suspended as a tool for crowd control purposes by the Olympia Police Department; and

WHEREAS, researchers are concerned that the use of tear gas in crowds might catalyze a new wave of COVID-19 infections; and

WHEREAS, the use of tear gas and other less-than-lethal agents for crowd control adversely affects individuals in crowds of demonstrators, as well as residents who are not involved in protesting, and it can have serious effects on medically vulnerable people and increase the spread of COVID-19; and

WHEREAS, as the capital of Washington state, the City of Olympia has experience with citizens and residents exercising their constitutional rights to peacefully assemble and to demonstrate in support or opposition to issues of public concern and to seek redress of grievances from their government; and

WHEREAS, the Olympia City Council understands and expects such demonstrations will continue to be planned in Olympia in coming days and weeks and the Olympia City Council should take immediate action to impose this moratorium on the use of less-than-lethal agents for crowd control purposes during the COVID-19 pandemic and to provide time for further study on the use of this law enforcement tool, and other alternatives that may be employed; and

WHEREAS, prohibiting the use of tear gas, pepper spray, mace, and smoke will require the Olympia Police Department to use other non-lethal tactics in crowd control situations, the Olympia City Council also recognizes that use of tear gas, pepper spray, mace, smoke and other less-than-lethal agents may be necessary in situations involving extreme risk to public safety, including but not limited to hostage situations or events or locations where persons are engaging in assaultive behavior and violence against other persons who are at risk of severe injury or death; and

WHEREAS, other law enforcement agencies in Washington, including the Washington State Patrol and the City of Seattle, are following Olympia's lead by declaring a halt to use of tear gas and other less than lethal agents during the pandemic; and

WHEREAS, the Olympia City Council deems it in the best interests of public health and safety of citizens and residents of the City of Olympia to place an immediate moratorium prohibiting the use of tear gas,

pepper spray, mace, smoke and other less-than-lethal agents for crowd control purposes during public rallies and demonstrations for the duration of the COVID-19 pandemic;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

Section 1. The Olympia City Council recognizes its responsibility to protect public peace, health, safety, and welfare during the COVID-19 pandemic and to also protect the rights of persons to lawfully exercise their rights under the First Amendment and to peacefully assemble and demonstrate in the City of Olympia.

Section 2. The City Manager is hereby directed to impose an immediate moratorium by the Olympia Police Department prohibiting the use of tear gas, pepper spray, mace, smoke and other less-than-lethal agents for crowd control purposes during public demonstrations, which pose a risk of coughing and mucus generation, until such time as the COVID-19 pandemic has ended or until Thurston County and the City of Olympia is in Phase 5 of the Governor's *Safe Start—Stay Healthy* plan, except as may be necessary in situations involving extreme risk to public safety, such as and including but not limited to, hostage situations or events or locations where persons are engaging in violence and assaultive behavior against other persons who are at risk of severe injury or death.

Section 3. Further, the Olympia City Council hereby ratifies and confirms actions of the City Manager already taken in response to the Council's motion to declare a moratorium prohibiting the use of less-than-lethal agents for crowd control purposes, passed by the Council in its business meeting on June 9, 2020.

PASSED BY THE OLYMPIA CITY COUNCIL this 16th day of June 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber
CITY ATTORNEY