

Allegheny County Council

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Meeting Minutes

Wednesday, June 24, 2020

4:00 PM

Conference Room I

Committee on Health & Human Services

Cindy Kirk, Chair; Tom Baker, Liv Bennett, Tom Duerr, Bob Macey, Anita Prizio and Paul Zavarella, Members

I. Call to Order

The meeting was called to order at 4:03.

Invited Guests :

**Allegheny County Chiefs of Police Association
Fraternal Order of Police Lodge 1
Allegheny County Police**

Representatives from each invited entity are to be determined.

Chief Sicilia was present via phone from the Allegheny County Chiefs of Police Association.

Superintendent McDonough was present via phone from the Allegheny County Police.

Mr. Barker, Mr. Cambest (via phone), and Mr. Varhola were present from the Office of County Council

II. Roll Call

Members Present: 1 - Cindy Kirk

Members Absent: 1 - Olivia Bennett

Members Phone: 5 - Tom Baker, Tom Duerr, Bob Macey, Anita Prizio and Paul Zavarella

Members 6 - Sam DeMarco, Patrick Catena, Nick Futules, Paul Klein, John Palmiere and Bethany
Non-Members: Hallam

III. Approval of Minutes

[11546-20](#)

Motion to approve the minutes of the June 18, 2020 meeting of the Committee on Health & Human Services.

**A motion was made by Baker, seconded by Duerr, that this matter be Passed.
The motion carried by a unanimous vote.**

IV. Agenda Items

Ordinances

[11516-20](#)

An ordinance amending and supplementing the Allegheny County Code of Ordinances, Division 5, entitled "Health and Sanitation," through the creation of a new Chapter 600, entitled "Less Lethal Devices," in order to protect the public health by eliminating the use of certain devices within Allegheny County.

Sponsors: Council Member Hallam and Council Member Bennett

The Chair discussed the procedure that she would be following, noting that no motions would be accepted at the current meeting, as the purpose is to gather information, and indicating that an additional session on June 30 would be held to allow for testimony from individuals who support the ordinance, with deliberations and amendments to be

undertaken on July 8 or 9 and a final vote at the July 14 regular meeting. The Chair provided an overview of the individuals who were present to offer comment, and established limits regarding the subjects for discussion as matters that are germane to the ordinance itself, rather than peripheral matters.

Mr. Cambest summarized potential legal issues, noting that the Home Rule Charter provisions regarding infringing upon the powers of municipalities may become an issue, as may federal preemption under statutes relating to ammunition regulation, and indicated that Commonwealth law may give rise to preemption issues.

In response to a question from Mr. Duerr, Mr. Cambest expressed his opinion that altering the bill to impact only the County Police would render it more sustainable.

In response to a question from the Chair, Mr. Cambest indicated that the County Sheriff is an independent body to some extent, but that it is a part of the County and thus may be subject to a validly enacted legislative ban.

Mr. DeMarco suggested that the Sheriff's standing as an independently elected County official renders him exempt from the jurisdiction of Council. Mr. Futules expressed agreement.

In response to a question from Mr. Futules, Mr Cambest noted that the Council's jurisdiction over the County Police is clear, but that there may be questions relating to the Sheriff.

In response to a question from Ms. Hallam, Mr. Cambest noted that defending the ordinance as written, should it be enacted, would be largely dependent upon the wording, but he also stressed that it would be difficult to construct an effective argument regarding the ordinance in its current form.

Mr. Macey indicated that he does not believe that the ordinance as written constitutes a valid exercise of Council's authority.

In response to questions from Mr. Klein, Mr. Cambest indicated that he would not want to speak on behalf of how the administration might go about enforcing the ordinance should it be enacted, and noted that the preemption issue would potentially impact enforcement, but that the authority to create policy for the County Police would not concern him.

In response to a question from Mr. Duerr, Mr. Cambest indicated that his own opinion is that the characterization of the bill as health or safety focused doesn't really impact most of his analysis.

Mr. DeMarco noted that applying the provisions of the ordinance to only the County Police could end up having unintended consequences, should the County Police be assisting local law enforcement in their activities, because different rules would be in place for the two departments.

In response to a question from Ms. Hallam, Mr. Cambest indicated that he would look into similarities between this bill and the conversion therapy ban in more detail, but he believes that the issues raised are different.

At the request of the Chair, Chief Sicilia discussed the less lethal weapons under discussion, noting that the breadth of some of the definitions may not be accurate

depictions of the devices in use by law enforcement; by way of example, Chief Sicilia discussed the difference between military eye irritants and those that law enforcement uses, described the function of "flash bang" grenades and noted that they do not contain projectiles, and that, while rubber bullets do exist, the devices currently in use resemble a racquetball cut in half more than a rubber bullet, and that he had never seen a true rubber bullet deployed. Chief Sicilia noted that, in his department, bean bag rounds are used specifically in relation to individual targets, rather than fired into crowds.

Superintendent McDonough noted that the Chief's description of the devices in use by his Department is essentially identical to the devices used by the Allegheny County SWAT Team, and indicated that the intended use of the devices is as a means of avoiding the use of deadly force. Superintendent McDonough noted that it is important to remain cognizant that the devices are not used solely in crowd control scenarios, and related a situation in which the SWAT Team was able to immobilize an individual who had taken an infant hostage, rather than firing regular bullets and endangering the child. Superintendent McDonough also discussed the Tree of Life incident, in which flash bang grenades were used to distract or disorient a mass shooter in order to effect a rescue. Superintendent McDonough indicated that not having the option to use less lethal devices can be problematic, insofar as it limits officers' to a only the two options of not using force and using deadly force.

Superintendent McDonough indicated that less lethal weapon use in a crowd control setting is as a last resort prior to the use of lethal force, and that County Police policy is intended to preserve the public's right to peaceful free speech, while protecting officer or citizen safety in the event that a gathering is violent, dangerous, or otherwise engaged in criminal activity. Superintendent McDonough indicated that the County Police attempt to focus only upon individuals who are engaging in illegal or dangerous activity, and that dispersal orders are only given by himself or a specific designee in the event that a given situation has become dangerous to the crowd at large. Superintendent McDonough noted that the dispersal orders are repeated at least three times prior to using any type of less lethal weapon and that less lethal weapons are only ever used by specially trained SWAT officers against individual targets and not crowds. Superintendent McDonough indicated that, per County Police policy, an avenue of escape is always left when less lethal devices are used, and that medical attention is made available by local EMS or the SWAT officers themselves, many of whom are also trained as EMS responders. Superintendent McDonough indicated that devices like flash bang grenades may only be used when sighted delivery is possible; the officer using the device must be able to visually identify a discrete target and be aware that the circumstances do not magnify the danger of using the device.

Mr. Baker thanked everyone for their input.

Mr. Duerr suggested that he does not believe that the intention is to preclude applicability of these devices to situations like the Tree of Life but, rather, to minimize the possibility of overuse or inappropriate use of the devices.

In response to a question from Mr. Duerr, Superintendent McDonough discussed factors that are used to ensure officer accountability, including serialization of certain devices like flash bang devices issued to officers, review of all SWAT activities after they take place, comprehensive advance planning of SWAT activities, etc. Superintendent McDonough also indicated that situations can be fluid, and that planning is not always possible when dangers to death or serious bodily harm arise suddenly, although general guidelines relating to use of force do exist. Superintendent McDonough did indicate that

there is probably always wisdom in re-evaluating policies in light of lessons learned in practice.

In response to a question from Mr. Zavarella, Superintendent McDonough noted that the County Police do have extensive training for all cadets and officers regarding use of force decision-making. Superintendent McDonough noted that he is satisfied that the assets at his disposal are adequate for effective training, but did express some concern about the temporary closure of the Police Academy during the COVID-19 outbreak, although the Academy is about to re-open.

In response to questions from Mr. Catena, Superintendent McDonough indicated that the County Police have not deployed a single less lethal device in the last three years in a crowd control setting, and noted that in his opinion, less lethal devices - when paired with the proper devices and training - are critical tools in law enforcement, and completely abandoning them might result in law enforcement activities reverting to use of force policies that were in effect decades ago.

Mr. DeMarco indicated that he believes that there would be wisdom in waiting until all of the evidence is in regarding use of force, rather than basing a decision that could result in more force being used on what may have been seen in a brief news report or heard in a second or third hand report.

In response to a question from Mr. Futules, Chief Sicilia distinguished tear gas from smoke bombs, noting that the latter are geared toward distraction, while tear gas is intended to create an incentive for individuals to move based on physical discomfort. Superintendent McDonough indicated that his understanding is that both devices were used in the recent Pittsburgh protests, but that one of the things that officers should do prior to using tear gas is to evaluate the direction and strength of the wind, and that smoke bombs are sometimes used for that purpose.

Ms. Hallam indicated that she would furnish information regarding the potential dangers of less lethal devices.

In response to a question from Ms. Hallam, Superintendent McDonough expressed reluctance to engage in hypothetical speculation about how force might be used if the ordinance were to pass in its current form.

In response to a question from Mr. Klein, Superintendent McDonough indicated that he would be willing to consider whether some quantum of legislative action may not compromise the County Police's activities.

In response to a question from Mr. Macey, neither Chief Sicilia nor Superintendent McDonough were specifically aware of the number of individuals who required medical assistance in the wake of the recent Pittsburgh protests, but that this information might be available from the Pittsburgh Bureau of Police.

The Chair and Mr. Futules discussed the procedure to follow, with the Chair noting that her desire is to allow comments relating to the other side of the issue at a meeting on June 30.

In response to a question from Mr. DeMarco, Superintendent McDonough distinguished between crowd management, which is undertaken during peaceful gatherings, and crowd control after individuals are warned to disperse once an assembly is deemed to exceed

the limits of the law. Superintendent McDonough noted that the vast majority of demonstrations are peaceful, and that the police's role in those settings generally consists of observing and guaranteeing the right to assemble and speak, to regulate traffic, and to make sure that the demonstration itself does not create a risk of injury for things like demonstrations in streets, etc. Superintendent McDonough indicated that, once a given demonstration begins to endanger public safety, it does become unlawful and the police function shifts to dispersing the crowd.

The Chair indicated that, after the information gathering process wraps up, her desire would be for any amendments that members may wish to introduce to be prepared for submission to all members by July 2.

V. Adjournment

The meeting was adjourned at 5:07.