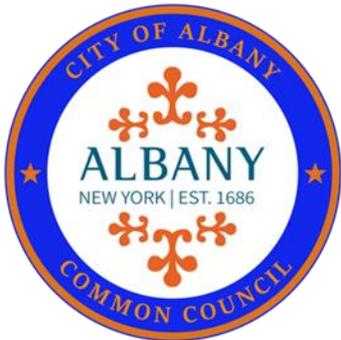


This meeting is being held in accordance to Governor Hochul’s signed legislation allowing municipalities to resume remote meetings until January 15, 2022 and we encourage residents to continue participating. Constituents provide public comment on our new public comment line 518-694-3987, by email commoncouncil@albanyny.gov or the form on our website <https://www.albanyny.gov/Government/CityOfficials/CommonCouncil.aspx>. These comments will be shared with members and/ or read for the record at the meeting, posted on our website and Facebook. Constituents may also register to speak during the meeting and you will be provided with the zoom credentials if it is your intent to speak email us at commoncouncil@albanyny.gov.



COMMON COUNCIL MEETING
Public Safety
Kelly Kimbrough, Chair

DATE: THURSDAY, SEPTEMBER 30, 2021

TIME: 6:30PM

PUBLIC COMMENT PERIOD: YES

TOPICS OF DISCUSSION:

LOCAL LAW L of 2021 (As Amended 09/22/2021)

A LOCAL AMENDING CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO CREATING A PUBLIC SAFETY COMMISSION

LOCAL LAW M OF 2021

A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF PART I (ADMINISTRATIVE LEGISLATION) OF THE ALBANY CITY CODE WITH REGARD TO THE USE OF CHEMICAL WEAPONS AND KINETIC ENERGY MUNITIONS ON CIVILIAN POPULATIONS

The meeting will be held using Zoom and streamed through the Albany Common Council’s Facebook. To stream this video please visit: <https://www.facebook.com/albany.commoncouncil>. If we experience any technical difficulties on Facebook, the video will be streamed to YouTube: https://www.youtube.com/channel/UC-rQHp1fBLPcdk_4N6J4XbQ. The Common Council of the City of Albany is using the Zoom© platform to provide the public access to participate in committee meetings, caucuses, and common council meetings. The Common Council, its agents, nor any of its staff are responsible for the performance of Zoom© or your ability to access the content. Please make sure you visit Zoom’s support to confirm that you have the appropriate system requirements at <https://support.zoom.us/hc/en-us/articles/201>

LOCAL LAW L of 2021 (As Amended 09/22/2021)

A LOCAL AMENDING CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO CREATING A PUBLIC SAFETY COMMISSION

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. Article XI (General Provisions) of Part 3 (Department of Public Safety) of Chapter 42 (Departments and Commissions) of Part I (Administrative Legislation) of the Code of the City of Albany is hereby amended to read as follows:

Section 42-69 Legislative Intent

The City of Albany envisions a Public Safety Commission that decouples public safety from policing, centers community voices, and ends systemic racism. The Commission embraces the four pillars of procedural justice: treating people with dignity and respect; giving citizens a voice during encounters; being open and transparent in decision-making; and conveying trustworthy motives. The Public Safety Commission will ensure the elevation of the concepts of community policing into the practice of public safety. A guiding principle of the Public Safety Commission is sanctity of life: that at the core of an officer’s responsibilities is the duty to protect all human life and physical safety.

Section 42-70 Definitions

Commissioner

Shall mean a member of the Public Safety Commission.

Chief of Police

Shall mean the Chief of Police of Albany Police Department

Department of Public Safety

The Department established under Article XI of the Code of the City of Albany.

Immediate relative

For purposes of this Article, an “immediate relative” shall refer to a spouse, child, stepchild, sibling, parent, or stepparent; mother-, father-, son-, daughter-, brother-, or sister-in-law; and any other individuals who live in one’s household except for tenants and household employees.

Section 42-71 Commission Established; Appointment of Members; Qualification.

- A. There is hereby established a Public Safety Commission, with three principal responsibilities: oversight of the Albany Police Department; administration of the Department of Public Safety; and ensuring public access to information about policing and public-safety practices in the City of Albany.

- B. The Public Safety Commission shall be comprised of nine Commissioners, five of whom shall be appointed by the Common Council and four of who shall be appointed by the Mayor.
- C. Commissioners shall serve for a term of three years. Terms shall be staggered so that three Commissioners begin their terms each year. If a Commissioner leaves office before the expiration of their term, their successor shall be appointed to complete the remainder of the term.
- D. Eligibility requirements:
1. All Commissioners must be residents of the City of Albany.
 2. Current employees of the City of Albany and current and former employees of the Albany Police Department shall not be eligible to serve as Commissioners. Nor shall any immediate relative of a current City employee or current or former Police Department employee be eligible.
 - a. An “immediate relative” shall refer to a spouse, child, stepchild, sibling, parent, or stepparent; parent-in-law, child-in-law, or sibling-in-law; and any other individuals who live in one’s household except for tenants and household employees.
 - b. If a question is raised about whether a candidate for Commissioner is an “immediate relative” of a current City employee or current or former Police Department employee, the appointing authority shall resolve that question.
- E. Candidates for the Public Safety Commission shall be subject to a public hearing prior to commencement of their term. Reappointments shall be subject to a public hearing. Candidates shall be present at the public hearing.
1. Notice of such public hearing shall circulate to the media no less than ten calendar days before the scheduled public hearing.
 2. Such notice shall include the time, place, and a statement that all are welcome to submit comments and questions regarding the candidacy of the nominee(s).
- F. Commissioners shall receive compensation that shall be set in the budget.
- G. The Public Safety Commission shall recommend to the Mayor a budget for the Commission and for the Department of Public Safety. The Mayor will consider this submission for inclusion in the general budget annually, as prescribed by the Charter of the City of Albany.
- H. The Commission may establish advisory committees, standing or ad-hoc committees, panels, and/or host forums and public hearings as the Commission deems necessary. In doing so, the Commission shall ensure wide and comprehensive representation of the

various geographic areas with Albany, with special attention to historically underrepresented areas and areas that have been the focus of more police activity.

- I. The Commission shall require individual Commissioners to excuse themselves from participating in discussions or decision-making in which any item, in the execution of their duties, presents a personal, professional, or financial conflict of interest.
- J. The Commission shall appoint for itself an executive director and other staff, all of whom shall be independent of the Albany Police Department and the Department of Public Safety.

Section 42-71.1 Powers and Duties: Overseeing the Albany Police Department

- A. *Policymaking Authority.* The Commission shall have the power to make rules, regulations, and policies concerning public safety, consistent with the goals set forth in this article.
 - 1. The Commission shall have the authority to modify existing Albany Police Department procedures or policies. The Commission's authority shall supersede the authority of the Chief of Police under section 42-6.
 - 2. If the Commission identifies a need for legislative action by the Common Council, it shall propose draft legislation to the Council.
 - 3. The Commission shall implement the reforms and recommendations of the Albany Policing Reform and Reinvention Collaborative Plan as adopted by the Common Council in Resolution 26.31.21R and any subsequent amendments thereto.
 - 4. The Commission shall also review and assess any and all policies and practices regarding financial fines, fees, and penalties imposed on people who come into contact with the criminal-justice system or any department or office of the City that is involved in public safety, including but not limited to all issues within the purview of the Albany Police Department and the Department of Public Safety. It shall recommend changes in those policies and practices with the goal of ensuring that interactions with the City of Albany and its government departments do not affect people unequally on the basis of their economic class, their race or ethnicity, their immigration status, their ability or disability, or any other protected characteristic.
 - 5. The Commission shall also review and assess the accessibility of public-safety institutions and practices for persons with disabilities. It shall also assess the need for better language access for the institutions and issues within its authority.
- B. *Commission Review of Police Department Policies.* If the Albany Police Department seeks to promulgate or modify a rule or policy (including standard operating procedures or standing orders), it shall notify the Public Safety Commission.
 - 1. If the Commission takes no action within 15 calendar days, the change shall take effect.

2. If the Commission determines that Commission consideration or public discussion of the issue is appropriate, however, the Commission shall within 15 calendar days issue a public notice of its intent to take up the issue
 3. If the Chief of Police informs the Commission that a rule or policy must take immediate effect because of emergency circumstances, the rule or policy may take effect before the 15-day period expires. However, the Commission shall have the authority to suspend the rule or policy upon its determination that Commission consideration or public discussion of the issue is appropriate.
 4. If there is any question whether an action by the Police Department falls under this provision and is subject to review by the Commission, the Commission shall resolve that question.
- C. *Personnel Policies and Practices.* The Commission shall set departmental practices for the Albany Police Department and the Department of Public Safety in recruiting, hiring, promoting and disciplining, all in accordance with statutory authority, and may make recommendations to the Mayor and Common Council regarding practices, procedures, policy and planning. Along with other criteria the Commission deems relevant, the Commission shall review training and personnel practices to ensure that violence prevention and de-escalation are sufficiently emphasized.
- D. *Relationship With Community Police Review Board.* The Public Safety Commission shall work in conjunction with Community Police Review Board in accordance of Part 33 of Chapter 42 of this Code. When the Commission or any employee of the Department of Public Safety becomes aware of any complaint concerning individual misconduct by an employee of the Albany Police Department, or identifies an issue on its own initiative, it shall refer that complaint or issue to the Community Police Review Board for investigation. The Commission shall share with the Review Board whatever information the Review Board deems relevant.

Section 42-71.2 Powers and Duties: Administering the Department of Public Safety

- A. *Commission's Authority Over the Department of Public Safety.* The Public Safety Commission's authority to make policies and rules governing public safety, shall include (but will not be limited to) policies and rules governing the operations of the Department of Public Safety, as well as rules about whether the Albany Police Department or the Department of Public Safety shall assume primary or shared responsibility for responding to specific kinds of calls or situations. In assessing which Department should respond to a given issue, the Commission shall consider any and all factors it deems relevant.
- B. *Staff.* The Department of Public Safety shall have sufficient staff to carry out the responsibilities identified in this statute and by the Public Safety Commission. The Department shall have an executive director appointed by the Public Safety Commission. The Public Safety Commission shall have responsibility for overseeing the operations of the Department of Public Safety.

- C. Dispatch. The Department of Public Safety shall have primary responsibility for answering calls to 911 and dispatching responders. It shall also maintain a way for community members to contact the Department directly, without calling 911.
- D. Responsibilities of the Department of Public Safety. The Department of Public Safety shall have primary responsibility for responding to calls for help involving people experiencing homelessness; mental-health issues, including threats of suicide; and substance-abuse issues.
- E. Commission Must Assess Appropriate Responders. The Public Safety Commission shall further assess, and promulgate rules or policies determining, whether the Department of Public Safety should assume primary responsibility for other issues where unarmed response may be feasible and consistent with the goals set forth in this article, including but not limited to:
1. Disturbances; adolescent disturbances; suspicious persons; trespassing incidents; other quality-of-life concerns; accidents without injuries; minor theft from purses, cars, and homes; destruction of property; and any criminal matters where it is unlikely that the responders will encounter a violent situation;
 2. Investigation of crimes;
 3. Domestic disputes and domestic violence;
 4. Noise complaints and lower-risk conflicts between neighbors, between landlords and tenants, between family members, or between other community members;
 5. Child abuse;
 6. Environmental conditions or nuisances;
 7. Non-criminal traffic violations; road hazards;
 8. Emergency medical care and first aid;
 9. Wellness checks;
 10. Death notifications;
 11. Transportation to services;
 12. Crisis counseling;
 13. Resource connections and referrals;
 14. Taking reports;

15. Any other category of issue which the Commission determines should be considered. The enumeration of any issue in this sub-section shall not be construed to limit the issues which the Commission may consider as potentially appropriate for response by the Department of Public Safety.

F. Facilities. The Department of Public Safety may maintain facilities in the community to help address the issues for which it is responsible. These may include crisis-stabilization centers; overdose-prevention sites; safe-injection facilities; The Department may also form and maintain relationships with service providers who maintain such facilities.

G. Long-Term Solutions and Strategies. The Department shall respond both to immediate needs and to long-term needs, working to find long-term solutions to the issues it encounters in the community.

1. Along with developing its own long-term strategies for resolution of individuals' needs; the Department shall form relationships with service providers in all relevant areas so that it can refer people to those providers where appropriate.

2. Once a referral is made, the Department shall follow up to determine whether additional work could help. The Department shall ensure that appropriate personnel follow up on a long term basis where needed.

3. The Department shall report to the Public Safety Commission regularly on the long-term impact of its interventions on individual cases.

H. Staff. The Department of Public Safety shall employ personnel with skills and backgrounds sufficient to allow an effective response to situations for which the Department is responsible. It may also employ consultants or form relationships with organizations to ensure the successful provision of services. Backgrounds that should be considered by the Department include:

1. Experience as paramedics, clinicians, counselors, therapists, and crisis-intervention specialists;

2. Mediators; credible messengers (i.e., individuals with strong ties to the community, oftentimes with a personal history of overcoming violence or justice system involvement, who are able to connect to community residents based on their shared background and experiences); and "violence interrupters" (outreach workers trained to mediate conflicts before they turn violent);

3. Peer responders (i.e., people who have lived experience of the concerns they respond to) and peer outreach workers (e.g., people who share an experience of housing insecurity).

I. Relationship With Police Department. The Public Safety Department and the Albany Police Department shall collaborate fully with each other. Where necessary, personnel from the Public Safety Department shall request support in responding to a situation from Albany Police Department officers.

- J. Access to Records. The Public Safety Department shall have full access to Albany Police Department records. The Department of Public Safety shall have the authority to determine whether to grant access to its own records to Albany Police Department personnel. The Department of Public Safety shall not grant such access when it would undermine individual or community trust in the Department of Public Safety, unless the Department of Public Safety determines that there is a compelling public-safety justification for doing so and no alternative is available.

Section 42-71.3 Powers and Duties: Transparency

- A. The Public Safety Commission shall have primary responsibility for ensuring that the public has access to information about policing and public safety in Albany. The Commission's regulatory shall include the power to make rules about public access to information.
- B. The Albany Police Department and the Department of Public Safety shall keep the Public Safety Commission fully informed as to their activities, and shall grant the Commission full access to information deemed relevant by the Commission even if the Departments deem the information confidential. The Commission shall have the power to issue subpoenas if necessary to enforce access.
- C. All video from body-worn cameras, dashboard cameras, and other recording technologies used by the Albany Police Department, shall be held in the care of the Public Safety Commission. The Commission shall ensure that the Albany Police Department has all necessary access to those recordings through a system that allows police employees to access the recordings without removing them from the custody of the Commission.
- D. The Commission shall also take custody of such other information, recordings, data, and materials as it deems necessary to ensure adequate public transparency and public trust in the quality of information available to the public.
- E. The Commission shall ensure that statistical information about public safety and police practices is available to the public, including the information required by Section 42-5.1 and other statistical information the Commission deems relevant. It shall further ensure that this information uses plain language, clear explanations, and formats comprehensible to non-experts.
- F. The Public Safety Commission shall have the authority to compel the release of any information it deems appropriate, and to require the Albany Police Department or the Department of Public Safety to make information available online.

Section 3: Section 42-38 is hereby amended, and a new Section 42-38.1 is added, as follows:

Section 42-38: Duties of police force.

It is hereby made the duty of said police force, at all times of the day and night, within said City of Albany, and the members of said force are accordingly hereby thereunto empowered especially to preserve the public peace, prevent crime, detect and arrest offenders, suppress riots and insurrections, protect the rights of persons and of property, guard the public health, preserve order at every primary and public election, remove nuisances from public streets, and public and private alleys, roads, places, and highways; repress and restrain disorderly houses and houses of ill fame; ~~to arrest all street beggars and mendicants~~; to provide a proper police attendance at every fire, in order that thereby the firemen, fire engines, and property exposed may be suitably protected or assisted; to assist, advise and protect immigrants, strangers and travelers in public streets and at landings of ferry and steamboats, river boats and canal boats, and at railway stations; enforce every law relating to the suppression and punishment of crime, or to the observance of Sunday, or regarding pawnbrokers, emigration, or elections, or gambling, or intemperance, or lotteries, or lottery policies, ~~or vagrants, or disorderly persons, or the public health~~, or any ordinance or resolution of the Common Council of said City applicable to police, health or criminal procedure, except where such responsibilities are assumed by the Department of Public Safety.

It shall be the duty of the police to avoid or prevent violence wherever possible; to protect the life, safety, dignity, rights, and well-being of every person, including those suspected of criminal offenses; to treat all persons with respect, regardless of their status; and to work tirelessly to combat racism, bias, and inequality.

The Police Department shall embrace the principles of community policing by joint problem-solving and partnering with community members to address the immediate and long-term causes of crime, while resisting calls for action that would reinforce inequality. The Department shall also ensure that the principles of procedural justice are respected in every interaction between police and community members.

It shall further be the duty of police officers, because they are public servants, to facilitate transparency and the public's right to know how public servants exercise the power with which their community entrusts them.

Section 42-38.1: Violence Prevention and the Requirement of Least Possible Force

Prevention of violence shall be part of the Albany Police Department's core mission. As such:

1. Training on de-escalation shall be mandatory and regular;
2. Violence prevention and de-escalation shall be among the core skills taught in all police training programs;
3. Police must always deploy the least possible force necessary to protect the safety of the public and of the police officers.
4. In every case in which a police officer makes physical contact with a member of the public, a report shall be filed which addresses:
 - a. Whether a nonviolent responder could have been dispatched to the situation, rather than an armed officer;

- b. What de-escalation techniques were used before contact was made;
 - c. Whether, in retrospect, other de-escalation techniques could have made physical contact unnecessary and, if so, what those techniques were and whether the officer involved has had training in those techniques.
5. To help police officers gain deeper understanding of community needs, the Albany Police Department shall undertake a program through which police officers may serve temporarily as unarmed responders working with the Department of Public Safety, in a role to be determined by the Public Safety Commission and the Department of Public Safety.

Section 4. Severability and Interpretation.

A. Severability. If any provision of this law or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this law are severable.

B. Interpretation. The ejusdem generis canon and related principles of interpretation shall not be used to interpret this law or to limit the power of the Public Safety Commission or the Department of Public Safety.

Section 5. This Local Law shall go into effect upon passage, public hearing, filing with the Secretary of State and referendum.

**APPROVED AS TO FORM THIS
22nd DAY OF SEPTEMBER, 2021**

Corporation Counsel

To: Danielle Gillespie, City Clerk
From: John-Raphael Pichardo, Esq., Research Counsel
Re: Common Council Legislation
Supporting Memorandum
Date: September 22, 2021

SPONSOR Council Members Johnson, Anane, and Hoey with the support of Council President Ellis

LOCAL LAW L of 2021 (As Amended 09/22/2021)

TITLE

A LOCAL AMENDING CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO CREATING A PUBLIC SAFETY COMMISSION

GENERAL PURPOSE OF LEGISLATION

Under this law, there would be three entities responsible for public safety in Albany (not counting the Fire Department, which is not affected by this bill). One is the Albany Police Department; one is the Department of Public Safety, which will send unarmed responders to appropriate situations; and one is a new Public Safety Commission, which will make public-safety policy and provide transparency for the public.

Public Safety Commission

The Public Safety Commission will have the authority to issue rules and policies for the Albany Police Department, as well as to review policies the Department issues itself. It will also decide whether the Police Department or the Department of Public Safety is the appropriate responder for various kinds of situations.

Five of its members are appointed by the Common Council, and four by the Mayor. The Commission will hire its own executive director and staff to ensure its independence.

The Public Safety Commission has a different relationship with the Police Department and the Department of Public Safety. While the Commission will essentially manage the Department of Public Safety, it will provide oversight and transparency for the Police Department rather than exercising any direct managerial authority. Thus, the Public Safety Commission will appoint the executive director of the Department of Public Safety.

The Public Safety Commission will also have responsibility for ensuring that the Police Department operates transparently. Thus, it will have authority over release of information and data; it will also take custody of all video and other recordings, to ensure public trust.

The Department of Public Safety

The statute gives the Department of Public Safety authority over certain kinds of situations, specifically homelessness, mental-health issues, and substance-abuse issues; the Department will also have responsibility for dispatch. For other issues, the Public Safety Commission will consider whether and how to transfer authority from the Police Department to the unarmed responders of the Department of Public Safety: minor crimes, traffic, investigations, taking reports, domestic violence, neighborhood conflicts, child abuse, well-being, environmental conditions, crisis counseling, and other services.

Reforms of the Police Department's Mission

The statute also amends the Police Department's mission statement to affirm a commitment to preventing violence; opposing racism, bias, and inequality; promoting community policing and procedural justice; and ensuring public transparency. It also adds specific requirements, like training and reporting, to help the Police Department prevent violence.

NECESSITY FOR LEGISLATION AND CHANGES TO EXISTING LAW

The Albany Police Reform & Reinvention Collaborative identified many reforms that could help improve policing and reduce racism and inequality in Albany, including many of the reforms enacted by this legislation. Its report is online here: <https://www.albanyny.gov/641/Police-Reform-Reinvention-Collaborative>. Earlier reports documenting the need for reforms to ensure successful independent oversight of the Albany Police Department include Dr. Alice Green's report, [Pathway to Change: African Americans and Community Policing in Albany](#) (Center for Law and Justice, 2013).

The need for unarmed response has been extensively documented in research by various experts on policing and public policy. Some examples include:

- Amos Irwin & Betsy Pearl, *The Community Responder Model: How Cities Can Send the Right Responder to Every 911 Call* (Center for American Progress & Law Enforcement Action Partnership, Oct. 2020);
- Samantha Batko, Sarah Gillespie, Katrina Ballard, & Mary K. Cunningham, *Alternatives to Arrests and Police Responses to Homelessness: Evidence-Based Models and Promising Practices* (Urban Institute, Oct. 30, 2020);
- Jackson Beck, Melissa Reuland, & Leah Pope, *Behavioral Health Crisis Alternatives: Shifting from Police to Community Responses* (Vera Institute, Nov. 2020);
- Matt DeLaus, *Alternatives to Police as First Responders: Crisis Response Programs* (Government Law Center at Albany Law School, Nov. 16, 2020).

FISCAL IMPACT(S)

To be determined

LOCAL LAW M OF 2021

A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF PART I (ADMINISTRATIVE LEGISLATION) OF THE ALBANY CITY CODE WITH REGARD TO THE USE OF CHEMICAL WEAPONS AND KINETIC ENERGY MUNITIONS ON CIVILIAN POPULATIONS

BE IT ENACTED by the Common Council of the City of Albany as follows:

Section 1. Article VIIB (Albany Police Department Interactions) of Part 1 (Department of Police) of Chapter 42 (Departments and Commissions) of Part I (Administrative Legislation) of the Albany City Code is hereby amended by adding a new section 42-54.3 to read as follows:

Section 42-54.3. Use of Chemical Weapons and Kinetic Energy Munitions

A. Use of Chemical Weapons and Kinetic Energy Munitions Policy.

- (1) The Chief of Police, or if there is one, the Commissioner of Public Safety, shall establish a written policy to prohibit the use of Chemical Weapons and Kinetic Energy Munitions by any member of the Albany Police Department on civilian populations, except for:**
 - (a) The use of pepper spray as defined herein;**
 - (b) In circumstances where a person is being restrained against their will, as defined in Penal Law §135.00, where significant bodily injury is clearly threatened against such individual, and the Chief of Police or a Deputy Chief of Police present on the site determined that there is no alternative to the use of chemical weapons to secure the safety of the person being so restrained and adequate notice is given to individuals occupying indoor or outdoor spaces in the vicinity to allow them to protect themselves against exposure;**
 - (c) Circumstances in which the Chief of Police or Deputy Chief of Police is on site at a situation in which eleven or more persons are present and such Chief of Police or Deputy Chief of Police confirms that:**
 - (i) such persons are engaging in actions that meet the elements of section 240.06 (1) of the New York State Penal Law;**
 - (ii) no alternative to the use of Chemical Weapons and/or Kinetic Energy Munitions is available to enable the Albany Police Department to secure the safety of people in the immediate vicinity of the riot;**

- (iii) when deployed in a residential area, the use of Chemical Weapons and/or Kinetic Energy Munitions is absolutely necessary to protect lives;
 - (iv) the Albany Police Department has provided two notifications to the public in the immediate vicinity that Chemical Weapons and/or Kinetic Energy Munitions are about to be deployed; and
 - (v) at least one Emergency Medical Technician is present at the scene of the situation.
 - (d) However, neither Chemical Weapons nor Kinetic Energy Munitions shall be deployed against any individual or group of individuals who are engaging in First Amendment Activities, as defined in paragraph (3) of subsection (B) of this section.
- (2) Prior to the establishment of such policy, the Chief of Police, or if there is one, the Commissioner of Public Safety, shall present such policy to the Community Police Review Board and shall consider any modifications as recommended by such Board.
- (3) Such policy shall be consistent with the limitations in this section and shall be established within sixty (60) days of the enactment of this law.
- (4) Whenever either Chemical Weapons or Kinetic Energy Munitions are deployed by any member of the Albany Police Department, the Chief of Police shall submit a Use of Force Report to the Public Safety Committee of the Common Council within five (5) business days of such use of Chemical Weapons or Kinetic Energy Munitions. The Public Safety Committee shall convene as soon as practicable after the submission of such Use of Force Report to review the use of such weapons and/or munitions. The following shall apply to all meetings of the Public Safety Committee of the Common Council at which Use of Force Reports dealing with the use of Chemical Weapons and/or Kinetic Energy Munitions are discussed:
- (a) The Chief of Deputy Chief who authorized the use of Chemical Weapons or Kinetic Energy Munitions at issue shall attend the meeting at which the Public Safety Committee reviews the Use of Force report to explain the decision to deploy Chemical Weapons or Kinetic Energy Munitions.
 - (b) The Public Safety Committee may make a finding as to whether Chemical Weapons and/or Kinetic Energy Munitions were deployed, in the instance at issue, in a manner consistent with or in violation of the policy laid out in this section. If the Public Safety Committee determines that Chemical Weapons or Kinetic Energy Munitions were deployed in a manner inconsistent with such policy, the Public Safety Committee can make a recommendation to the Common Council to ban such Chemical Weapons and/or Kinetic Energy Munitions completely.

B. Definitions. For the purposes of this section, the following terms shall have the following meaning:

(1) Chemical Weapons. Any type of device containing toxic chemicals designed to be launched or thrown as a projectile or otherwise released in the area of civilian populations, in order to cause temporary or permanent incapacitation, injury or trauma to the intended target, through the action of such chemicals as an eye, throat, respiratory, and/or skin irritant. The term specifically includes, but is not limited to, any item commonly referred to as or having similar effects to “tear gas.”

(a) The term “chemical weapon” shall not apply to the use of pepper spray contained in liquid spray canisters of a volume no greater than 0.75 ounces when used to temporarily control a specific individual a police officer reasonably believes to be in the process of committing a crime that endangers other people and only when such agent is released in compliance with department policies and New York State law relating to the use of force and under circumstances that reasonably assure others in the vicinity are not affected by the use of such spray.

(2) Kinetic Energy Munitions. Any type of device designed to be launched from any device as a projectile, in order to cause temporary pain, injury, irritation, disability, incapacitation or trauma to the intended target. The term specifically includes, but is not limited to, any item commonly referred to as “impact rounds” or “rubber bullets.”

(3) First Amendment Activities. Any demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons.

Section 2. This local law shall take effect upon final passage, public hearing and filing with the Secretary of State.

**APPROVED AS TO FORM THIS
27TH DAY OF MAY, 2021**

Corporation Counsel

To: Danielle Gillespie, City Clerk

From: Brett Williams, Senior Assistant Corporation Counsel

Re: Request for Common Council Legislation
Supporting Memorandum

Date: May 27, 2021

Sponsor: Council Member Kimbrough

LOCAL LAW M of 2021

TITLE

A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF PART I (ADMINISTRATIVE LEGISLATION) OF THE ALBANY CITY CODE REGARDING TO THE USE OF CHEMICAL WEAPONS AND KINETIC ENERGY MUNITIONS ON CIVILIAN POPULATIONS

GENERAL PURPOSE OF LEGISLATION

This local law will greatly limit the circumstances in which the Albany Police Department may deploy chemical weapons such as tear gas and kinetic energy munitions such as rubber bullets against civilian populations, and outright bans the use of such substances and devices against individuals engaging in activities protected by the First Amendment.

NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW

This local law bans the use of chemical weapons and kinetic energy munitions in all but very limited situations, which are spelled out in the legislation. Under this local law, the Albany Police Department may only use chemical weapons or kinetic energy munitions when the Chief of Police or a Deputy Chief is on the scene of an incident at which there are eleven or more people and such Chief or Deputy Chief confirms that:

- The individuals are are engaging in actions that meet the elements of section 240.06 (1) of the New York State Penal Law;
- The Police Department has no alternative to the use of chemical weapons and/or kinetic energy munitions available to secure the safety of people in the immediate vicinity of the riot;
- The use of such devices, if deployed in a residential area, is absolutely necessary to protect lives;
- The Police Department has provided two notifications to the public in the immediate vicinity that such are about to be deployed; and
- At least one Emergency Medical Technician is present at the scene before such devices are deployed.

The local law also allows for the use of chemical weapons and/or kinetic energy munitions in hostage situations and in circumstances in which individuals are being restrained against their will, and then only after adequate warning has been given.

The legislation also requires the Chief of Police to develop a departmental policy on the use of such devices, consistent with this local law, within 60 days of the enactment of this local law, which must be presented to the Community Police Review Board for their review and recommendation.

The local law bans, outright, the use of such devices against one or more persons engaging in activities protected by the First Amendment of the United States Constitution, such as demonstrating, picketing, speechmaking, marching, holding vigils or religious services, and all other like forms of conduct that involve the communication or expression of views or grievances.

FISCAL IMPACT(S)

None.