Appendix 1--Use of Force at Protests and Restrictions on Use of OC Spray

Recommended Policy: Members of the CPD must be prohibited from using force against peaceful protestors. OC spray, long range acoustic devices, and batons must not be used against passively resisting protestors or to disperse crowds at protests. OC spray must be prohibited against an individual unless they pose an immediate threat of bodily harm to an officer or others.

Introduction

As a general matter, best practice forbids use of force against peaceful protestors. Following best practice, a federal judge in Seattle issued an order enjoining the use of pepper spray, tear gas, and other crowd control devices against anyone “peacefully engaging in protests or demonstrations” and prohibiting chemical irritants from being deployed “indiscriminately into a crowd.”

I. OC spray, or pepper spray, is dangerous.

The Centers for Disease Control and Prevention (CDC) warn against the adverse effects of riot control agents. The CDC notes that they can cause excessive tearing, burning eyes, chest tightness, nausea, vomiting, blindness, and even immediate death due to severe chemical burns or respiratory failure. Prolonged exposure can lead to long-term effects such as eye problems including scarring, glaucoma, and cataracts, and breathing problems such as asthma.

Poison Control also warns against the effects of pepper spray. They note that some immediate effects, like coughing, difficulty breathing, eye sensitivity to light, and skin discomfort are usually mild and temporary, but that more severe injuries such as corneal abrasions, wheezing, and skin blisters are

3 Id.
possible. People with lung conditions such as asthma or COPD can have worse effects. They note that leaving the area and getting to fresh air can mitigate some effects.

II. **OC spray should never be used against peaceful protestors or as a crowd control technique.**

Following best practice, leading international human rights organizations recommend that police officers not be allowed to use O/C or pepper spray on crowds. Amnesty International recommends that law enforcement officials be given a clear message “that their task is to facilitate and not to restrict a peaceful public assembly.” Additionally, they recommend that even when policing “assemblies that are unlawful but non-violent, law enforcement officers must avoid the use of force.”

Amnesty International also notes that “[c]hemical irritants, such as tear gas, should not be used where people are confined in an area and not in a way that can cause lasting harm (such as at too close range, or directly aimed at people’s faces).”

The American Civil Liberties Union also recommends that officers “should not treat crowds as a single violent entity because of the actions of some individuals” and must respond to violent actions “without unnecessarily interfering with the rights of other protesters.” They further recommend that firing OC spray “directly into a crowd or towards individuals must be prohibited.”

Finally, they say that, “[i]f a protest turns violent, the police and security forces should protect those

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5 Id.
6 Id.
7 Good Practice for Law Enforcement Officials Policing Demonstrations, Amnesty International USA.
8 Id.
9 Id.
11 Id.
in the crowd who are most at risk of injuries, including children and the elderly, among other vulnerable groups.”

III. Best practice either forbids OC spray altogether during protests or limits it to circumstances in which a person presents an immediate threat of bodily harm.

A number of police departments forbid the use of pepper spray during protests or as crowd control. Full stop. The Berkeley Police Department has said that the use of OC spray “as a crowd control technique is prohibited.” In Milwaukee, the Fire and Police Commission ordered the Milwaukee Police Department to discontinue use of pepper spray in light of recent protests.

Similarly, the Philadelphia Police Department guidelines say that, for “Protestors/Demonstrators that are exercising their Constitutional Rights of Free Speech or Assembly and are non-compliant and passively resisting officer’s commands, OC Spray SHALL NOT BE USED to overcome the resistance.” They further state that OC spray is not to be used “for the dispersal of non-violent persons,” “for disorderly crowds,” or “[i]n situations where people are peacefully exercising their Constitutional Rights of free speech or assembly.” Finally, they say that when OC spray is used, officers will “[e]nsure care is taken to protect infants, children, and the elderly from exposure.”

Additionally, best practice dictates that the use of O/C or pepper spray must be limited to immediate threats to public safety. The Salt Lake City Police Department forbids the use of OC spray

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12 Id.
13 Use of Force: General Order U-2, Berkeley Police Department (March 9, 2017)
17 Id.
“against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.”18 The San Diego Police Department guidelines mandate that chemical agents are only to be used “under circumstances when it is necessary to overcome violent physical force or resistance likely to result in injury to either the suspect, officer(s), or others present.”19 The city of Columbus, Ohio, restricts the use of pepper spray to “situations involving only clear instances of violence.”20 The Austin Police Department forbids the use of chemical agents against people, unless they are “violent or physically resisting,” or have “demonstrated an intention to be violent or to physically resist and who reasonably appear[] to present the potential to harm employees, himself, or others.”21 They are not allowed against people who “exhibit[] only verbal and/or passive resistance.”22 Western European standards, as represented by those of the Association of Chief Police Officers of England, Wales, and Northern Ireland, similarly restrict OC spray to situations in which an officer is faced with violence or an imminent threat of violence.23

20 Press Release, City of Columbus, Mayor Ginther, Chief Quinlan, City Attorney Klein and Council President Hardin Announce Chief’s Advisory Panel and Strict Limits on Use of Tear Gas, Pepper Spray (June 16, 2020).
22 Id.