

SENT VIA ELECTRONIC MAIL

June 5, 2020

Mayor Esther Manheimer, esthermanheimer@avlcouncil.com
Vice Mayor and Councilwoman Gwen Wisler,
gwenwisler@avlcouncil.com
Chief of Police David Zack, dzack@ashevillenc.gov
City Manager Debra Campbell, dcampbell@ashevillenc.gov
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Councilman Vijay Kapoor, vijaykapoor@avlcouncil.com
Councilwoman Julie Mayfield, juliemayfield@avlcouncil.com
Councilwoman Sheneika Smith, sheneikasmith@avlcouncil.com
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Leah Hamilton
President

Chantal Stevens
Interim Executive Director

Dear Mayor Manheimer, Chief Zack, City Manager Campbell, and City Council Members:

We write concerning the City of Asheville's response to the ongoing protests over the killing of George Floyd. Over the past week, we have been profoundly disturbed to hear repeated accounts and see numerous images of Asheville police taking violent action against protestors, in blatant violation of state and federal constitutional protections.

The First Amendment guarantees the rights to free speech, peaceful assembly, and petition of the government for redress of grievances. The Supreme Court of the United States "has frequently reaffirmed that speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145 (1983) (quotation marks omitted).

The Fourth Amendment prohibits unreasonable search and seizure, which includes the use of excessive force by law enforcement. Any use of force must be objectively reasonable given the circumstances. This rule applies equally to measures that some police departments categorize as "non-lethal," such as pepper spray, rubber bullets, and tasers. *See Estate of Armstrong ex rel. Armstrong v. Vill. of Pinehurst*, 810 F.3d 892, 905 (4th Cir. 2016). The power of these devices to inflict serious pain, injury, and even death is well-known.

Over the last two weeks, we have watched with grave concern while protestors across the country—anguished over yet another

police killing of an unarmed Black man—have been gassed, beaten, arrested, and shot at by militarized law enforcement.

In Asheville, news reports, protestors, and public officials have confirmed the use of tear gas and rubber bullets against protestors who did not present any threat of imminent harm. On Tuesday, police officers used force against volunteer medics and destroyed their station containing water, food, and emergency medical supplies. Such violence and destruction only compound the tragedies at the heart of the protests. These measures are clearly disproportionate and unreasonable, and threaten to chill the speech of people who wish to be heard on a matter of immense public concern.

This moment calls for empathy and moral leadership from public officials—not a violent crackdown on the exercise of constitutional rights. We demand an end to the use of force, including but not limited to teargas, rubber bullets, and “flash bangs” against protestors. In the days and weeks that follow, we will be monitoring the situation closely to ensure that city officials are held accountable for any constitutional violations.

Sincerely,

/s/ Kristi Graunke
Legal Director

/s/ Robert T. Stephens
Director of Political Strategy
and Advocacy

/s/ Chantal Stevens
Interim Executive Director