

SENT VIA ELECTRONIC MAIL

June 5, 2020

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Councilman Jonathan Melton - jonathan.melton@raleighnc.gov
Councilwoman Nicole Stewart - nicole.stewart@raleighnc.gov

Dear Mayor Baldwin, Chief Deck-Brown, City Manager Hall, and City Council Members:

We write concerning the City of Raleigh's response to the ongoing protests over the killing of George Floyd. Over the past week and particularly during the weekend of May 30-31, we have been profoundly disturbed to hear repeated accounts and see numerous images of Raleigh 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 obvious—indeed, the Supreme Court of North Carolina



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recently found a flash bang grenade to qualify as “a weapon of mass death and destruction.” *State v. Carey*, 373 N.C. 445, 445, 838 S.E.2d 367, 369 (2020). See also *Edrei v. Maguire*, 892 F.3d 525, 538 (2d Cir. 2018) (holding that use of a long-range acoustic device (LRAD) to force non-violent protesters to exit the street could violate the Fourteenth Amendment).

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 Raleigh, multiple accounts and videos have documented the use of tear gas, flash bang grenades, and rubber and foam bullets against protestors who did not present any threat of imminent harm, as well as the excessively violent detention of individual protestors. We have heard and seen accounts of police failing to provide adequate notice of orders to disperse before using these weapons. This violence only compounds the tragedies at the heart of the protests. Such wanton infliction of harm is clearly disproportionate and unreasonable, and threatens 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