



June 3, 2020

SENT VIA EMAIL

Oregon Association Chiefs of Police

Kevin Campbell, Executive Director

kevin@victorygrp.com

Chief Jim Ferraris, Board President

jim.ferraris@ci.woodburn.or.us

Oregon Mayors Association

Kelly Richardson, Staff Liaison

krichardson@orcities.org

League of Oregon Cities

Mike Cully, Executive Director

mcully@orcities.org

Scott Winkels

swinkels@orcities.org

City of Eugene

Mayor Lucy Vinis

lvinis@eugene-or.gov

City Manager Sarah Medary

smedary@eugene-or.gov

Police Chief Chris Skinner

cskinner@eugene-or.gov

City of Salem

Mayor Chuck Bennett

cbennett@cityofsalem.net

City Manager Steve Powers

manager@cityofsalem.net

Police Chief Jerry Moore

police@cityofsalem.net

//
//
//



City of Portland

Mayor Ted Wheeler

MayorWheeler@portlandoregon.gov

Police Chief Jami Resch

jami.resch@portlandoregon.gov

Dear Oregon Mayors, City Managers and Police Chiefs,

We are in the middle of a global pandemic caused by a virus that attacks the respiratory system and is spread through droplets expelled when we cough. This pandemic has had a highly disproportionate impact on the Black community. The world also recently witnessed a United States police officer kill a Black man by kneeling on his neck while he cried, “I can’t breathe.” Using tear gas and other chemical weapons that attack respiratory systems, cause coughing and make it hard to breathe in response to protests about the longstanding racial injustices in our communities is excessive and morally repugnant.

The ACLU of Oregon implores you to immediately prohibit the use of indiscriminate weapons, as well as adopt practices that account for the unique risks of the current COVID-19 pandemic.

In 1918, the International Committee of the Red Cross referred to chemical weapons like tear gas as “barbaric” and “criminal.”¹ In 1925, the Geneva Protocol banned the use of chemical weapons in warfare.² Again, in 1997, the international community reinforced its commitment to ban the use of dangerous chemical weapons.³ Now, in 2020, over 1,000 United States health professionals are calling for an end to the use of tear gas to support public health and the fight to end racism.⁴

Tear gas, a weapon banned in war, has no business being used in our streets with such abandon as we have seen by officers throughout Oregon, especially in Portland, Eugene and Salem. We have heard complaints of tear gas harm from a wide range of people, including media, legal observers, children and other peaceful protestors. We have also heard particularly

¹ International Committee of the Red Cross, *Toxic Chemicals as Weapons for Law Enforcement* (June 2, 2013), <https://www.icrc.org/en/doc/resources/documents/interview/2013/02-06-toxic-chemical-weapons-law.htm>.

² See Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925), available at <https://www.un.org/disarmament/wmd/bio/1925-geneva-protocol/>.

³ Organisation for the Prohibition of Chemical Weapons, *About Us* (last visited June 3, 2020), <https://www.opcw.org/about-us/history>.

⁴ “Open letter advocating for an anti-racist public health response to demonstrations against systemic injustice occurring during the COVID-19 pandemic,” available at <https://drive.google.com/file/d/1Jyfn4Wd2i6bRi12ePghMHtX3ys1b7K1A/view>.



alarming accounts of people in the unhoused community being hit with tear gas while they are sleeping. Police militarization is killing and severely injuring Black people. This must end.

Article I, section 13 of the Oregon constitution demands that arrest and confinement practices be justified by necessity. During the COVID-19 pandemic, the government has a constitutional obligation to keep those in their custody physically distant from one another. The congregate environment of jails present uniquely high risks for COVID-19 infection, as does the frequent cycling of new persons into the facilities.⁵ With these risks in mind, **police should avoid taking people to jail and avoid using group transportation vehicles where at all possible.** Oregon has made significant strides in reducing its jail populations.⁶ Now is not the time to backslide.

The ACLU of Oregon also calls on you to immediately prohibit the use of dangerous aerial distraction devices (“flash-bangs”) and rubber ball distraction devices (“flash bang grenades”). We have witnessed the severe harm that such distraction devices can cause to people exercising their First Amendment rights. In one case, an Oregon woman suffered third-degree burns and permanent soft-tissue damage on her arm when the Portland police shot her with a flash bang.⁷ We have also witnessed the use of grenades that explode and shoot small, hard rubber balls in all directions, causing disorientation and impact wounds. These dangerous weapons do not make our communities safer and too frequently injure peaceful demonstrators, bystanders, and media.

Flash bang devices and tear gas are by their very nature indiscriminate and their use should be prohibited. Some Oregon police policies prohibit the indiscriminate deployment of weapons into crowds. That is a good policy. However, the use of weapons, the impact of which cannot be controlled, directly contradicts the language and spirit of these policies. Officers cannot control who is impacted by large clouds of chemical irritants, nor can they control who may be impacted by flashbangs. Both categories of weapons have the potential to seriously injure or kill a person.⁸ They should not be used on Oregonians.

⁵ American Civil Liberties Union, *New Model Shows Reducing Jail Population will Lower COVID-19 Death Toll for All of Us* (April 22, 2020), <https://www.aclu.org/news/smart-justice/new-model-shows-reducing-jail-population-will-lower-covid-19-death-toll-for-all-of-us/>

⁶ Disability Rights Oregon, *Oregon Jails During COVID-19: A Look Inside 29 County Jails* (May 1, 2020), <https://droregon.org/wp-content/uploads/DRO-Report-Oregon-Jails-during-COVID-19-A-Look-Inside-29-County-Jails-Updated-05-01-2020.pdf>.

⁷ ACLU of Oregon, *ACLU Files Lawsuit on Behalf of Portland Women Shot with Flash-Bang Grenade at Protest* (August 5, 2019), <https://www.aclu-or.org/en/press-releases/aclu-files-lawsuit-behalf-portland-woman-shot-flash-bang-grenade-protest>.

⁸ See, e.g., Defense Technology, 37MM SKAT SHELL® OC, CN, CS AND SAF-SMOKE™, available at <https://www.defense-technology.com/on/demandware.static/-/Sites-DefenseTech-Library/default/dwe8262d1c/resources/def-tech-pdfs/37mmSkatShell.pdf>; see also Defense Technology,



Now is the time to put down your weapons and listen. Black lives matter. And your job requires you to make sure that they do.

Sincerely,

A handwritten signature in black ink, appearing to read "K.S.", written over a light blue horizontal line.

Kelly Simon
Interim Legal Director

STINGER® GRENADE RUBBER PELLET RP, RP/CS & RP/OC, available at <https://www.defense-technology.com/on/demandware.static/-/Sites-DefenseTech-Library/default/dw4b6d9f56/product-pdfs/Stinger%20Grenade.pdf>. The ACLU has seen reporting that these or similar devices have been used by the Portland police and assumes the devices are similar to others being used in Oregon. Note that along with the much more serious concern of causing serious bodily injury or death, these types of devices also can cause fire and damage property.