



October 22, 2020

Mayor John J. Tecklenburg
Councilmember Marie Delcioppo
Councilmember Kevin Shealy
Councilmember Jason Sakran
Councilmember Robert M. Mitchell
Councilmember Karl L. Brady, Jr.
Councilmember William Dudley Gregorie
Councilmember Perry K. Waring
Councilmember Michael S. Seekings
Councilmember A. Peter Shahid, Jr.
Councilmember Harry Griffin
Councilmember Ross A. Appel
Councilmember Carol Jackson
Chief Luther T. Reynolds

Dear Mayor Tecklenburg, Charleston City Councilmembers, and Chief Reynolds:

Earlier this month a diverse group of organizations and advocates came together to form the Charleston People's Budget Coalition. It's goal is to build an equitable city budget, eliminate poverty and racial disparities, and redistribute power back where it belongs - with the people.

As a first step, the Coalition is asking Charleston's elected leaders to reallocate five million dollars from the Charleston Police Department (CPD) budget into permanently affordable housing, youth and education programs, sidewalks, weatherization programs, living wages for city employees, and the Special Commission on Equity, Inclusion, and Racial Conciliation.

Two weeks ago, the CPD reminded us why the Coalition's request should be an easy decision for every city leader in Charleston.

On October 8, the Charleston Police Department (CPD) released its "assessment" of its response to the uprising in Charleston on May 30 and 31, 2020. The assessment provides a masterclass in the use of hollow rhetoric and passing the buck. There is a stark difference between the image and reality of the Charleston Police Department.

For more than four months we have asked CPD to explain its rationale for responding to non-violent protests against police violence with more police violence, as well as outline its plans for holding officers accountable and guaranteeing people's right to protest in Charleston.¹ We have received no serious response.²

In the assessment released on October 8, CPD attempts to blame the victims of police violence, instead of those who perpetuated it. This is unacceptable.

There are four major concerns with the CPD assessment. First, the CPD assessment has serious factual inaccuracies and omissions. Second, CPD selectively used inflammatory and passive language in an attempt to persuade the reader instead of providing an objective analysis. Third, CPD maintains a frightening level of control over community members. Fourth, CPD violated their own department policy and failed to discuss that in the assessment.

Factual Inaccuracies and Omissions

The ACLU of South Carolina (ACLU SC) served as a legal observer during the protests on May 31 in Marion Square. The description of events outlined in CPD's assessment around that afternoon does not match the reality that the ACLU SC witnessed firsthand.

According to the assessment, CPD deployed potentially lethal weapons against protestors "who were throwing objects at officers and actively and aggressively approaching officers." This is not what happened.

As ACLU SC told CPD in a letter dated June 2:³

We arrived at Marion Square at approximately 3:30pm and witnessed a group of people peacefully protesting against police violence and for racial justice. Shortly thereafter, a large group of law enforcement officers from multiple departments arrived at Marion Square. The officers were wearing pads, gas masks, and helmets, and were accompanied by at least one armored vehicle.

...

After demanding that all protestors disperse, the law enforcement officers then began moving toward the protestors, making arrests and firing projectiles at the protestors.

¹ See ACLU of South Carolina letter to Chief Luther T. Reynolds, et al., June 2, 2020, *available at* https://www.aclusc.org/sites/default/files/20.06.02.ltr_to_charleston_area_law_enforcement_re_abuse_of_power.pdf; see also ACLU of South Carolina letter to Heather Mulloy, Assistant Corporation Counsel City of Charleston, July 28, 2020, *available at* https://www.aclusc.org/sites/default/files/field_documents/2020.07.29_aclu_sc_2nd_letter_-_law_enforcement_response_to_protests_0.pdf.

² Email from Heather Mulloy, Assistant Corporation Counsel City of Charleston, to Frank Knaack, Executive Director ACLU of South Carolina, June 22, 2020 (on file with ACLU of South Carolina).

³ ACLU of South Carolina letter to Chief Luther T. Reynolds, et al., June 2, 2020, *available at* https://www.aclusc.org/sites/default/files/20.06.02.ltr_to_charleston_area_law_enforcement_re_abuse_of_power.pdf.

During this time the protestors remained non-violent. This response by law enforcement marked a clear, dangerous, and counterproductive escalation.

[CPD and other agencies'] officers continued this tactic until the protestors were pushed out of Marion Square and into active streets, including Meeting Street. During this time [CPD and other agencies'] officers launched projectiles and what appeared to be tear gas into areas with non-violent protestors and other community members present, including small children. One individual who was shot by law enforcement showed us the circular and bloody mark that the projectile left on his stomach.

Furthermore, in its June 22 response to the letter, the City of Charleston made no mention of any violent actions by protestors directed at law enforcement prior to their deployment of potentially lethal force.⁴ In fact, it attempted to justify the force used by CPD that afternoon by citing two factors.⁵ First, that the events that happened the day before in a different place justified the use of force.⁶ Second, that the protest in Marion Square lacked a permit, and thus could be broken up.⁷ Specifically, the City stated:⁸

On the evening of Saturday, May 30, 2020, after a day of peaceful protests, an unprecedented riot broke out in Charleston's central business district, with numerous instances of assault, arson, burglary and vandalism reported throughout the night. The following day, as unfolding events made it clear that there could be a repeat of the previous night's violence, Charleston police enforced city laws against unpermitted public gatherings. To prevent a civil disturbance from escalating any further, groups were ordered to disperse and arrests were made for failure to obey a lawful order.

The CPD assessment also makes only a passing reference to the violence by law enforcement that occurred in the Eastside following the protests on May 31. And, the assessment's framing of the violence on the Eastside that evening also places the blame on residents for "aggressively approaching officers." CPD's assessment, like that in Marion Square, conflicts with the reality as witnessed by residents. As former Eastside Charleston City Councilman Kwadjo Campbell told *The Charleston Chronicle*:⁹

"Police came on Sunday [May 31], after the protesters dispersed on Meeting and Amherst streets and proceeded through the Eastside terrorizing residents who were going about their regular day. Older folk on their stoops were totally taken unaware as police came through pushing folks, interrogating folks and frisking folks. It culminated in

⁴ Email from Heather Mulloy, Assistant Corporation Counsel City of Charleston, to Frank Knaack, Executive Director ACLU of South Carolina, June 22, 2020 (on file with ACLU of South Carolina).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Eastside Residents Want Answers About May 31 Police Assault*, *The Charleston Chronicle*, June 17, 2020, available at <https://www.charlestonchronicle.net/2020/06/17/eastside-residents-want-answers-about-may-31-police-assault/>.

a coordinated military-like operation on Johnson Street Project, as we use to call it (formally Cooper River Court), where they fired rubber bullets and tear gas on residents.”

And, as ACLU SC wrote in a second letter on July 28 to the the City of Charleston following a conversation with Eastside community residents:¹⁰

In addition to the concerns raised in our letter dated June 2, 2020, we have since learned that following the police violence in and around Marion Square in the afternoon and early evening of May 30, 2020, CPD and other department officers continued their path of excessive force that evening in Charleston’s Eastside community where officers carried out their brutality against Black community members. This excessive, unprovoked police action is a part of a pattern against Black Eastside community members that cannot be ignored. We are united in solidarity with Charleston’s Eastside residents who face police aggression. Residents’ calls for accountability have been dismissed by CPD leadership and other local and statewide law enforcement leaders whose officers executed this pattern of violence. It is unconscionable that law enforcement have chosen to disregard community concerns about police violence. It also highlights why procedural reforms will never be enough and police violence.

The CPD assessment systematically misrepresented these facts and ignored and avoided any accountability for engaging in serious violence against people peacefully protesting and against Eastside community residents just going about their day.

Selective use of Inflammatory and Passive Language

Our second concern around the CPD assessment is the selective use of inflammatory and passive language. Government assessments like this should provide clear, objective assessment of the situation and recommendations, regardless of how uncomfortable the truth may be for the government. The CPD’s selective use of language makes clear that this assessment is not intended to be a balanced, objective analysis of the events of May 30 and 31, 2020. The assessment uses terms like “criminal element,” “gratuitous violence,” and “wanton destruction” to describe the actions of those engaged in the uprising. Law enforcement officers who engaged in violence against peaceful protestors avoided these labels, despite their use of potentially lethal weapons against peaceful protestors in a public park.

Even more troubling is the use of passive language to describe the murder of George Floyd by a Minneapolis, MN police department. Instead of clearly condemning the murder of Mr. Floyd by the Minneapolis Police Department, the CPD condemned the “excessive use of force used against George Floyd” and stated that he was “killed while in custody.”

¹⁰ ACLU of South Carolina letter to Heather Mulloy, Assistant Corporation Counsel City of Charleston, July 28, 2020, *available at* https://www.aclusc.org/sites/default/files/field_documents/2020.07.29_aclu_sc_2nd_letter_-_law_enforcement_response_to_protests_0.pdf.

Finally, over the past several years, the City of Charleston has taken steps to demonstrate to the community a concern for racial justice, including apologizing for its role in slavery, commissioning a racial bias audit of the police department, establishing the “Special Commission on Equity Inclusion and Racial Conciliation,” and removing the Calhoun monument from Marion Square.

Instead of following these gestures with concrete actions to reduce harms enacted on Black people in Charleston, CPD continues to use dehumanizing and racist language like “criminal element.” In the birthplace of America’s first police force, which was originally established as a slave patrol, the continued use of dehumanizing and racist language is unacceptable.

CPD Control over Community Members

Throughout the assessment, CPD reiterates its mission - “to protect and serve the citizens of Charleston, SC.” In practice, CPD’s role is much different. For example, since 2015 CPD has made more arrests for marijuana possession than for all violent offenses combined.¹¹ And, despite white and Black people using marijuana at roughly the same rate, Black people are arrested at a staggering rate compared to white people.¹²

Looking more specifically at the right to protest, instead of protecting the fundamental right to protest, CPD has used its broad discretionary authority to declare a protest unlawful and arrest people for “disobeying a lawful order,” even though no underlying crime took place. As ACLU SC wrote to the City of Charleston on July 28:¹³

The act of declaring a protest in a public space as unlawful was an unconstitutional act by CPD. The right to gather and speak out against abuses of power by the government in traditional public forums is fundamental to our democracy and protected by the Constitution. Political expression related to public policy is the prototypical example of protected speech.¹⁴ And, public parks like Marion Square are “prototypical” examples of public fora, and have long been considered a rightful place for political demonstrations.¹⁵ The arrests and use of force against the individuals exercising the First Amendment right to protest were unconstitutional infringements on this fundamental right.

CPD’s response to protests and other mass assemblies should not involve militarized displays or mass violence, and CPD should never deploy indiscriminate weapons, such

¹¹ City of Charleston, CPD Open Data Police Response Datasets, 2015-2019, available at <https://www.arcgis.com/apps/MapSeries/index.html?appid=fad2a3f085c644d0b014b507d23bcd9a>.

¹² See City of Charleston, CPD Open Data Police Response Datasets, 2015-2019, available at <https://www.arcgis.com/apps/MapSeries/index.html?appid=fad2a3f085c644d0b014b507d23bcd9a>; see also United States Census Bureau, Quick Facts, 2019, available at <https://www.census.gov/quickfacts/charlestoncountysouthcarolina>.

¹³ ACLU of South Carolina letter to Heather Mulloy, Assistant Corporation Counsel City of Charleston, July 28, 2020, available at https://www.aclusc.org/sites/default/files/field_documents/2020.07.29_aclu_sc_2nd_letter_-_law_enforcement_response_to_protests_0.pdf.

¹⁴ Texas v. Johnson, 491 U.S. 397, 411 (1989).

¹⁵ Hague v. C.I.O., 307 U.S. 496, 515 (1939).

as tear gas, on any mass gathering or assembly. In addition to posing serious risks to people's health and safety, such weapons almost by definition violate the right to due process and will seldom, if ever, constitute the least restrictive means available to regulate conduct in the context of a protest.

We remain deeply disturbed that instead of protecting the rights of protestors on May 31, 2020, the CPD decided to violate their rights and trample on the Constitution. The fact that property had been damaged the night before does not and cannot justify overt police hostility toward peacefully protesting people the next day.

It appears that CPD is seeking to protect and serve some segments of our community at the expense of others.

Violations of CPD Department Policy

The CPD assessment discussed how its response was in accordance with CPD General Orders. The assessment noted with favor the fact that CPD already had policies in place addressing de-escalation and the duty to intervene. Despite this acknowledgement, in reality, as ACLU SC wrote to the City of Charleston on July 28,¹⁶ the actions by CPD officers on May 31, 2020 conflicted with CPB Administrative General Orders, including these two orders:¹⁷

CPD cannot justify the use of excessive force against individuals by pointing to things that happened on another day. As CPD's own Administrative General Order states, "[f]orce is to be regarded as an unusual procedure and an absolute last resort in police operations. Applied force should be limited to the force that is objectively reasonable and necessary under the circumstances existing at the time force is applied."¹⁸ When CPD officers chose to deploy force on May 31, 2020, there was no objectively reasonable case for those actions.

The use of chemical agents against people peacefully protesting is also a violation of CPD Administrative General Orders. According to CPD Administrative General Order 25, "the use of a chemical agent may be necessary in circumstances where a serious

¹⁶ ACLU of South Carolina letter to Heather Mulloy, Assistant Corporation Counsel City of Charleston, July 28, 2020, *available at* https://www.aclusc.org/sites/default/files/field_documents/2020.07.29_aclu_sc_2nd_letter_-_law_enforcement_response_to_protests_0.pdf.

¹⁷ ACLU of South Carolina letter to Heather Mulloy, Assistant Corporation Counsel City of Charleston, July 28, 2020, *available at* https://www.aclusc.org/sites/default/files/field_documents/2020.07.29_aclu_sc_2nd_letter_-_law_enforcement_response_to_protests_0.pdf.

¹⁸ City of Charleston Police Department Policy and Procedure Manual, Administrative General Order 23 Response to Resistance / Aggression, Effective Date: 02/01/08, Revised: 02/01/17, available at <https://www.charleston-sc.gov/DocumentCenter/View/16968/General-Order-23---Response-to-Resistance--Aggression> (emphasis added).

danger to life and property exists and other methods of apprehension would be ineffective or more dangerous.”¹⁹ There is no objectively reasonable way to equate the peaceful protest on May 31, 2020 with “a serious danger to life and property,” nor is there an objectively reasonable way to claim that other methods of apprehension against passive protestors were not available.

Even those officers who did not use excessive force were in violation of CPD Administrative General Orders because they failed to intervene. As Administrative General Order 23 states, “[a]ny officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of such excessive force. Officers shall promptly report these observations to a supervisor.”²⁰ We witnessed no attempts by officers to prevent the use of excessive force.

At a time when people across America are speaking out against police violence and for racial justice, the CPD assessment makes clear that CPD either does not care or does not recognize the seriousness of its abuses that weekend, and in its subsequent actions.

This assessment provides yet another reminder of why our city leaders must rethink Charleston’s approach to public safety and work with the Charleston People’s Budget Coalition to finally build a Charleston that is safe and just for all.

Sincerely,



Frank Knaack
ACLU of South Carolina



Allie Menegakis
South Carolina for Criminal Justice Reform

¹⁹ City of Charleston Police Department Policy and Procedure Manual, Administrative General Order 25 Less-Lethal & Lethal Weapons, Effective Date: 02/01/08, Revised: 05/13/20, available at <https://www.charleston-sc.gov/DocumentCenter/View/18918/General-Order-25---Less-Lethal-andLethal-Weapons> (emphasis added).

²⁰ City of Charleston Police Department Policy and Procedure Manual, Administrative General Order 23 Response to Resistance / Aggression, Effective Date: 02/01/08, Revised: 02/01/17, available at <https://www.charleston-sc.gov/DocumentCenter/View/16968/General-Order-23---Response-toResistance--Aggression>.