

## Legislation Text

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November 10, 2020

TO THE PRESIDENT AND MEMBERS OF THE  
COUNCIL OF THE CITY OF PHILADELPHIA:

I am hereby returning with my signature Bill No. 200538, which was passed by Council at its session on October 29, 2020. This bill requires that the Police Department have a written policy prohibiting officers from using “less lethal force,” such as tear gas and rubber bullets, against individuals lawfully exercising their First Amendment rights. The Law Department identified a potential legal issue regarding enforceability of the bill due to the separation of powers. The Home Rule Charter vests all executive powers in the Mayor, and therefore City Council has no authority to direct the manner in which the Police Department carries out its duties. However, this issue is moot due to my Administration’s long-standing agreement with such a policy. That is why the Police Department’s policy already prohibits the use of force on individuals engaged in peaceful, constitutionally protected First Amendment activities, even if a protestor passively resists Police commands. To emphasize and clarify any ambiguities, the Department is expected to update its written policies, which will then align even more closely with this bill. I would be remiss, however, if I did not reiterate the distinction between Constitutionally protected activity, on the one hand, and unlawful destruction of property or violence, on the other, which Commissioner Outlaw explained in her testimony before the Committee on Public Safety. Once that line is crossed, the bill’s prohibition does not apply. In those instances, the Police Department will use whatever means at their disposal, consistent with department policy and proportional to the threat posed, in order to neutralize such situations.

For these reasons, I am returning with my signature, Bill No. 200538.

Respectfully,

JAMES F. KENNEY  
Mayor