Mayor Elliot, Councilmembers, good afternoon and thank you for inviting me to speak with you today.

My name is Maria Ponomarenko, and I am a law professor at the University of Minnesota, and also the Co-founder and Counsel at the Policing Project at NYU Law. At the Policing Project we’ve worked closely with police departments and community members in more than a dozen jurisdictions—including New York, Chicago, Los Angeles, Tucson, and Nashville—to help make policing more effective, equitable, and just.

I want to start out by commending the City Council for taking up these issues, and for doing so in a manner that recognizes the need for transformative change. Too often the response on the part of elected officials to moments of crisis has been to tinker at the margins. What we’ve seen time and again, however, is that piecemeal efforts simply do not work.

I also want to underscore that although historically, elected officials have tried to avoid getting too involved in how policing occurs in their communities, what you’re doing now is not only well within your purview—it is in fact your responsibility. We give police officers extraordinary authority to detain individuals and to use force against them. It is up to us—and, in particular, up to you as representatives of your communities—to ensure that this authority is used in a manner that actually promotes public safety and minimizes the risk of harm.
As for the proposed resolutions, I’d like to focus my remarks on two in particular: regarding enforcement of non-moving violations, and the use of citations in lieu of custodial arrest for low-level offenses.

**Low-Level Traffic Stops**

The first resolution calls for the creation of an unarmed civilian Traffic Enforcement Department to enforce non-moving violations. This proposal would ensure that these sorts of infractions could not be used as a “pretext” to stop someone to investigate more serious wrongdoing, and it would reduce the risk that a minor infraction could potentially escalate into a lethal encounter.

Although many departments have relied on pretext stops as a crime control strategy, the reality is that they do very little to promote public safety—and they cause a great deal of harm.

You’ve heard a great deal about the harms of pretext stops, particularly in communities of color. Today I want to address the notion that these harms are something we need to accept in order to give the police the tools they need to keep us safe.

The evidence suggests this is far from the case.

In 2017, the Policing Project was asked to evaluate the Nashville Police Department’s use of pretext stops as a crime fighting tool. Like many agencies, the Nashville Police Department was convinced that pretext stops were an essential tool for addressing violent crime.

The evidence did not back this up.

Working with researchers from the Stanford Computational Policy Lab we looked at the “hit rates” for stops—which is to say the number of stops that resulted in arrest for more serious crimes. And we also evaluated the impact of stops on crime rates in the neighborhoods in which they were used.

What we found is that only a tiny fraction of stops—less than 1%—resulted in a gun charge, the discovery of an outstanding warrant, or an arrest for a more serious crime like robbery or burglary. And importantly, we also found no effect on surrounding crime rates. Which is to say that flooding a particular neighborhood with large numbers of pretext stops did not appear to have an impact on crime rates overall.

Indeed, there was some evidence to suggest that Nashville’s stop practices actually undermined public safety by alienating the very communities from whom the department needed cooperation.

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1 https://www.policingproject.org/news-main/Nashville-report-released
in order to meaningfully address violent crime.

To the Department’s credit, they quickly recognized that there were much better ways for their officers to spend their time. In the two years after our study, the department cut stops by more than 80%. The Department now emphasizes that traffic enforcement should focus primarily on traffic safety. And it relies on more targeted strategies—often in collaboration with residents—to address violent crime.

Other cities have adopted a similar approach. Berkeley is in the process of implementing a proposal along the lines proposed here. Virginia recently passed a bill that simply prohibits officers from pulling people over for low-level equipment violations. I would strongly urge the City Council to follow their lead.

The one thing I would urge as you formalize the resolution, however, is to consider adding low-level moving violations to the list as well. One concern is that if officers can no longer stop someone for a broken tail-light, we will start to see a lot more stops for failure to signal, or for going just a few miles over the speed limit. We at the Policing Project are working on a comprehensive statute to address the use of pretext stops, and as part of that process are developing a broader list of offenses that should generally not give rise to a stop. I would be happy to share that list with the City Council once we have finalized it.

**Citations in Lieu of Arrest**

The other resolution I’d like to briefly speak to today is the proposal to require officers to issue a citation in lieu of arrest for non-felony offenses and warrants.

A custodial arrest is a serious intrusion that must be justified by an equally weighty public safety interest. When an individual poses an immediate risk of harm to others, an arrest may be unavoidable. But the reality is that far too often we arrest people in circumstances where the harms caused by the arrest far outweigh any government interest at stake.

Custodial arrests impose two distinct sorts of harms: First, there is the cost of the arrest itself, both to the individual arrested and to the criminal justice system. These costs are substantial and should not be underestimated. Second, once we authorize an arrest, we also implicitly authorize an officer to use force to effect that arrest. (This does not need to be that way of course—and in fact the Policing Project’s model use of force statute imposes much stricter limits on the level of force that may be used to effect a misdemeanor arrest.\(^2\) But the surest way to avoid the need to use force is to prohibit the arrest altogether.

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\(^2\) [https://www.policingproject.org/force-statute](https://www.policingproject.org/force-statute)
Again, a number of jurisdictions have already moved in this direction. A number of states, for example, permit or require officers to issue a summons in lieu of arrest for a variety of low-level offenses. Some states also limit the circumstances under which an outstanding warrant may be issued, which reduces the need to take people into custody for failure to appear in court.3

Indeed, one thing we have seen as a result of the Covid-19 pandemic is that it is in fact possible to arrest far fewer people than we currently do. In order to limit the size of the jail population during the pandemic, a number of major cities, including Portland and Washington D.C., implemented emergency regulations to require summons in lieu of arrest for a wide array of misdemeanor offenses.4 I would strongly encourage you to adopt precisely this sort of policy— but on a permanent basis.

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4 See, e.g.: https://static1.squarespace.com/static/5edff6436067991288014c4c/t/6007104bf66a52242424777aa1/1611075659671/Citation+in+Lieu+of+Arrest.pdf