

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2022-006

AN ORDINANCE OF THE CITY OF SAN LEANDRO CITY COUNCIL APPROVING AND ADOPTING A MILITARY EQUIPMENT FUNDING, ACQUISITION AND USE POLICY AND ADDING CHAPTER 4-42 “MILITARY EQUIPMENT FUNDING, ACQUISITION, AND USE POLICY” TO TITLE 4. “PUBLIC WELFARE” OF THE MUNICIPAL CODE IN COMPLIANCE WITH ASSEMBLY BILL 481

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481 relating to the use of military equipment by California law enforcement agencies; and

WHEREAS, Assembly Bill 481 seeks to provide transparency, oversight, and an opportunity for meaningful public input on decisions regarding whether and how military equipment is funded, acquired, or used by law enforcement agencies; and

WHEREAS, Assembly Bill 481, codified at California Government Code section 7070, *et. seq.*, requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance adopting a “military equipment” use policy, at a regular meeting held pursuant to open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment. The term “military equipment” is defined in California Government Code section 7070 subdivision (c); and

WHEREAS, the San Leandro Police Department is in possession of certain items of equipment that may qualify as “military equipment” under Assembly Bill 481; and

WHEREAS, Assembly Bill 481 requires that a law enforcement agency possessing and using such qualifying equipment prepare a publicly released, written, military equipment use policy. The policy must be a document covering the inventory, description, purpose, use, acquisition, maintenance, fiscal impacts, procedures, training, oversight, and complaint process, applicable to the Department’s use of such equipment; and

WHEREAS, Assembly Bill 481 allows the governing body of a city to approve the military equipment use policy for continued or future funding, acquisition, or use of military equipment within its jurisdiction only if it makes the determinations specified in Government Code Section 7071 subdivision (d); and

WHEREAS, the military equipment use policy and supporting information must, upon adoption by ordinance, thereafter be approved by the City Council by ordinance and reviewed annually; and

WHEREAS, the proposed military equipment use policy, including military equipment inventory, was prepared by the San Leandro Police Department and identified as “SLPD Policy 707 – Military Equipment Funding, Acquisition and Use Policy” (“Policy 707”); and

WHEREAS, the San Leandro Police Department’s Policy 707 was published on the San Leandro Police Department’s internet website on April 1, 2022 in compliance with Government Code Section 7071 subdivision (b); and

WHEREAS, the San Leandro Police Department commenced the approval process prior to May 1, 2022, in accordance with Assembly Bill 481; and

WHEREAS, the San Leandro Police Department’s Policy was presented to City Council on May 2, 2022; and

WHEREAS, the San Leandro Police Department’s Policy meets the requirements of California Government Code Section 7070 subdivision (d); and

WHEREAS, the City of San Leandro City Council, having received the information required under Assembly Bill 481 regarding the San Leandro Police Department’s use of military equipment as defined in said law, and making the specified determinations required under Government Code Section 7071 subdivision (d), deems it to be in the best interest of the City to approve the San Leandro Police Department’s Military Equipment Funding, Acquisition and Use Policy as set forth herein.

NOW, THEREFORE, the City of San Leandro City Council hereby **ORDAINS** as follows:

Section 1. Recitals. The Recitals above are true and correct and when applicable, incorporated herein by reference.

Section 2. Authority. This Ordinance is adopted pursuant to the provisions set forth in Government Code Section 36937(b) and pursuant to all other applicable laws.

Section 3. Determinations.

Based on the findings above, in addition to information provided to the City Council at the public meeting, the City Council determines as follows:

1. The San Leandro Police Department’s Military Equipment Funding, Acquisition, and Use Policy is necessary because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.
2. The San Leandro Police Department’s Military Equipment Funding, Acquisition, and Use Policy will safeguard the public’s welfare, safety, civil rights, and civil liberties.
3. The military equipment identified in the San Leandro Police Department’s Military Equipment Funding, Acquisition, and Use Policy is reasonably cost effective compared to available alternatives that can achieve the same objectives of officer and civilian safety.
4. Prior military equipment use by the San Leandro Police Department complied with the Military Equipment Funding, Acquisition, and Use Policy although it was not yet in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.
5. The San Leandro Police Department’s Military Equipment Funding, Acquisition, and Use Policy, Policy 707, setting forth the City’s military equipment use policy is approved and adopted.

Section 3. Ordinance. That a new Chapter 4-42 entitled “MILITARY EQUIPMENT FUNDING, ACQUISITION, AND USE POLICY” is added to Title 4. “PUBLIC WELFARE” of the City of San Leandro Municipal Code to read as follows:

“Chapter 4-42 MILITARY EQUIPMENT FUNDING, ACQUISITION AND USE POLICY

(a) Pursuant to Government Code Section 7071 (d), the City Council has made the following determinations:

(1) The military equipment inventoried and presented to the City Council is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; and

(2) The proposed military equipment use policy (“Policy”) will safeguard the public’s welfare, safety, civil rights, and civil liberties; and

(3) The equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety (if any); and

(4) Prior military equipment use complied with the applicable equipment use policy (which included equipment now defined as military equipment) that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

(b) The Police Department has submitted a proposed Policy to the City Council identified as “SLPD Policy 707 – Military Equipment Funding, Acquisition, and Use Policy” and has made those documents available on the Police Department’s website for at least 30 days prior to the public hearing at the regular City Council meeting where this item concerning the military equipment at issue was considered by the City Council.

(c) The Policy was considered by the City Council as an agenda item in an open session of a regular meeting, noticed in accordance with the Ralph M. Brown Act, at which public comment was permitted.

(d) The Policy shall be made publicly available on the Police Department’s website for as long as the military equipment is available for use.

(e) The Police Department shall submit an annual military equipment report to the City Council, containing the information required in Government Code Section 7072, and the City Council shall determine whether each type of military equipment identified in that report has complied with the standards for approval set forth in (a)(1)-(4) above.

(f) The City Council shall review this ordinance, and vote on whether to renew it, on an annual basis at a regular meeting, in accordance with Government Code Section 7071(e)(2).

(g) The City Council approves the use of the Policy identified as “SLPD Policy 707 – Military Equipment Funding, Acquisition, and Use Policy”, and finds that it satisfies the requirements of Government Code Section 7070(d).”

Section 4. Environmental. The passage of this ordinance is not a project according to the definition in the California Environmental Quality Act and, therefore, is not subject to the provisions requiring environmental review.

Section 5. Ordinances Repealed. With the exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

Section 6. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each of every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 7. Effective Date and Duration. This ordinance shall take effect thirty (30) days after its final adoption.

Section 8. Publication. The City Clerk is directed to cause this ordinance to be published in a manner required by law.

Introduced by Mayor Cutter and passed to print on the 2nd day of May 2022 by the following called vote:

Members of the Council:

AYES: Councilmembers Aguilar, Azevedo, Ballew, Cox, Lopez, Simon, Cutter (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: _____
Kelly B. Clancy, Acting City Clerk

Passed and adopted the 16th day of May 2022 after publication on May 13, 2022, by the following called vote:

Members of the Council:

AYES: 0

NOES: 0

ABSENT: 0

ATTEST: _____
Kelly B. Clancy, Acting City Clerk