



Legislation Text

File #: 23-212, **Version:** 1

First Reading of an Ordinance to Approve and Renew a Military Equipment, Funding, Acquisition and Use Policy as Stated in San Leandro Municipal Code Chapter 4-42 in Compliance with Assembly Bill 481

SUMMARY AND RECOMMENDATIONS

The purpose of California Assembly Bill 481 is 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.

Staff recommends the City Council approve and adopt the Military Equipment Funding, Acquisition and Use Policy and renew Chapter 4-42 "Military Equipment Funding, Acquisition and Use Policy" in compliance with California Assembly Bill 481.

BACKGROUND

On September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481 ("AB 481") relating to the use of military equipment by law enforcement agencies, codified in California Government Code sections 7070 through 7075. The law required law enforcement agencies to obtain approval of the applicable governing body (City Council) for funding, acquiring, or using military equipment by authorizing an ordinance adopting a "military equipment" use policy.

The definition of Government Code section 7070 does not necessarily constrain the definition of the term "military equipment" solely to equipment that has been used by the military or purchased from the federal government. Rather, the definition includes, but is not limited to, unmanned aerial or ground vehicles, armored vehicles, command and control vehicles, less lethal projectile launchers, and flashbangs. California AB 481 allows the governing body of a city to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it makes specified determinations.

The law also requires law enforcement agencies that received approval for a military equipment use policy pursuant to Section 7071 to submit to the governing body an annual military equipment report for each type of military equipment approved by the governing body within one year of approval, and annually thereafter for as long as the military equipment is available for use. The law enforcement agency must make each annual military equipment report required by this section publicly available on its internet website for as long as the military equipment is available for use.

The annual military equipment report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of military equipment:

- (1) A summary of how the military equipment was used and the purpose of its use.
- (2) A summary of any complaints or concerns received concerning the military equipment.
- (3) The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.

- (4) The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
- (5) The quantity possessed for each type of military equipment.
- (6) If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

Within 30 days of submitting and publicly releasing an annual military equipment report pursuant to this section, the law enforcement agency shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment.

On May 16, 2022, the City Council adopted Ordinance 2022-006 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.

At that meeting, the City Council further directed that in the future staff bring forward the adopted policy to the Community Police Review Board (CPRB) for its review once practicable (since the ordinance creating the Board had only just been recently adopted at that time and it had yet to have its membership appointed by the City Council).

Based on Council's direction, the Department brought the policy forward for review by the CPRB at its regular meeting of April 19, 2023, which was publicly noticed. That meeting included a staff presentation coupled with robust questions and dialogue facilitated by the CPRB. At the conclusion of the meeting, the CPRB unanimously voted (with one member absent) to affirm a motion that included the following general provisions (modified for clarity and/or to reference relevant policies):

- (1) The Community Police Review Board shall be designated in the policy as the community engagement" forum for the annual review of the SLPD military equipment use report. (SLPD Policy 707.9).
- (2) The military equipment inventory on authorized uses for the Department's robot and unmanned aerial devices shall be amended to specify that these devices shall not be used for deadly force (items # 1-4 in the Inventory).
- (3) The Department agreed to consider further whether there is a need to retain the current "Use in Exigent Circumstances" section in the policy and/or whether to amend the policy with a definition of "exigent circumstance" (SLPD Policy 707.8)
- (4) The Department agreed to consider amending the policy to specifically exclude from use those categories of military equipment which the Department currently does not now possess.
- (5) The Department agreed to review the authorized use sections of the Military Equipment Inventory for chemical agents (e.g., CS/tear gas) and kinetic energy projectiles (e.g., rubber bullets or pellets) to assure compliance with AB 48, which restricts the use of such devices from being used at First Amendment assemblies (related to SLPD policies 303 and 431).

Consistent with the City Council's prior actions and the CPRB's recommendations, and pursuant to Assembly

Bill 481, staff has prepared the attached Annual Report on the “Military Equipment Funding, Acquisition and Use Policy,” “Military Equipment Inventory List” and corresponding ordinance for City Council Consideration.

Analysis

The San Leandro Police Department’s Annual Report on the “Military Equipment Funding, Acquisition and Use Policy,” as well as the proposed “Military Equipment Funding, Acquisition and Use Policy,” and required “Military Equipment Inventory List” are attached to this report.

The policy requires the department to:

- Identify equipment the department intends to acquire that requires approval by the governing body.
- Conduct an annual inventory of all military equipment.
- Collaborate with any allied agency that may use military equipment within the jurisdiction of the San Leandro Police Department (Government Code § 7071).
- Schedule an annual community engagement meeting regarding the department’s funding, acquisition, and use of equipment.
- Prepare and publish an annual military equipment on the department website (Government Code § 7072).
- Establish a procedure for a person to register a complaint, concern, or question about the use of a type of military equipment, and how the department will respond in a timely manner.

The San Leandro Police Department does not have any equipment obtained from the Law Enforcement Support Officer (LESO) 10-33 program. However, due to the definition of “military equipment” in Assembly Bill 481, the Police Department is in possession of equipment that is defined as “military equipment.” Included in the inventory list is:

- Equipment Description
- Capabilities
- Quantity
- Expected Lifespan
- Purpose
- Authorized Use
- Fiscal Impact
- Training
- Legal and Procedural Rules
- Miscellaneous Information

Therefore, for the department to continue to use the equipment, the City Council must renew approval of the policy and renew Chapter 4-42 “Military Equipment Funding, Acquisition and Use Policy”.

Fiscal Impacts

There is no new fiscal impact as a result of this policy. As provided in this policy, with the exception of replenishment items outlined in Policy Section 707.5.1, each request for a new purchase and use of a defined piece of military equipment will be brought before the City Council for review and approval.

PREPARED BY: Luis Torres, Assistant Police Chief

ATTACHMENT

- Attachment A: Military Equipment, Funding, Acquisition and Use Policy Ordinance
- Attachment B: Military Equipment, Funding, Acquisition and Use Policy 707
- Attachment C: Military Equipment Inventory List
- Attachment D: Presentation - California Assembly Bill 481: Military Equipment Funding, Acquisition, and Use Policy Annual Update