



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: March 1, 2022

TO: Honorable Mayor and Members of the City Council

FROM: Jovan Grogan, City Manager

PREPARED BY: Ryan Johansen, Police Chief

SUBJECT: Waive First Reading and Introduce Ordinance (Chapter 2.52) Regarding Police Department Acquisition and Use of Military Equipment; Approve Military Equipment Use Policy

BACKGROUND:

On September 30, 2021, California Assembly Bill 481 (AB 481) was signed into law. Subsequently, California Government Code Sections 7070, 7071, and 7072 were adopted to codify the requirements set forth in AB 481. The text of AB 481 and the above-mentioned California Government Codes are attached to this Staff Report for reference.

AB 481 requires a law enforcement agency to obtain the approval of its governing body, through the adoption of a Military Equipment Use Policy, by ordinance at a regular meeting held pursuant to specified open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment, as defined. The bill allows the governing body to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it determines that the military equipment meets specified standards. AB 481 requires the governing body to annually review the ordinance and to either disapprove a renewal of the authorization for a type of military equipment or amend the military equipment use policy if it determines, based on an Annual Military Equipment Report prepared by the law enforcement agency, that the military equipment does not comply with the above-described standards for approval.

California Government Code Section 7070 provides a list of types of equipment that are to be considered "Military Equipment" for purposes of compliance with AB 481 and the Government Code. While the San Bruno Police Department does not possess any tactical equipment that it has obtained from the military, nor does it possess any equipment that was designed for military use, it does possess some types of equipment that are listed in Section 7070. Additionally, the San Bruno Police Department participates in a regional S.W.A.T. team, which possesses and utilizes additional types of equipment that qualify as "Military Equipment" according to the Government Code.

In order to comply with AB 481 and the California Government Code, Staff is recommending that the City Council review and introduce a new ordinance, to be included in Title 2, Chapter 2.52, Military Equipment Use Ordinance. A summary of the sections of the proposed ordinance is provided below. Staff also recommends that the City Council approve by motion the attached Military Equipment Use Policy after determining that it is in compliance with state law and the attached ordinance.

DISCUSSION OF PROPOSED MILITARY EQUIPMENT USE ORDINANCE

Sections:

2.52.010 Name of Ordinance

2.52.020 Definitions

2.52.030 Military Equipment Use Policy Requirement

2.52.040 Use In Exigent Circumstances

2.52.050 Reports on the Use of Military Equipment

2.52.060 Severability

Section 2.52.010 Name of Ordinance

Staff proposes an ordinance name that is consistent with the verbiage of AB 481 and the applicable California Government Codes.

Section 2.52.020 Definitions

Where applicable Staff proposes use of the definitions that are provided in California Government Code Section 7070. This is especially important as it applies to the definition of "Military Equipment" and the definition of "Military Equipment Use Policy".

Section 2.52.030 Military Equipment Use Policy Requirement

This Section establishes the requirement that the Police Department obtain City Council approval of a Military Equipment Use Policy, prior to engaging in certain activities pertaining to Military Equipment, in accordance with California Government Code Section 7071. This Section further establishes the requirement that the Police Department commence a process of securing City Council approval of the continued use of Military Equipment acquired prior to January 1, 2022, no later than May 1, 2022. Wherever applicable, Staff has recommended language taken directly from California Government Code Section 7071 for this Chapter, in an effort to ensure compliance with the law.

Section 2.52.040 Use In Exigent Circumstances

Given the inherently unpredictable nature of providing for public safety, it is critically important that the Police Department maintain the ability to acquire and utilize equipment that could prove essential to emergency operations, even if that equipment has not previously been included in the approved Military Equipment Use Policy. In exigent circumstances, it is not feasible to convene City Council meetings to seek advance approval for the use of equipment that is needed to carry out critical operations. Staff recommends inclusion of this Section to establish the parameters for use of Military Equipment that is not included in the approved Military Equipment Use Policy, in such exigent circumstances.

Staff has recommended a relatively restrictive definition of exigent circumstances to ensure that this section is used only sparingly to facilitate the acquisition and/or use of Military Equipment that is not in the approved Military Equipment Use Policy. Exigent Circumstances is defined as, "...a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person is occurring, has occurred, or is about to occur."

Staff also recommends language in this Section that requires the Police Department to formally notify the City Council within thirty (30) days of acquiring and/or using Military Equipment pursuant to this Section, as well as to include any such occurrence in the Annual Military Equipment Report.

Section 2.52.050 Reports on the Use of Military Equipment

This Section establishes the requirement that the Police Department provide the City Council with an Annual Military Equipment Report, and that this report be made publicly available on the Police Department's public website. This Section also stipulates what information must be included in the Annual Military Equipment Report and establishes the requirement that the Police Department hold at least one well-publicized community engagement meeting to provide the public with the opportunity to discuss its contents. All of this is required pursuant to California Government Code Section 7072.

Where applicable, Staff has recommended language for this Section that is taken directly from California Government Code Section 7072, in an effort to ensure compliance with the law.

Section 2.52.060 Severability

Staff proposes standard severability language to protect the integrity of remaining Sections of this Chapter in the event that one or more sections are deemed to be invalid and/or unconstitutional.

DISCUSSION OF PROPOSED MILITARY EQUIPMENT USE POLICY

California Government Code Section 7070(d) defines a Military Equipment Use Policy as:

"Military equipment use policy" means a publicly released, written document governing the use of military equipment by a law enforcement agency or a state agency that addresses, at a minimum, all of the following:

1. A description of each type of military equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the military equipment.
2. The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of military equipment.
3. The fiscal impact of each type of military equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.
4. The legal and procedural rules that govern each authorized use.
5. The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of military equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the military equipment use policy.
6. The mechanisms to ensure compliance with the military equipment use policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.
7. For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of military equipment, and how the law enforcement agency will ensure that each complaint, concern, or

question receives a response in a timely manner.

California Government Code Section 7071(b) requires that the Police Department post to its website the Military Equipment Use Policy that it plans to propose to the City Council at least 30 days prior to any public hearing concerning the policy. The Police Department complied with this requirement by posting the policy being proposed tonight, to its public website, on January 26, 2022.

California Government Code Section 7071(d) stipulates that the City Council shall only approve the Military Equipment Use Policy if it determines all of the following:

1. The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
2. The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
3. If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
4. Prior military equipment use complied with the military equipment use policy 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.

California Government Code Section 7070(e) establishes that the Police Department is responsible for delivering to the City Council an Annual Military Equipment Report, which the City Council can utilize to confirm compliance with the Military Equipment Use Policy and the accompanying Military Equipment Use Ordinance (Chapter 2.52).

The San Bruno Police Department has not obtained any equipment from military surplus programs, known as 1033 Programs, it does not possess any tactical equipment that it has obtained from the military, and it does not possess any equipment that was designed for military use.

That said, California Government Code Section 7070 provides a list of sixteen (16) types of equipment that are to be considered "Military Equipment" for the purpose of compliance with AB 481 and the associated California Government Codes, and the Police Department does possess and use some of these listed types of equipment. Of the sixteen (16) types of equipment specified, the Police Department possesses only four (4) types. The list of the sixteen (16) types of Military Equipment per California Government Code Section 7070 is included below. Equipment types that the Police Department possesses are noted in bold type.

- 1. Unmanned, remotely piloted, powered aerial or ground vehicles.**
 - a) The Police Department possesses three (3) unmanned, remotely piloted aircrafts (drones). UAS/Drones may be utilized to enhance the Department's mission of protecting lives and property when other means and resources are not available or are less effective. Uses may include but are not limited to: search and rescue; suspect apprehension; crime scene documentation; tactical operations; scene security; hazard monitoring, identification and mitigation; response to emergency calls; crisis communications; legally authorized surveillance. This equipment is necessary because**

there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

2. Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.

3. High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.

4. Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.

5. Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.

a) The Police Department possesses a Mobile Command Vehicle (MCV). This vehicle is not armored or weaponized in any way and is used to facilitate unified command during critical and planned incidents. This equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

6. Weaponized aircraft, vessels, or vehicles of any kind.

7. Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.

8. Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.

9. Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.

10. Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.

a) The Police Department possesses 53 semi-automatic rifles. Fifty-two (52) of these rifles are standard-issue duty weapons for all Peace Officers, which actually exempts them from this policy per California Government Code Section 7070(c)(10). We have nonetheless included them in this policy in the interests of full transparency. The remaining rifle is issued to our SWAT Sniper, a position that is presently vacant. Officers may deploy the patrol rifle in any circumstance where the officer can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include but are not limited to: Situations where the officer reasonably anticipates an armed encounter; When an officer is faced with a situation that may require accurate and effective fire at long range; Situations where an officer reasonably expects the need to meet or exceed a suspect's firepower; When an officer reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage; When an officer reasonably believes that a suspect may be wearing body armor; When authorized or requested by a supervisor. This

equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

11. Any firearm or firearm accessory that is designed to launch explosive projectiles.

12. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.

13. Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).

14. The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.

a) The Police Department possesses sixteen (16) 40mm less lethal projectile launchers. The 40mm Less Lethal Launchers and Kinetic Energy Munitions are intended for use as a less lethal use of force option. This equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

15. Any other equipment as determined by a governing body or a state agency to require additional oversight.

16. Notwithstanding paragraphs (1) through (15), "Military Equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.

Additionally, the San Bruno Police Department participates in a regional Special Weapons and Tactics (SWAT) team (NCR SWAT), which possesses and utilizes additional types of equipment that qualify as "Military Equipment" according to California Government Code Section 7070. While the equipment possessed by NCR SWAT is not purchased, owned, or maintained by the Police Department, it could be used in the City of San Bruno if NCR SWAT is deployed, and is therefore included in the proposed Military Equipment Use Policy. It is important to note that NCR SWAT is generally only deployed in extreme circumstances such as active shooter incidents, hostage situations, and the execution of high-risk search and arrest warrants. The equipment NCR SWAT possesses is rarely deployed but could prove essential to emergency operations when needed.

The list of the sixteen (16) types of Military Equipment per California Government Code Section 7070 is included below. Equipment types that the NCR SWAT Team possesses are noted in bold type.

1. Unmanned, remotely piloted, powered aerial or ground vehicles.

2. Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.

3. High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a

breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.

4. Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.

5. Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.

6. Weaponized aircraft, vessels, or vehicles of any kind.

7. Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.

8. Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.

9. Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.

10. Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.

11. Any firearm or firearm accessory that is designed to launch explosive projectiles.

12. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.

13. Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).

14. The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.

15. Any other equipment as determined by a governing body or a state agency to require additional oversight.

16. Notwithstanding paragraphs (1) through (15), "Military Equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.

The Military Equipment Use Policy being proposed by Staff includes detailed information for each type of Military Equipment listed, as required by California Government Code Section 7070. This information includes the equipment's capabilities, its purpose/authorized uses, the legal/procedural rules governing its use, and the training required of Staff prior to its use.

Pursuant to California Government Code §7070(d)(7), the proposed Military Equipment Use

Policy also provides the avenues through which members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment in the policy.

These means include:

1. Via email to: militaryequipment@sanbruno.ca.gov
2. Via phone call to: (650) 616-7100
3. Via mail sent to:
San Bruno Police Department
Attn: Military Equipment Use Coordinator
1177 Huntington Avenue
San Bruno, CA 94066

Staff has drafted the attached Military Equipment Use Policy, as required by law, for City Council to consider adopting by motion.

FISCAL IMPACT: There is no fiscal impact.

ENVIRONMENTAL IMPACT:

The action is not a project subject to CEQA. City Council's action is not considered a "Project" per CEQA Guidelines and therefore no further environmental analysis is required.

RECOMMENDATION:

Waive First Reading and Introduce Ordinance (Chapter 2.52) Regarding Police Department Acquisition and Use of Military Equipment; Approve Military Equipment Use Policy

ALTERNATIVES:

Request additional information before introducing the Ordinance and/or adopting the Policy.

ATTACHMENTS:

1. Proposed City Ordinance Chapter 2.52
2. Text of California Assembly Bill 481 (AB 481)
3. Text of California Government Code Section 7070
4. Text of California Government Code Section 7071
5. Text of California Government Code Section 7072
6. Proposed Military Equipment Use Policy

