



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

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**DATE:** April 26, 2022

**To:** Honorable Mayor and Councilmembers

**FROM:** Ryan Johansen, Chief of Police

**SUBJECT:** Waive Second Reading and Adopt Ordinance (Chapter 2.52) Regarding Police Department Acquisition and Use of Military Equipment

### 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 a Special Meeting on March 1, 2022, City Council approved the Military Equipment Use Policy by motion, and also waived the first reading and introduced the new Ordinance (Chapter 2.52) Regarding Police Department Acquisition and Use of Military Equipment. In that same Special Meeting, City Council requested that Staff make efforts to publicize that the approved Military Equipment Use Policy was available for review on the Police Department's website, prior to the subsequent adoption meeting. This was accomplished through publicizing at several public meetings, as well as promotion in the City Manager's Newsletter.

In order to comply with AB 481 and the California Government Code, Staff is recommending that the City Council now waive the second reading and adopt the 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.

## **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.

## **FISCAL IMPACT**

None.

## **RECOMMENDATION**

Staff recommends that City Council waive second reading and adopt Ordinance (Chapter 2.52) regarding Police Department acquisition and use of Military Equipment in accordance with state law.

## **ALTERNATIVES**

1. Request additional information before adopting the Ordinance.

## **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. Approved Military Equipment Use Policy