



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: November 19, 2024

TO: Adam Politzer, Interim City Manager

FROM: John Kennedy, City Attorney
Jeff Jennings, Chief of Police

SUBJECT: Resolution Of The City Council Of The City Of Emeryville Approving And Accepting The Emeryville Police Department's 2024 Annual Military Equipment Use Report Pursuant To Government Code Section 7071 And Renewing City Of Emeryville Ordinance No. 22-006 "Approving Emeryville Police Department Policy Manual Policy 707-Military Equipment"

RECOMMENDATION

Staff recommends that the City Council approve and adopt the attached resolution Approving and Accepting the Police Department's 2024 Annual Military Equipment Report Pursuant to Government Code Section 7071 and Renewing Ordinance No. 22-006 "Approving Emeryville Police Department Policy Manual Policy 707-Military Equipment."

BACKGROUND

Effective January 1, 2022, Assembly Bill 481 (codified in Government Code Section 7070 et seq.) requires legislative bodies to adopt ordinances approving military equipment policies before law enforcement agencies can continue to engage in specified activities related to the use of what the state legislature has defined as "military equipment" in Government Code Section 7070. The Emeryville Police Department Military Equipment Policy was introduced and first read on July 19, 2022, and passed and adopted by the City Council by Ordinance No. 22-006, on September 6, 2022.

Government Code Section 7071(e)(1) states that the City Council shall review any ordinance that it has adopted pursuant to this section approving the funding, acquisition, or use of military equipment at least annually and, subject to paragraph (e)(2), to vote on whether to renew the ordinance at a regular meeting.

Paragraph (e)(2) of Government Code Section 7071 states that the City Council shall determine, based on an annual report, whether each type of military equipment identified in that report has complied with the standards for approval set forth in subdivision (d) of Section 7071, which reads as follows:

- (A) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

- (B) The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
- (C) 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.
- (D) 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.

If the City Council determines that a type of military equipment identified in its annual military equipment report has not complied with the standards for approval set forth above, the City Council shall either disapprove a renewal of the authorization for that type of military equipment or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance.

To facilitate the orderly annual ordinance review referenced above, Government Code Section 7072 requires that any law enforcement agency that receives approval for a military equipment use policy pursuant to Section 7071 shall submit to the City Council 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 shall also 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 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.

A copy of the Emeryville Police Department's 2024 Annual Report is attached hereto as Exhibit A.

DISCUSSION

As noted above, Government Code section 7071 requires law enforcement agencies to obtain the approval of the City Council, by adoption by ordinance of a Military Equipment Use Policy, prior to taking certain actions relating to the funding, acquisition, or use of military equipment.

Since the first reading on July 19, 2022, and the final adoption on September 6, 2022, the police department has not acquired any equipment that qualifies as military equipment as defined in AB 481.

The City Council considered and adopted Ordinance No. 22-006 “Approving Emeryville Police Department Policy Manual Policy 707- Military Equipment” on July 19, 2022. During the July 19 meeting, at which Ordinance No. 2022-131 was introduced, the Council took comments from the public and discussed the ordinance and involved policy.

The Annual Report will be posted on the City’s website after City Council approval of the associated resolution. Policy 707 has been continuously posted on the City website since adoption.

The Annual Report is meant to provide yearly information about each type of military equipment that was approved by Council. In Emeryville, the only military equipment possessed by the Police Department is forty-one (41) semi-automatic rifles. The Report contains a summary of how equipment was used, any complaints or concerns received about the equipment, and any associated costs related to the equipment’s use. For this reporting period, no new military equipment was purchased, the equipment was only utilized for minimal and/or training purposes, and all costs were contained within budget appropriations. The Report does not seek approval of future acquisitions.

Since there have been no changes in the types or use of military equipment held by the Police Department in the past year, all the findings made by the Council in support of the adoption of Policy 707 in 2022 should remain unchanged. As such, staff recommends that both the Annual Report and Ordinance and Policy 707 be renewed for another year by way of a resolution finding that the Annual Report has been prepared in accordance with legal requirements and that there have been no changes to the policy, and no immediate plans to acquire any additional military equipment. The adoption of a new ordinance is not needed at this time.

RECOMMENDATION

It is recommended that the City Council consider and adopt the attached Resolution, approving and accepting the Emeryville Police Department’s Annual Military Equipment Report Pursuant to Government Code Section 7071 and Renewing City of Emeryville

Ordinance No. 22-006 “Approving Emeryville Police Department Policy Manual Policy 707-Military Equipment.”

PREPARED BY: John Kennedy, City Attorney
Jeff Jennings, Chief of Police

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Adam Politzer, Interim City Manager

ATTACHMENTS

- (1) Resolution Adopting Emeryville Police Department Annual Report and Renewing Ordinance Approving Policy 707: Military Equipment
- (2) Exhibit A – Police Department 2024 Annual Report Inventory List