



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: April 19, 2022
TO: Christine Daniel, City Manager
FROM: Christie Crawl, Special Counsel
Oliver Collins, Acting Chief of Police

SUBJECT: An Ordinance of the City Council of the City of Emeryville Adopting Emeryville Police Department Policy No. 707: Military Equipment

RECOMMENDATION

Staff recommends that the City Council waive first reading and introduce by title only the attached Ordinance Adopting Emeryville Police Department Policy No. 707: Military Equipment.

BACKGROUND

On September 30, 2021, the Governor signed California Assembly Bill 481 (AB 481) into law. AB 481 adds new Sections 7070 et seq. to the Government Code requiring law enforcement agencies to obtain the approval of their governing bodies, through the adoption by ordinance of a Military Equipment Use Policy, prior to taking certain actions relating to the funding, acquisition, or use of military equipment. The new provisions require the Council 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 further requires the Council to review the ordinance on an annual basis 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 Police Department, that the military equipment does not comply with established standards for approval.

New California Government Code Section 7070 provides a list the of types of equipment that are to be considered "Military Equipment" for purposes of compliance with AB 481. The Emeryville Police Department had one item that qualified as "Military Equipment", which it is physically transferring to a vendor while the Department completes the necessary documentation to legally relinquish possession of the equipment. The Department does not currently possess any other equipment that meets the definition of Military Equipment in Section 7070, nor has it obtained or does it utilize any equipment procured from the United States Department of Defense through the Law Enforcement Support Program known as the 1028 or 1033 program. However, the Emeryville Police Department collaborates with other law enforcement agencies and departments that possess and utilize equipment that qualifies as Military Equipment, and AB 481 requires the City to adopt a Military Equipment Use Policy in order to continue doing so.

DISCUSSION

As noted above, AB 481 requires law enforcement agencies to obtain the approval of their governing bodies, 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.

Again, other than the equipment the Department is in the process of relinquishing, the Emeryville Police Department does not currently possess any other Military Equipment as defined in AB 481, so many of the new law's requirements are not applicable at this time. Moreover, the Emeryville Police Department has not obtained and does not utilize any equipment from military surplus programs, other tactical equipment from the military; or any equipment that was designed specifically for military use, including any equipment listed in the 16 categories set forth in Government Code Section 7070.

However, the Emeryville Police Department receives mutual aid from and collaborates with the Alameda County Sheriff Office and other agencies within the mutual aid Operational Area, so the City is still required to adopt its own Military Equipment Use Policy under Government Code section 7071(a)(1)(D). Military equipment used by these Departments in providing mutual aid to the City shall comply with their respective military equipment use policies.

Like many other police departments in the State of California and throughout the United States, the Emeryville Police Department utilizes the services of Lexipol LLC for the preparation of its policy manuals, training bulletins and consulting services. Such services are provided on a subscription basis. Lexipol has provided its member entities with a "Policy-Military Equipment" that is in compliance with the provisions of AB 481 (the "Policy.") The Emeryville Police Department has reviewed the Policy and believes it should be accepted and approved. Staff is now recommending that the City Council review and introduce an ordinance approving the Policy. Use of an ordinance for policy adoption, as opposed to a resolution, is mandated by AB 481 as a means of creating a better public forum to discuss the acquisition and use of military equipment.

A. General AB 481 Requirements

At a minimum, , AB 481 requires the Policy to include the following:

1. Each type of military equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions;
2. The purpose and authorized uses for which the law enforcement agency proposes to use each type of military equipment;
3. The fiscal impact of each type of military equipment, including initial acquisition and maintenance costs;
4. The legal and procedural rules that govern each authorized use;
5. The training that must be completed before each type of military equipment can be used in order to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties;

6. The means to ensure compliance with the military equipment use policy; and
7. The procedures by which members of the public may register complaints or concerns or submit questions about the use of specific types of military equipment, and how such complaints and questions will be responded to and/or answered.

Further, California Government Code Section 7071(b) requires that the Emeryville Police Department post its proposed Military Equipment Use Policy to its website at least 30 days prior to any public hearing before the City Council concerning the policy. The Emeryville Police Department does not maintain its own website, but the Policy has been accessible since January on the “Police” page of the City’s website at: <https://www.ci.emeryville.ca.us/ArchiveCenter/ViewFile/Item/5064>.

And pursuant to California Government Code Section 7070(d)(7), the proposed Military Equipment Use Policy also indicates that the Chief of Police will choose a Military Equipment Use Coordinator who will establish procedures through which members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment covered by the policy. As required, the Chief has designated a Military Equipment Use Coordinator within the Police Department. Pursuant to the Policy, the Military Equipment Use Coordinator has posted complaint procedures on the City’s website.

B. Policy Approval

California Government Code Section 7071(d) stipulates that the City Council shall only approve the 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.

Once the Policy has been adopted, California Government Code Section 7070(e) states that the Emeryville Police Department is responsible for delivering to the City Council an

Annual Military Equipment Report, which the City Council can use to confirm compliance with the Military Equipment Use Policy.

RECOMMENDATION

AB 481 requires that law enforcement agencies seeking to continue the use of any Military Equipment must commence the approval process for the Policy by May 1, 2022. Staff recommends complying with this deadline given the City receives mutual aid from and collaborates with other police departments as needed. Thus, staff recommends waiving the first reading of and introducing the ordinance attached hereto as Exhibit A, adopting Emeryville Police Department Policy 707: Military Equipment. Second reading and formal adoption of the ordinance will not be scheduled until relinquishment of the equipment noted above is complete.

PREPARED BY: Christie Crawl, Special Counsel; Oliver Collins, Acting Chief of Police

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



Christine Daniel, City Manager

ATTACHMENTS

- Attachment A – Draft Ordinance Adopting Emeryville Police Department Policy 707: Military Equipment