



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: September 6, 2022
TO: Adam Politzer, Interim City Manager
FROM: Christie Crowl, Special Counsel
Jeff Jennings, 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 approve the second reading and adoption of the attached Ordinance Adopting Emeryville Police Department Policy No. 707: Military Equipment, with the minor changes included in the Background section of this staff report.

BACKGROUND

On April 19, 2022, the City Council considered the first reading of an Ordinance Adopting Emeryville Police Department Policy No. 707: Military Equipment (the "Ordinance"). At that meeting, the City Council received a staff report and presentation on AB 481, which generally requires law enforcement agencies to obtain the approval of their governing bodies, through adoption of a Military Equipment Use Policy, prior to taking certain actions relating to the funding, acquisition, or use of military equipment (as such equipment is defined in the statute). Additional background information regarding AB 481 and the draft Ordinance can be found in the staff report for the April 19, 2022, meeting, attached hereto as **Attachment A**. The draft Ordinance is attached, and Police Department Policy No. 707 is attached as **Exhibit A** to the draft Ordinance.

In the staff report and presentation for the April 19, 2022, meeting, staff indicated that the City was in the process of relinquishing ownership and possession of two 40 mm launchers and would not bring the Ordinance back for second reading and adoption until that process was complete. The City has completed the process of formally relinquishing ownership and possession of those launchers.

Finally, in the presentation for the April 19, 2022, meeting, the City Attorney's Office recommended minor clarifying, non-substantive changes to the portion of the draft Ordinance containing Policy 707, as follows¹:

Section 707.6 – clarify the end of the last sentence so that the text reads: "707.6 COORDINATION WITH OTHER JURISDICTIONS. Military equipment should not

¹ The City Attorney's Office also recommended clarifying Section 707.4 to indicate that no military equipment inventory attachment was needed since the Department did not possess qualifying equipment. As indicated in the Discussion section of this staff report, the updated ordinance now includes an inventory, and this recommendation is no longer applicable.

be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with ~~this policy~~ **Government Code sections 7070 and 7071.**"

DISCUSSION

Following public comment on the draft Ordinance, the Council continued the item and directed staff to bring back answers to three questions:

1. Does Alameda County's draft AB 481 ordinance comply with AB 48, which generally prohibits use of certain kinetic energy projectiles and chemical agents unless certain protocols are followed?

Yes, the County's draft AB 481 ordinance (which was considered by the Board of Supervisors on April 26, 2022, and referred to the County's Public Protection Committee for further review), complies with AB 48.

This question arose at the City Council meeting because a public commenter indicated that it was her opinion that Alameda County's draft AB 481 ordinance did not comply with AB 48. Since Emeryville Police Department may collaborate with the Alameda County Sheriff in circumstances where additional aid is needed, the City Council directed staff to look into this issue.

AB 48 generally prohibits use of kinetic energy projectiles and chemical agents by law enforcement for crowd control purposes unless officers have received specific POST training, certain circumstances exist (e.g., there is a threat to life or serious bodily injury), and certain protocols are followed (e.g., de-escalation techniques are employed first, people are given time to leave the scene, medical assistance is provided when the scene is safe, etc.). AB 48 also requires law enforcement agencies to report and summarize instances where officers deploy kinetic energy projectiles or chemical agents.

Alameda County's draft AB 481 ordinance does not contain any provisions that are inconsistent with AB 48. Alameda County's draft AB 481 ordinance includes a number of chemical agents and describes their uses but does not indicate that the County and/or the Sheriff's Department will not otherwise comply with the training, deployment, or protocol requirements of AB 48.

2. Have surrounding agencies included standard-issue AR-15s in their AB 481 ordinances?

In the three months since this item was previously before the City Council, most cities in Alameda County have now completed their AB481 process. Most surrounding agencies decided to include AR-15s in their AB 481 ordinances (e.g. Alameda County, City of Alameda, City of Oakland all include these types of rifles). All of these surrounding agencies had to create inventories for many other items

referenced in the legislation and included their standard issue, authorized rifles on the inventory as well.

Given that neighboring agencies have included their standard issue, authorized AR-15 style rifles on their inventories, staff recommends that, for regional consistency, Emeryville's ordinance also include these rifles. Accordingly, staff has updated the draft ordinance and policy to include an inventory of the City's authorized AR-15 style rifles. While their inclusion on the inventory is not legally required because they are the Department's authorized weapons, their inclusion promotes the spirit and intent of AB 481's transparency requirements. These rifles are the only item(s) of military equipment on the City's inventory, which is attached to this staff report as **Exhibit B** to the draft Ordinance.

3. Please describe the training required for the City's standard-issue AR-15s and their intended use/purpose.

The updated draft Ordinance includes the attached inventory of the City's authorized AR-15 style rifles and the accompanying information required by AB 481, including the intended use and purpose of these rifles.

Generally, the AR-15 platform style rifle is considered a "short barrel rifle," and California Peace Officer Standards and Training ("POST") sets the minimum standards for mandated courses, and short barrel rifle training is part of the mandated training requirements. (See Penal Code section 33220(b).) POST has two-year training cycles for all law enforcement agencies in the state, and all officers are required to receive firearms training for all firearms carried on duty every two years. The POST minimum training requirement for firearms is four hours during each two-year cycle. This training requirement includes both pistols and rifles (i.e. AR-15s). Prior to carrying a rifle on duty, officers must attend and pass a one-time minimum of 16 hours of a POST-approved firearms/tactical rifle training course. Thereafter, officers recertify every two years as noted above.

In addition, EPD staff must test or "qualify" with their duty firearms twice per year. (See EPD Policy 305.6.) All but one officer at EPD has been through the POST-certified 16-hour firearms/tactical rifle training course and met the required standards. Firearms/tactical training courses were not available due to COVID-19; however, classes have resumed and the officer is scheduled to attend.

EPD currently deploys 35² AR-15 patrol rifles. This weapon is used as a precision weapon when sworn personnel reasonably anticipate an armed encounter to address threats that may be protected by body armor or where the distance prevents a handgun from proficiently or effectively addressing the threat.

² This figure includes 9 rifles personally owned by officers but authorized for use in the course of duty. (See Policy 305.3.3 for rules upon separation of duty.)

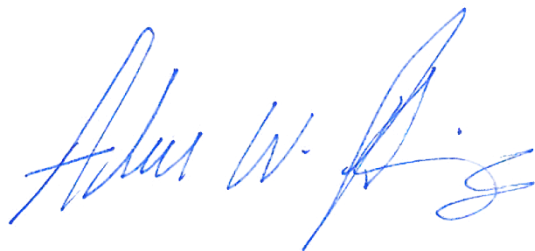
Emeryville Police Department policies “300-Use of Force” and “305-Firearms” further describe authorized use of the rifle and are included in the City’s Police Department Policy Manual (see Exhibit A to the draft Ordinance).

CONCLUSION

Staff recommends waiving the first reading of and introducing the ordinance attached hereto, and adopting Emeryville Police Department Policy 707: Military Equipment with the changes proposed in the Background section of this staff report.

PREPARED BY: Christie Cowl, Special Counsel; Jeff Jennings, Chief of Police

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



Adam Politzer, Interim City Manager

ATTACHMENTS

- Attachment A: City Council staff report from April 19, 2022
- Draft Ordinance Adopting Emeryville Police Department Policy 707: Military Equipment
 - Exhibit A: Emeryville Police Department Policy Manual (see Policy 707)
 - Exhibit B: AB 481 Military Equipment Inventory (Attachment to Policy 707.4)