

ORDINANCE NUMBER ____ (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA
APPROVING A MILITARY EQUIPMENT USE POLICY IN COMPLIANCE
WITH ASSEMBLY BILL 481

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill (AB) 481, codified in California Government Code sections 7070 *et seq.*, relating to the use of military equipment by California law enforcement agencies; and

WHEREAS, AB 481 seeks to provide transparency, oversight, and an opportunity for meaningful public input on decisions regarding whether and how military equipment is funded, acquired, or used; and

WHEREAS, AB 481 requires that a law enforcement agency possessing and using such qualifying equipment prepare a publicly released, written, military equipment use policy document covering the inventory, description, purpose, use, acquisition, maintenance, fiscal impacts, procedures, training, oversight, and complaint process, applicable to the law enforcement agency's use of such equipment; and

WHEREAS, AB 481 requires that the military equipment use policy be approved by the governing body by ordinance and reviewed annually; and

WHEREAS, AB 481 provides that in order for a law enforcement agency to continue to use any military equipment acquired prior to January 1 2021, the governing body must commence the approval process of a military equipment use policy prior to May 1, 2022 and approve such a policy within 180 days of its submission to the governing body; and

WHEREAS, the Santa Monica Police Department is in possession of certain items of equipment that qualify as “military equipment” as defined by AB 481; and

WHEREAS, Government Code Section 7071(b) requires that the Santa Monica 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; and

WHEREAS, on March 25, 2022, the Santa Monica Police Department posted its draft Military Equipment Use Policy to its public website, thereby complying with the 30-day posting requirement prior to a public hearing before City Council on April 26, 2022; and

WHEREAS, the City Council of the City of Santa Monica, having received the information required under AB 481 regarding the Santa Monica Police Department’s use of military equipment as defined by that law, deems it to be in the best interest of the City to approve the Military Equipment Policy as set forth herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. DEFINITIONS. As used in this Ordinance, the following terms have the following meanings.

- (A) “Governing body” means the means the elected body that oversees the Police Department, which, here, is City Council of the City of Santa Monica.
- (B) “Military equipment” has the same meaning as that term is defined by Government Code section 7070(c) and includes all of the following:
- (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.
- (C) “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.

- (D) "Police Department" means any division, section, bureau, employee, volunteer or contractor of the Santa Monica Police Department.
- (E) "Policy 707" means the Police Department's Policy 707 Military Equipment, attached hereto as Exhibit 1.
- (F) "Type" means each item that shares the same manufacturer model number.

SECTION 2. DETERMINATIONS; FINDINGS

- (A) Policy 707 satisfies the requirements of a military equipment use policy, as defined in Section 1(C) above and Government Code section 7070(d).

- (B) Having considered Policy 707 and the information provided to the City Council at the public hearing, the City Council makes the following determinations required by Government Code 7071(d)(1):
- (1) The military equipment inventoried and presented to City Council through Policy 707 is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
 - (2) Policy 707 will safeguard the public's welfare, safety, civil rights, and civil liberties.
 - (3) The military 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.

SECTION 3. APPROVAL; REVIEW

- (A) The City Council approves Policy 707.
- (B) Policy 707 shall remain publicly available on the Police Department's website for as long as the military equipment is available for use.

- (C) The City Council shall review this Ordinance, and vote on whether to renew it, on an annual basis at a regular meeting, in accordance with Government Code section 7071.

SECTION 4. ANNUAL REPORTS ON THE USE OF MILITARY EQUIPMENT

- (A) The Police Department shall submit a military equipment report to the City Council on an annual basis, containing the information required by and in accordance with Government Code Section 7072.
- (B) The Police Department shall make each annual military equipment report required by this section available to the Public Safety Reform and Oversight Commission and publicly available on its internet website for as long as the military equipment is available for use.
- (C) Within 30 days of submitting and publicly releasing an annual military equipment report pursuant to this section, the Police Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the Police Department's funding, acquisition, or use of military equipment.
- (D) The City Council shall determine, based on the annual military equipment report submitted pursuant to this section, whether each type of military equipment identified in that report has complied with the standards for approval set forth in Section 2(B) above and Government Code section 7071(d). If the City Council determines that a type of military equipment identified in the annual military equipment report has not complied with the

standards for approval set forth in Section 2(B) above and Government Code section 7071(d), the City Council shall either disapprove a renewal of the authorization for that type of military equipment or require modifications to Policy 707 in a manner that will resolve the lack of compliance.

SECTION 5. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

Susan Y. Cola
Interim City Attorney