



File #: 23-0438, Version: 1

REPORT TO COUNCIL

SUBJECT

Public Safety Military Equipment Use Annual Report Pursuant to California Assembly Bill No. 481

BACKGROUND

On September 30, 2021, Governor Gavin Newsom signed into law California Assembly Bill No. 481 (AB 481), relating to the acquisition and use of military equipment by law enforcement agencies. AB 481 requires law enforcement agencies to obtain approval from the agency's governing body, in the form of an ordinance adopting a publicly released policy, prior to funding, acquiring, or using any military equipment. The term "military equipment" is broadly defined in the law (California Government Code section 7070) and includes various pieces of equipment that were already used by the Department of Public Safety (DPS) staff such as drones, the command vehicle, battering rams, tear gas, pepper balls, armored personnel carrier, and flash bangs. DPS does not possess any equipment acquired from military surplus programs (known as 1033 Programs) designed for military use.

AB 481 required all law enforcement agencies to develop a military use policy approved by its governing body by ordinance by May 1, 2022. At minimum, AB 481 required that the approved policy address the type, quantity, capabilities, purposes, and authorized uses of each type of military equipment; the cost associated with its acquisition and continued use; the legal limitations and procedural rules that govern its use; the training required; the mechanisms in place to ensure policy compliance; and the procedures by which members of the public may file complaints. The City Council was also required to make findings that the equipment was necessary, will safeguard the public's safety, is reasonably cost effective, and that prior uses complied with policy.

In compliance with AB 481, DPS staff brought its proposed policy to Council on April 5, 2022 (RTC No. 22-0354). Ordinance No. 3191-22 was adopted approving the policy and took effect on May 26, 2022.

On November 1, 2023 (RTC No. 22-0991) Ordinance, No. 3191-22 was amended to authorize the purchase and use of a third Unmanned Aerial System (UAS drone) which was added to the existing list of authorized military equipment.

Pursuant to California Government Code Section 7071 (e)(1) and 7071 (e)(2), DPS must now submit annually for City Council consideration its military use policy and report to consider renewing the ordinance and analyzing whether each type of military equipment identified in that report has complied with the standards set forth in Government Code Section 7071(d), to be heard at a regular meeting held pursuant to the Ralph M. Brown Act.

DPS now seeks Council to review and renew the Ordinance, receive the required Annual Report, re-

authorize previously approved equipment, and authorize the purchase of replacement items from the existing list of previously authorized military equipment.

In compliance with Government Code Section 7072(b), DPS is required to hold at least one well-publicized community meeting each year at least 30 days after publishing the annual report in order to receive questions about the report generally, or regarding the funding, acquisition, or use of military equipment. The community meeting has been scheduled for May 10, 2023.

EXISTING POLICY

General Plan Goal SN-3: Ensure a safe and secure environment for people and property in the community by providing effective public safety response and prevention and education services.

General Plan Police SN-3.2: Control conduct recognized as threatening to life and property.

ENVIRONMENTAL REVIEW

The action being considered does not require review under the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that it may have an impact on the environment. (CEQA Guidelines Section 15061(b)(3)).

DISCUSSION

Report

DPS has attached its annual military equipment report to the Report to Council. The report contains all the required information as provided in Government Code Section 7072(a), including 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 regarding the equipment; 3) The results of any internal audits, violations of the policy, and actions taken in response; 4) The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, ongoing costs, and the funding source; 5) Quantities; and 6) Requests for additional equipment. There were no complaints received by DPS this calendar year involving its military equipment, and no findings of any use contrary to policy.

Policy

DPS seeks the City Council's review of Lexipol Policy 705, Military Equipment, which was adopted by Ordinance No 3191-22. The Policy was originally posted on the City website on February 22, 2022. The policy addresses all the required elements as outlined in AB 481, including the type, quantity, capabilities, purposes, and authorized uses of each type of military equipment; the cost associated with its acquisition and continued use; the legal limitations and procedural rules that govern its use; the training required; the mechanisms in place to ensure policy compliance; and the procedures by which members of the public may file complaints.

Additionally, Policy 705 permits DPS to replenish its existing stock once supply levels fall below 30%. This would ensure that DPS can maintain adequate supplies without first returning to Council for authorization.

Policy 705 provides two exceptions to the approved uses of military equipment in the event of exigent circumstances for a mutual aid call. DPS works closely with local, county, state, and federal partners. In exigent circumstances and with the approval of the Chief or his designee, the policy provides that

additional types or additional quantities beyond that which was approved in Policy 705 may be deployed from outside entities to promote the safety and security of community members.

Generally, a response may involve “exigent circumstances” if it involves an extraordinary and emergency situation requiring a swift response to prevent imminent danger to life, serious damage to property, imminent escape of a suspect, or destruction of evidence. If DPS acquires, borrows, or uses military equipment in exigent circumstances, it will provide written notification to the City Council within 30 days following the commencement of such exigent circumstance, unless such information is confidential or privileged under local, state, or federal law. Calls involving mutual aid resources have been noted in the report.

Findings

Government Code Section 7071(e) requires that the City Council annually review its policy adopted by ordinance and vote whether to renew the ordinance at an open and public meeting. The Council must make a finding that the Department has used each type of military equipment identified in the report in compliance with the standards set forth in the policy. If Council finds any military equipment use was not in conformance with the previously approved standards, it shall either disapprove the authorization for that equipment, or require new standards in the policy in order to resolve the lack of compliance. Based on the attached report, the Department believes this finding can be made as there are no documented instances of equipment use that were not within policy.

FISCAL IMPACT

The current inventory of military equipment has been acquired using appropriated operating budget funds and leveraging grant funds whenever possible. DPS does not anticipate acquiring any new military equipment in the upcoming budget cycle, except to restore expended stock to current levels. Non-consumable items are included in the department’s equipment replacement schedule. Other stock items are part of the calculated equipment and supplies funded in the existing operating budget.

PUBLIC CONTACT

Public contact was made by posting the Council meeting agenda on the City's official-notice bulletin board at City Hall, at the Sunnyvale Public Library and in the Department of Public Safety Lobby. In addition, the agenda and this report are available at the NOVA Workforce Services reception desk located on the first floor of City Hall at 456 W. Olive Avenue (during normal business hours), and on the City's website.

ALTERNATIVES

1. Adopt a Resolution Regarding the Presentation of the Annual Public Safety Military Equipment Use Report and Renewing the Military Equipment Use Policy Pursuant to California Assembly Bill No. 481 and Finding the Uses Conformed to Policy and Find that the Action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).
2. Adopt a Resolution Regarding the Presentation of the Annual Public Safety Military Equipment Use Report and Renewing the Military Equipment Use Police Pursuant to California Assembly Bill No. 481 with Modifications and Finding the Uses Conformed to Policy and Find that the Action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

3. Do not Adopt the Resolution and Provide Alternative Direction to Staff.

STAFF RECOMMENDATION

Alternative 1: Adopt a Resolution Regarding the Presentation of the Annual Public Safety Military Equipment Use Report and Renewing the Military Equipment Use Policy Pursuant to California Assembly Bill No. 481 and Finding the Uses Conformed to Policy and Find that the Action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061 (b)(3).

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Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. DPS Annual Military Equipment Report
2. Ordinance No. 3191-22
3. Resolution