



CITY COUNCIL AGENDA REPORT

City of Anaheim POLICE DEPARTMENT

DATE: MAY 24, 2022
FROM: POLICE DEPARTMENT
SUBJECT: ORDINANCE ADOPTING A MILITARY EQUIPMENT USE POLICY FOR THE ANAHEIM POLICE DEPARTMENT, PURSUANT TO ASSEMBLY BILL 481 (SECOND READING)

ATTACHMENT: YES **ITEM # 31**

RECOMMENDATION:

That the City Council, following a public hearing, adopt an Ordinance adopting the Police Department's Military Equipment Use Policy and approving the use, pursuit of funding for, and acquisition of the military equipment described in section 706 of the Police Department's Policy.

DISCUSSION:

Background

On September 30, 2021, the Governor of the State of California approved Assembly Bill 481 (AB 481) requiring law enforcement agencies to obtain approval of the applicable governing body (here, the City Council), by adoption of a military equipment use policy, before acquiring, seeking funding for, continuing to use, or collaborating with another law enforcement agency in the use of defined military equipment. The law's definition of military equipment is broad and includes common police equipment not sourced from the military. The Police Department must obtain City Council approval of its military equipment use policy via an ordinance adopted at a regular open meeting, and the process for obtaining that approval must commence by May 1, 2022. In addition, AB 481 requires that the military equipment policy be posted on the Department's website and distributed to Council at least thirty (30) days prior to the "public hearing" on the ordinance. The policy was posted and distributed to Council on April 18, 2022, and the public hearing will occur at the second reading and adoption of the ordinance on May 24, 2022.

AB 481 allows the governing body to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it determines that the military equipment meets specified standards. The ordinance is subject to an annual City Council review to determine whether, based on an annual military equipment report, the standards set forth in the approving ordinance have been met. The City Council may renew the authorizing ordinance, disapprove authorization for particular

military equipment where standards have not been met, or require modifications to the military equipment use policy to address any non-compliance with standards.

Police Department's Policy & Response

The mission of the Anaheim Police Department is to maintain a safe community to live, work, and play. The Police Department remains transparent by providing awareness and understanding of police practices, values public input, and welcomes open dialogue about its practices and operations. The Police Department understands the acquisition and deployment of equipment deemed military equipment may impact the public's safety and welfare. The Police Department responds to a wide variety of critical incidents, instances of civil unrest, and life and death situations, and operates in unpredictable and dynamic environments. A variety of equipment options are needed for an effective and safe resolution to those situations. The Police Department's catalog of military equipment and associated training gives its officers the capability to de-escalate volatile situations, protect the community and officers from harm, and bring critical incidents to a safe resolution.

The Anaheim Police Department works closely with local, county, state, and federal partners. In exigent circumstances, military equipment may be deployed from outside entities to promote the safety and security of the community. If the Police Department acquires, borrows, or uses military equipment in exigent circumstances, it will provide written notification of the acquisition or use 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.

In accordance with AB 481, codified in California Government Code Sections 7070 – 7075, the Police Department has created a Military Equipment Use Policy (Section 706) (Attachment 1 hereto). Per the statute, "military equipment use policy" means a publicly released, written document governing the use of military equipment by the Department 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 Department 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 sworn member 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. 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.

Pursuant to AB 481, the Department 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 Department 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 immediate previous calendar 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, consistent with state law employee privacy restrictions.
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 Department intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

The Police Department presented an inventory of its military equipment to the Anaheim Police Review Board on March 27, 2022. The meeting was open to the public. During the presentation, members of the Police Department discussed the passage of AB 481 and summarized the Police Department's military equipment, including each item's purpose, lifespan, cost, authorized use, and required training. Members of the Police Review Board were given opportunities to ask questions regarding the Police Department's military equipment use.

In order to approve the Police Department's Military Use Policy (Policy), the Council must adopt an ordinance (Attachment 2) which makes the following findings: 1) the military equipment described in the Policy is necessary because there is no reasonable alternative that can achieve the same objectives of officer and civilian safety; 2) the Policy will safeguard the public's welfare, safety, civil rights, and civil liberties; 3) continued use of existing military equipment and purchase of military equipment described in the Policy is reasonably cost effective compared to available alternatives that

can achieve the same objective of officer and civilian safety; and 4) the Department's past use of military equipment complied with any applicable policy or the Department has taken steps to ensure that future uses of existing military equipment described in the Policy will comply with the Policy.

The Police Department created a comprehensive Military Equipment Use Policy that addresses all of the criteria listed above. The Policy seeks to strike a balance in addressing operational needs, public safety, officer safety, civil rights, oversight, accountability, and fiscal responsibility. The military equipment described within the Policy is necessary because there is no reasonable alternative that can achieve the same objective of civilian and officer safety. The list of military equipment used by the Police Department is listed in Attachment 1 starting on page 4. The Police Department recognizes it is incumbent upon incident commanders, supervisors, and individual officers to recognize the particular circumstances wherein military equipment should be employed to enhance the safety of the public and officers and to bring a critical incident to a safe resolution.

From a fiscal responsibility perspective, this Policy achieves transparency of ongoing and future military equipment acquisitions balanced with the Police Department's operational needs. The use of existing military equipment and purchase of future military equipment described in the Policy is reasonably cost-effective compared to available alternatives that can achieve the same objective of officer and civilian safety. The Police Department will continue to comply with all existing city budget processes, procurement requirements, and grant requirements for funding and acquisition of military equipment, and any future use of military equipment will comply with the Military Equipment Use Policy.

In producing the Military Equipment Use Policy, the Police Department has sought to provide transparency and information to our communities and elected officials in compliance with the law and in line with legislative intent. The City Council's adoption of the Policy will allow the Police Department to continue to possess and utilize the resources and equipment needed to maintain a safe community to live, work, and play.

IMPACT ON BUDGET:

The passage of AB 481 does not have a fiscal impact on the Police Department.

Respectfully submitted,

Jorge Cisneros
Chief of Police

Attachments:

1. Military Equipment Use Policy
2. Ordinance Adopting Military Equipment Use Policy