

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Renewing the Military Equipment Use Policy in Compliance with Govt. Code Section 7070 *et seq.*

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and declarations. The City Council finds and declares as follows:

1. In 2021, the California Legislature and the Governor approved AB 481, which requires the City Council to approve a “Military Equipment Use Policy” in order to acquire, use, or seek funds for the use of certain equipment used by law enforcement. AB 481 is codified at Gov. Code section 7070 *et seq.*
2. The City Council adopted Ordinance 5562 in September 2022 to approve the City’s first Military Equipment Use Policy.
3. As required by Govt. Code section 7072, the Palo Alto Police Department submitted an annual military equipment report for each type of military equipment approved by the City Council in 2022. This report was posted publicly on the Department’s website. The Department also held a community engagement meeting on October 11, 2023.
4. As required by Govt. Code section 7071, the City Council now intends to renew and restate Ordinance 5562 to implement the Military Equipment Use Policy for another year.

SECTION 2. The City Council makes the following required findings in compliance with Gov. Code section 7071(d)(1) and (e) as to the attached Military Equipment Use Policy:

- (A) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
- (B) The proposed military equipment use policy will safeguard the public’s welfare, safety, civil rights, and civil liberties.
- (C) The equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
- (D) Prior military equipment use complied with the military equipment use policy that was in effect at the time.

SECTION 3. The City Council hereby approves the attached Military Equipment Use Policy incorporated as **Exhibit A** to this ordinance.

SECTION 4. 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 5. The Council finds that adoption of this Ordinance is not a “project” within the meaning of CEQA.

SECTION 6. This Ordinance shall be effective on the thirty-first date after the date of its adoption. This Ordinance shall then supersede Ordinance 5562, and any conflict shall be resolved in favor of this Ordinance.

SECTION 7. This Ordinance shall be uncodified.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Chief of Police

Exhibit A
Palo Alto Police Department Military Equipment Use Policy
(Updated November 2023)

PURPOSE

This policy is provided to fulfill the obligations set forth in Assembly Bill No. 481 as codified at Govt. Code section 7070 *et seq.*, and establishes guidelines for the acquisition, funding, use and reporting of “military equipment”, as the term is defined in Government Code section 7070. These obligations include but are not limited to seeking approval on specific items deemed, by statute, to be military equipment and requirements related to compliance, annual reporting, cataloging, and complaints regarding these items.

PROCEDURE

A. DEFINITIONS

1. Governing Body – The City Council of the City of Palo Alto.
2. Military Equipment – Shall have the same meaning as defined by California Government Code § 7070(c).

B. GOVERNING BODY APPROVAL

1. The Department shall obtain approval of the governing body prior to engaging in any of the following activities:
 - a. Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
 - b. Seeking funds for military equipment including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
 - c. Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
 - d. Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body.
 - e. Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to general order
 - f. Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, military equipment.
 - g. Acquiring military equipment through any means not provided in a. through f.
2. In seeking the approval of the governing body, the Department shall comply with Gov. Code § 7071, which requires that the Department submit a proposed military equipment use policy, or subsequent amendments, to the City Council and the public via the law enforcement agency’s internet website at least 30 days prior to any public hearing concerning the military equipment at issue.

3. The governing body must be able to make the following findings in approving the Military Equipment Use Policy as required by Gov. Code § 7071(d)(1) in order to use military equipment:

- a. The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
- b. The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
- c. 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.
- d. 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.

C. MILITARY EQUIPMENT ANNUAL REPORT

The Department shall submit an annual military equipment report to the governing body that addresses each type of military equipment possessed by the Department in compliance with Gov. Code § 7072.

1. The Department shall also make each annual military equipment report publicly available on its internet website for as long as the military equipment is available for use.

2. The annual military equipment report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of military equipment:

- a. A summary of how the military equipment was used and the purpose of its use.
- b. A summary of any complaints or concerns received concerning the military equipment.
- c. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
- d. 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.
- e. The quantity possessed for each type of military equipment.
- f. If the Department intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

The Department will document each use of military equipment and, via administrative review, ensure compliance with this policy. Any instances of non-compliance will be reported to the City Council via the annual military equipment report, and to the Independent Police Auditor where appropriate.

D. MILITARY EQUIPMENT USE POLICY COMPLAINTS AND CONCERNS

Pursuant to Gov. Code § 7070(d)(7), members of the public may register complaints or concerns or submit questions by any of the following means:

1. Via email to: militaryequipment@cityofpaloalto.org
2. Via phone call to: (650) 329-2406
3. Via mail sent to: Palo Alto Police Department
Attn: Personnel and Training
275 Forest Avenue
Palo Alto, CA 94301

The Department is committed to responding to complaints, concerns and/or questions received through any of the above methods in a timely manner.

E. MILITARY EQUIPMENT TRAINING

Military equipment shall only be used after applicable training, including any course required by the Commission on Peace Officer Standards and Training (P.O.S.T.), has been completed, unless exigent circumstances arise.

F. MILITARY USE EQUIPMENT POLICY CONTENTS

All military use equipment kept and maintained by the Department shall be cataloged in a way which addresses each of the following requirements in compliance with Gov. Code § 7070(d):

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.

G. USE POLICY FOR SPECIFIC EQUIPMENT

Qualifying Equipment Owned/Utilized by the Department

Equipment Type: 37mm Less Lethal Launchers and Kinetic Energy Munitions - CA Gov't Code §7070(c)(14)	
Quantity Owned/Sought: 30 owned	Lifespan: Approximately 15 years
Equipment Capabilities: The 37MM Less Lethal Launcher is capable of firing 37MM Kinetic Energy and Chemical Agent Munitions. Palo Alto PD only possesses "KO1" impact baton rounds in its inventory.	
Manufacturer Product Description: Sage Control Ordinance 37MM launchers are rugged, reliable, and simple to operate less lethal launchers. These launchers are light weight, versatile and used worldwide by police officers. The 37MM launcher family of products is available in single-shot ("Ace"), double-shot ("Deuce"), or magazine fed configurations. Palo Alto PD possesses the "Ace" and "Deuce" models.	
Purpose/Authorized Uses: The 37MM Less Lethal Launchers and Kinetic Energy Munitions are intended for use as a less lethal use of force option. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury and can be used in an attempt to de-escalate a potentially deadly situation.	
Circumstances appropriate for deployment include, but are not limited to, situations in which:	
(a) The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.	
(b) The suspect has made credible threats to harm him/herself or others.	
(c) The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.	
(d) There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.	
Fiscal Impacts: The initial cost of this equipment was approximately \$27,000. The ongoing costs for munitions will vary and maintenance is conducted by departmental staff.	
Legal/Procedural Rules Governing Use: Use governed by applicable State, Federal and Local law, and PAPD policy, including but not limited to PAPD policy §§ 300 (Use of Force) and 308 (Control Devices and Techniques). Use will continue to be subject to an administrative Use of Force review.	
Training Required: Officers must complete a department certified 37mm course as well as regular training and qualifications as required by law and policy.	
Other Notes: None.	

Equipment Type: Long Range Acoustic Device (LRAD) - CA Gov't Code §7070(c)(13)	
Quantity Owned/Sought: 1	Lifespan: Unknown.
Equipment Capabilities: LRAD systems are a type of Acoustic Hailing Device (AHD) used to send messages over long distances. LRAD systems produce much higher sound levels (volume) than normal loudspeakers or megaphones, and can be more narrowly directed.	
Manufacturer Product Description: LRAD systems are a type of Acoustic Hailing Device (AHD) used to send messages over long distances. LRAD systems produce much higher sound levels	

(volume) than normal loudspeakers or megaphones. Over shorter distances, LRAD signals are loud enough to cause pain in the ears of people in their path.
Purpose/Authorized Uses: Primarily used to communicate, from a safe distance, with armed and/or barricaded subjects, for the purpose of negotiation. Can also be used in furtherance of search and rescue operations, and to communicate lawful dispersal orders.
Fiscal Impacts:
Legal/Procedural Rules Governing Use: Use governed by applicable State, Federal and Local law, and PAPD policy, including but not limited to PAPD policy § 414 (Hostage and Barricade Incidents). Use will be subject to an administrative review.
Training Required: The Palo Alto Police Department provides internal training for staff members prior to allowing them to use this equipment.
Other Notes: This equipment is maintained and operated by members of the Department's Crisis Negotiation Team (CNT).

Equipment Type: Diversionary Devices and Chemical Agents (tear gas) and pepper balls - CA Gov't Code §7070(c)(12)	
Quantity Owned/Sought: 108	Lifespan: 5 years
Equipment Capabilities: Capable of creating auditory/visual distractions, and/or deploying tear gas or pepper chemical to distract potentially dangerous individuals.	
Manufacturer Product Description:	
The Palo Alto Police Department uses Diversionary Devices and Chemical Agents produced by Defense Technology (DT) and Combined Tactical Systems (CTS). All Chemical Agents utilized by PAPD contain CS (Orthochlorobenzalmalononitrile) or OC (Oleoresin Capsicum).	
Diversionary Devices:	
1. Mini-Bang (CTS-7290M) <ul style="list-style-type: none">a. The Model 7290M Flash-Bang exhibits all of the same attributes of its larger counterpart but in a smaller and lighter package. Weighing in at just 15 ounces the new 7290M is approximately 30% lighter than the 7290 but still has the same 180db output of the 7290 and produces 6-8 million candela of light.	
Chemical Agents:	
1. CS 37mm Liquid Ferret Barricade Round (CTS-3330) <ul style="list-style-type: none">a. 3330 – Liquid CS filled projectile penetrates intermediate barriers and delivers irritant agents into an adjacent room.	
2. CS 37mm Liquid Ferret Barricade Round (DT-1162) <ul style="list-style-type: none">a. The Ferret® 37 mm CS Round is a frangible projectile filled with chemical agent. Upon impacting the barrier, the nose cone ruptures and instantaneously delivers the .16 oz. agent payload inside a structure.	
3. CTS 5230b Baffled CS <ul style="list-style-type: none">a. The design of the Baffled CS allows the contents to burn within an internal can and external baffling, and disperse the agent safely with reduced risk of fire. The grenade is designed primarily for indoor tactical situations to detect	

and/or dislodge a barricaded subject. This grenade can be hand thrown or launched from a fired delivery system.

4. CTS 5230 Riot CS

a. The CTS Riot CS is specifically designed for outdoor use. It discharges a high volume of smoke and chemical agent through multiple emission ports. This grenade can be hand thrown or launched from a fired delivery system.

5. CS Riot Control (DT-1082)

a. The Riot Control CS Grenade is designed specifically for outdoor use in crowd control situations with a high volume continuous burn. . This grenade can be used to conceal tactical movement or to route a crowd. The volume of smoke and agent is vast and obtrusive. .

Smoke:

1. CTS 5210 White Smoke

a. The CTS 5210 White Smoke Grenade is designed specifically to conceal tactical movement or to route a crowd. The volume of non-irritant smoke and agent is vast and obtrusive.

PepperBall:

Less lethal launchers are designed for minimum time between launches and quick reload speed, so whether in a crowd control scenario, tactical or even Mobile Field Force situation, the PepperBall system offers flexibility, safety and security, all within one platform. Each launcher is air powered, with either carbon dioxide (CO2), nitrogen, or compressed air powering the launch of projectiles.

Purpose/Authorized Uses: creating explosive distractions, and/or deploying chemical agents.

Fiscal Impacts: The initial cost of the Pepperball equipment was approximately \$7,920. The ongoing costs for munitions will vary and maintenance is conducted by departmental staff. The initial cost of the distraction devices and chemical agents was approximately \$2,400. The ongoing costs for munitions will vary and (minimal, if any) maintenance is conducted by departmental staff.

Legal/Procedural Rules Governing Use Use governed by applicable State, Federal and Local law, and PAPD policy, including but not limited to PAPD policy §§ 300 (Use of Force), 308 (Control Devices and Techniques), and 408 (Crisis Response Unit). Use of tear gas or pepper balls will continue to be subject to an administrative Use of Force review. Use of distraction devices will be subject to an administrative review to ensure policy compliance.

Training Required: A P.O.S.T. certified Control Devices and Techniques Department chemical agent and distraction device instructor provides internal training for all members of the SWAT team prior to allowing them to use flashbang grenades or tear gas. The Department provides internal training for all members prior to allowing them to use pepper balls.

Other Notes: Distraction devices and chemical agents are exclusively maintained and operated by members of the Department’s Special Weapons and Tactics Team (SWAT).

Equipment Type: Bolt Action Rifle and Ammunition - CA Gov’t Code §7070(c)(10)

Quantity Owned/Sought: 1 owned

Lifespan: Approximately 15 years

Equipment Capabilities: Accuracy International rifle is capable of firing a 7.62mm/.308 cal projectile bullet.

Manufacturer Product Description: Accuracy International (AI) Accuracy Tactical bolt action rifle .308 Winchester/7.62mm NATO.

1. 20" barrel threaded 5/8x24
2. Nightforce:C622 Scope .250 MOA
3. AI Adjustable cheek piece
4. AI Two-stage trigger
5. AI 10-round .380 caliber magazine
6. AI Three-position safety

Purpose/Authorized Uses: This rifle is authorized for use by a specially-trained, SWAT marksman only and may be deployed in any circumstance where the officer can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the rifle may include but are not limited to:

1. Situations where the officer reasonably anticipates an armed encounter.
2. When the officer is faced with a situation that may require accurate and effective fire at long range.
3. Situations where an officer reasonably expects the need to meet or exceed a suspect's firepower.
4. When an officer reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.
5. When an officer reasonably believes that a suspect may be wearing body armor.
6. When authorized or requested by a supervisor.

Fiscal Impacts: This equipment was purchased by the Palo Alto Police Department at an initial cost of \$6500.00. The ongoing costs for ammunition will vary and maintenance is conducted by departmental staff.

Legal/Procedural Rules Governing Use: Use governed by applicable State, Federal and Local law, and PAPD policy, including but not limited to PAPD policy §§ 300 (Use of Force), 312 (Firearms), and 408 (Crisis Response Unit). Each use will continue to be subject to an administrative Use of Force review.

Training Required: In addition to CA P.O.S.T. certified patrol rifle and CA P.O.S.T. certified standard SWAT Operator training, SWAT marksmen must successfully complete a CA P.O.S.T. certified course as well as regular SWAT marksmanship training and qualifications as required by law and policy.

Other Notes: None.

Qualifying Equipment Owned/Utilized by Palo Alto OES

Equipment Type: Command and control vehicle – CA Gov't Code §7070(c)(5)

Quantity Owned/Sought: 1

Lifespan: Approximately 20 years

Equipment Capabilities: The City of Palo Alto Office of Emergency Services (OES) has a Mobile Emergency Operations Center (MEOC) vehicle.

Manufacturer Product Description: The MEOC is built on a 40' Freightliner chassis, 2010 Model Year.
Purpose/Authorized Uses: The MEOC serves as a resource for public safety and coordinates with other such vehicles operated by other agencies. It is deployed to “all hazards” ranging from natural disasters, wildfires, crime, special events, and planned and unplanned disruptions to 9-1-1 and Emergency Operations Center systems and facilities.
Fiscal Impacts: The MEOC was acquired in approximately 2010 with grant funding of \$300,000 and City funding of \$375,000. The ongoing costs for maintenance and operation will vary and most maintenance is conducted by City staff.
Legal/Procedural Rules Governing Use: It is the policy of OES to use the MEOC in accordance with California State law regarding the operation of motor vehicles. Furthermore, since the MEOC is grant-funded and since the MEOC is a rare resource, the City may support mutual aid with the MEOC (for example wildfire response). Use will be subject to an administrative review to ensure policy compliance.
Training Required: The MEOC is a highly complex system. City staff are provided with requisite training and licensing, depending on their role in supporting the MEOC.
Other Notes: The MEOC is not a “military vehicle” but could support coordination with the National Guard, FEMA, and other cooperating agencies after a major earthquake or other disaster.

Qualifying Equipment known to be owned and/or utilized by law enforcement units with which the Palo Alto Police Department collaborates and/or participates for law enforcement purposes

Equipment Type: Unmanned Aircraft Systems (UAS/Drones) – CA Gov’t Code §7070(c)(1)
Quantity Owned/Sought: None (outside owned) Lifespan: Various
Equipment Capabilities: Remotely piloted aerial vehicles capable of providing live and recorded video images captured from aerial positions, including images enhanced by Forward Looking Infrared (FLIR) and optical zoom lenses.
Manufacturer Product Description: Various. Dependent upon the availability of mutual aid equipment and personnel at the time of need.
Purpose/Authorized Uses: UAS/Drones may be utilized to enhance the Department’s mission of protecting lives and property when other means and resources are not available or are less effective. Uses may include but are not limited to: search and rescue; suspect apprehension; crime scene documentation; tactical operations; scene security; hazard monitoring, identification and mitigation; response to emergency calls; crisis communications; legally authorized surveillance.
Fiscal Impacts: None. Equipment owned, maintained, and operated by another agency.
Legal/Procedural Rules Governing Use: Use governed by applicable State, Federal and Local law, Federal Aviation Administration (FAA) regulations, and PAPD policy, including but not limited to PAPD policy §§ 322 (Search and Seizure) and 352 (Outside Agency Assistance). Federal Aviation Administration (FAA) regulations . Absent a warrant or exigent circumstances, operators and observers shall adhere to FAA altitude regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure). Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of

<p>areas where there is a reasonable expectation of privacy. Upon mutual aid or other request from PAPD, UAS/Drone will be operated by the deploying agency's staff pursuant to their own policies and review.</p>
<p>Training Required: Prior to piloting any UAS/Drone staff members must secure an FAA Remote Pilot License and complete all training required by our FAA COA.</p>
<p>Other Notes: None.</p>

<p>Equipment Type: Unmanned, remotely piloted, powered ground vehicles - CA Gov't Code §7070(c)(1)</p>
<p>Quantity Owned/Sought: None (outside owned) Lifespan: Various</p>
<p>Equipment Capabilities: Robots are capable of being remotely navigated to provide scene information and intelligence in the form of video and still images transmitted to first responders.</p>
<p>Manufacturer Product Description: Various. Dependent upon the availability of mutual aid equipment and personnel at the time of need.</p>
<p>Purpose/Authorized Uses: To enhance the safety of potentially dangerous situations by providing first responders with the ability to capture video and still images of hazardous areas prior to, or in lieu of, sending in personnel.</p>
<p>Fiscal Impacts: None. Equipment owned, maintained, and operated by another agency.</p>
<p>Legal/Procedural Rules Governing Use: Absent a warrant or exigent circumstances, operators and observers shall adhere to all applicable privacy laws and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure). Use governed by applicable State, Federal and Local law, Federal Aviation Administration (FAA) regulations, and PAPD policy, including but not limited to PAPD policy §§ 322 (Search and Seizure) and 352 (Outside Agency Assistance). Upon mutual aid or other request from PAPD, vehicle will be operated by deploying agency's staff pursuant to their own policies and review.</p>
<p>Training Required: Subject to the policies of the deploying agency.</p>
<p>Other Notes: While the Palo Alto Police Department does not own or operate this equipment, it could be deployed to an incident within city limits.</p>

<p>Equipment Type: Wheeled vehicles that have a breaching apparatus attached - CA Gov't Code §7070(c)(3)</p>
<p>Quantity Owned/Sought: None (outside owned) Lifespan: Various</p>
<p>Equipment Capabilities: Capable of breaching doors, gates, and other points of entry; facilitating the safe transport of officers or civilians facing an armed suspect.</p>
<p>Manufacturer Product Description: Various. Dependent upon the availability of mutual aid equipment and personnel at the time of need.</p>
<p>Purpose/Authorized Uses: Breaching doors, gates, and other points of entry. Safely transporting police personnel or evacuating civilians, when facing with an armed suspect.</p>
<p>Fiscal Impacts: None. Equipment owned, maintained, and operated by another agency.</p>
<p>Legal/Procedural Rules Governing Use: Use governed by applicable State, Federal and Local law, and PAPD policy, including but not limited to PAPD policy §§ 322 (Search and Seizure) and 352 (Outside Agency Assistance). Upon mutual aid or other request from PAPD, vehicle will be operated by deploying agency's staff pursuant to their own policies and review.</p>
<p>Training Required: Subject to the policies of the deploying agency.</p>

NOT YET APPROVED

Other Notes: While the Palo Alto Police Department does not own or operate this equipment, it could be deployed to an incident within city limits.