



City Council Staff Report

From: City Manager

Report Type: **CONSENT CALENDAR**

Lead Department: Police

Meeting Date: **November 13, 2023**

Report #:2310-2103

TITLE

Adoption of an Ordinance Renewing the Police Department's Military Equipment Use Policy Under AB 481; CEQA status – not a project.

RECOMMENDATION

Staff recommends that the City Council adopt an ordinance renewing and restating Ordinance No. 5562 (**Attachment A**), approving the updated Palo Alto Police Department Military Equipment Use Policy; and determining that, based on the PAPD 2023 AB 481 Annual Report (**Attachment B**), each type of military equipment has been used in compliance with Ordinance No. 5562.

BACKGROUND

Assembly Bill 481 was adopted by the California Legislature and approved by Governor Gavin Newsom in September 2021.¹ It went into effect on January 1, 2022. AB 481 is designed to increase community awareness and oversight over the possession and use by local police departments of certain types of equipment that AB 481 labels as “military” equipment. It requires the City Council to provide both authorization and oversight of the equipment used.

The law, codified in California Government Code sections 7070 through 7075, requires law enforcement agencies to produce a military equipment use policy that identifies and describes: each type of military equipment; its authorized use; fiscal impact; rules/laws that govern use of such equipment; training required; and mechanisms to ensure compliance with the policy. (See Gov. Code section 7070(d)). On September 27, 2022, in accordance with AB 481, the Palo Alto City Council adopted Ordinance No. 5562, approving Palo Alto Police Department Policy 716: Military Equipment.²

¹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481

² City Council 9/27/22, <https://www.cityofpaloalto.org/files/assets/public/v/1/police-department/public-information-portal/ab481-staff-report-and-ordinance-9-27-2022.pdf>

Additionally, AB 481 requires an annual report, community engagement meeting, and annual review by the governing body for continued use of the equipment. The Department's 2023 AB 481 Annual Report describes its use of qualifying equipment over the past year, current inventory, related costs, and plans to replace certain pieces of equipment with safer and more cost-effective alternatives in the coming year.

Military Equipment Defined

AB 481 defines the term "military equipment" to include many pieces of equipment that are designed exclusively for, and commonly used by, local law enforcement agencies throughout the United States. While the Palo Alto Police Department possesses some equipment as defined by AB 481, the types of equipment possessed by the Palo Alto Police Department have been possessed for years (in some cases decades) and are all designed specifically for a law enforcement (not military) application.

Under AB 481, military equipment is defined as: drones and robots; command and control vehicles; military-grade vehicles for breaching (Mine Resistant Ambush Protected vehicles (MRAP) and Humvees); vehicles propelled by tracks; weaponized aircraft, vessels, or vehicles; explosive rams, slugs, or breaching devices; any .50 caliber or larger weapon or ammunition; any firearm or firearm accessory that is designed to launch explosive projectiles; "flashbang" grenades and explosive breaching tools, "tear gas," and "pepperballs"; Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD); 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons; any other equipment as determined by a governing body or a state agency to require additional oversight. (See Gov. Code section 7070(c)).

DISCUSSION

Staff recommends that the City Council adopt the attached ordinance to renew City Ordinance 5562 to ensure that the Palo Alto Police Department will continue to have access to each of its existing pieces of qualifying equipment, and to approve the updated corresponding policies and procedures applicable to maintenance and use of the equipment.

Qualifying Military Equipment Owned by Palo Alto Police Department

For each type of qualifying equipment possessed by the Palo Alto Police Department, the possession and use of that equipment is governed by applicable Department policy, various statutes, and state and federal case law, in addition to AB 481. Personnel of the Palo Alto Police Department meet or exceed all California Peace Officer Standards & Training (POST) training requirements that apply to the qualifying equipment. The Department does not possess any equipment that is atypical for the region. Palo Alto possesses fewer types of this equipment than many other Bay Area agencies.

Many of the pieces of qualifying equipment possessed by the Palo Alto Police Department are specifically designed for the safe resolution of critical incidents, as opposed to everyday routine patrol deployment; as such, some are used exclusively by members of the specially-trained PAPD

Crisis Response Unit (which includes the Special Weapons & Tactics (SWAT) Team and the Crisis Negotiation Team), who receive additional specialized training in the use of the equipment. The proposed policy outlines all qualifying equipment possessed by the Department in Section “G” on page 4 of the policy.

Several pieces of qualifying equipment are designed to support community safety and criminal apprehension by:

- Alternatives to the use of deadly force, such as less-lethal munitions and chemical agents available to properly certified and/or trained sworn officers to provide less-lethal force options to safely effectuate arrests of criminal suspects in limited situations.
- Means of de-escalation, such as the long-range acoustic device intended to send messages to facilitate communications with subjects from a safe distance.
- Means of gathering information without jeopardizing the safety of officers, bystanders, and criminal suspects, such as an unmanned aerial vehicle or robot, neither of which are possessed by the Palo Alto Police Department but that may be used by a partner law enforcement agency to safely resolve a critical incident during a mutual aid event.
- Command and control vehicle (the Mobile Emergency Operations Center, or MEOC) which serves as a mobile command post at critical incidents, disasters, or special events, as well as a backup 9–1–1 dispatch center in the event the City’s main dispatch center is compromised or unavailable. The MEOC is most typically operated by the City’s Office of Emergency Services.
- Diversionary devices, used exclusively by members of the Department’s SWAT team who have received specialized additional training; the equipment creates an auditory and visual diversion to facilitate the operation of tactical teams during a critical public safety incident.
- One sniper rifle with associated ammunition, used exclusively by members of the Department’s SWAT team who have received specialized additional training. While not covered by AB 481, all properly trained patrol officers carry standard-issue AR-15 patrol rifles that are carried locked in patrol vehicles. In both cases, rifles allow sworn officers to address threats with greater precision at a greater distance.

Annual Reporting Requirements

As required by AB 481, City Ordinance 5562, and PAPD Policy 716, PAPD must prepare an annual report on the use of each type of military equipment approved in the Policy over the last year. Subsequently, the City Council must review the Ordinance, Policy, and AB 481 Annual Report and determine whether PAPD’s use of the defined military equipment in the past year complied with the Policy and whether to renew the Ordinance.

AB 481 requires that the Department produce an annual report containing the following elements:

1. Summary of how each type of equipment was used and the purpose of that use;

2. Quantity possessed of each type of equipment;
3. Annual costs for each type of equipment;
4. Summary of complaints or concerns received for each type of equipment;
5. Information disclosing violations of military equipment policies and actions taken in response, as well as the result of internal audits; and
6. Plans to acquire additional military equipment in the coming year, and the quantity sought.

The table contained in the attached PAPD 2023 AB 481 Annual Report provides this information. The reporting period for this report is from the adoption of the use policy ordinance on September 27, 2022 to June 30, 2023 (the end of Fiscal Year 2023). Future reports will align with the City's fiscal year to aid in reporting costs and planned purchases.

1. Use of Qualifying Equipment

During the reporting period, the Department's qualifying equipment has been used minimally, largely related to training and certification. In fact, the only piece of equipment to be used in an operational setting (once) was the Mobile Emergency Operations Center, which was deployed in support of a presidential visit in June 2023. It should be noted that, as these types of equipment are specialized in nature, regular training is critical to maintaining proficiency and readiness in the event of a critical incident.

2. Quantity Possessed

The Department's inventory of qualifying equipment was reduced only as a result of use for training and certification purposes. The Department plans to replenish its inventory only as necessary to maintain an adequate supply for training and potential operational use over the next year.

3. Annual Costs

The only related costs during the reporting period (approximately \$13,000) were attributable to the maintenance and upkeep of the Mobile Emergency Operations Center.

4. Summary of Complaints

The Department did not receive any complaints or concerns related to the use of qualifying equipment.

5. Violations of Policy

The Department did not identify any violations of PAPD Policy 716, Military Equipment.

6. Plans to Acquire Additional Qualifying Equipment

The Department does not plan to acquire any new types of qualifying equipment. For those types of equipment where a portion of the Department's inventory was used for training purposes, the Department plans to replenish its inventory accordingly to maintain an adequate supply for training and potential operational use over the next year, at a total cost not expected to exceed

\$4,000. Additionally, the Department plans to retire three pieces of equipment, replacing each with a newer alternative that is safer and more cost-effective. This is expected to come at a total cost not to exceed \$1,400. The City's updated Military Equipment Use Policy reflects this new equipment. In the coming year, the Mobile Emergency Operations Center is expected to require maintenance and equipment replacement with a total cost not to exceed \$25,000.

STAKEHOLDER ENGAGEMENT

On October 11, 2023 the Police Department hosted a community meeting at the Rinconada Library branch to present its 2023 AB 481 Annual Report, in accordance with the requirements of AB 481. The meeting was publicized – via the City's event calendar, the City's Uplift Local publication, and the Police Department's dedicated AB 481 webpage – and took place within 30 days of submittal of the 2023 Annual Report to the City Council and its publication on the Police Department's AB 481 webpage. The meeting was live-streamed and a recording of the meeting was also posted on the City's Youtube channel and the Department's AB 481 webpage.³

POLICY IMPLICATIONS

With Council renewal of the ordinance, the Police Department will continue to have access to each of its existing types of qualifying equipment (or analogous alternative), and the corresponding policies and procedures surrounding the use of the equipment will remain in effect.

RESOURCE IMPACT

There are no budget implications resulting from the adoption of this policy. Planned purchases articulated above are anticipated to be made using the Department's FY 2024 adopted general fund budget.

ENVIRONMENTAL REVIEW

Adoption of an ordinance approving a military equipment use policy is not a "project" within the meaning of CEQA.

ATTACHMENTS

Attachment A: Ordinance Renewing the City's Military Equipment Use Policy

Attachment B: PAPD 2023 AB 481 Annual Report

APPROVED BY:

Andrew Binder, Police Chief

³ <http://www.cityofpaloalto.org/PAPDequipment>