



TOWN OF FAIRFAX

STAFF REPORT

June 1, 2022

TO: Mayor and Town Council

FROM: Rico Tabaranza, Chief of Police

SUBJECT: Second Reading and Adoption of Ordinance Authorizing a Special or Military Equipment Use Policy for the Fairfax Police Department Pursuant to California Assembly Bill 481

RECOMMENDATION

Waive second reading and read by title only and adopt “An Ordinance Authorizing a Special or Military Equipment Use Policy Pursuant to California Assembly Bill 481.”

BACKGROUND

In September of 2021, the California State Legislature passed Assembly Bill 481 titled, “Law enforcement and state agencies: military equipment: funding, acquisition, and use.” The Bill was approved by Governor Newsom on September 30, 2021, and amended California Government Code §7070 – 7075, effective January 1, 2022. As amended, California Government Code §7071(b) now requires that law enforcement agencies submit a proposed Military and Equipment Use Policy to their own governing body for approval. This law broadly defines military equipment to include some standard policing equipment and requires certain disclosure and approval activities. The attached policy includes all the definitions, even though Fairfax possesses only two items. The policy is not requesting any new items.

DISCUSSION

The Council introduced the attached ordinance at its May 4, 2022 meeting. Tonight is the second reading and adoption. If adopted, the ordinance would take effect in 30 days.

The Fairfax Police Department seeks the approval of the attached ordinance and Specialized or Military Equipment Use Policy. Many of the items deemed to be military equipment by AB 481 are standard law enforcement equipment utilized throughout the state and the country. These tools have been tested in the field and are used by law enforcement agencies to enhance citizen and officer safety. Loss of these items would jeopardize the welfare of citizens and police officers within the Town of Fairfax.

The term military equipment, as used in AB 481 does not necessarily indicate equipment that has been used by or obtained from the military. In fact, the Fairfax Police Department does not own any equipment obtained from the military.

The Fairfax Police Department is committed to using contemporary tools and resources to safeguard the citizens of Fairfax. Out of the extensive list of items deemed to be military equipment by AB 481, the Fairfax Police Department possesses two items that fall under this list. Those items are a department standard Patrol Rifle (Colt AR-15 Rifle) and a Less-Lethal “Bean-

Bag” Shotgun (Remington 870). The Fairfax Police Department has possessed these two pieces of equipment since the year 2001. These items provide police officers with a greater ability to safely resolve volatile situations. To this end, the items in the proposed ordinance, and accompanying Specialized or Military Equipment Use Policy provide Fairfax Police Officers with vital tools that help facilitate compliance within the confines of its existing stringent use of force policy.

There is a substantial interest in ensuring that law enforcement continues to have access to equipment that will provide police officers as many options as possible to safeguard lives, ensure safety, and protect civil liberties. The use of the tools identified in the proposed policy are vital to the Fairfax Police Department’s mission and will continue to be strictly regulated through internal processes, policies and oversight built into this new bill.

AB 481 further requires agencies to submit an annual military equipment report to their governing body for as long as the equipment is available for use and whenever a new equipment is purchased. In addition, the bill requires agencies to hold at least one community engagement meeting within 30 days of submitting the proposed policy and publicly release an annual report. To encourage as much transparency as possible, the department intends on accomplishing this requirement via an annual Special and Military Use staff report at a regularly scheduled Council Meeting. Further AB 481 requires the posting of the military equipment inventory and Policy on the department’s website. This will be accomplished by posting this information to the Fairfax Police Department website. Lastly, agencies are required to establish procedures by which members of the public may register complaints or concerns or submit questions about the use of each type of military equipment. This will be accomplished by posting the below contact information on the department’s website.

AB481 Coordinator, Fairfax Police Department 144 Bolinas Rd Fairfax, Ca 94930, fairfaxpd@fairfaxpd.org, 415-453-5330

FISCAL IMPACT

None.

ATTACHMENTS

- A. Proposed Specialized or Military Equipment Use Ordinance (uncodified)
- B. Fairfax Police Department Policy 708 Specialized or Military Equipment
- C. California Government Code §7070(c) Military Equipment List
- D. Fairfax Police Department Specialized and Military Equipment Inventory List

ORDINANCE NO. _____
OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX

**ORDINANCE (Uncodified) ADOPTING A SPECIAL OR MILITARY EQUIPMENT USE
POLICY PURSUANT TO AB 481**

The Town Council of the Town of Fairfax does ordain as follows:

ARTICLE 1. RECITALS.

(a) On September 30, 2021 Governor Newsom signed a series of policing reform legislation items into law. These laws are aimed at increasing police transparency, and AB 481 in particular requires law enforcement agencies to adopt a special or military equipment use policy ("Policy") prior to taking certain actions relating to the funding, acquisition, or use of military equipment as defined by the law. The Policy must be adopted by ordinance at a regular meeting of the governing body (the Town Council) for that agency.

(b) AB 481 requires adoption of the Policy before the law enforcement agency can take action to request military equipment as defined by the statute; seek funds (such as grants or in-kind donations) for acquiring military equipment; actually acquire military equipment, either permanently or temporarily by owning, borrowing, or leasing; collaborate with other law enforcement agencies to deploy or use military equipment in the agency's territorial jurisdiction; use new or existing military equipment in a manner not previously subject to AB 481's scope; solicit or respond to a proposal for, or enter into an agreement with, any person or entity to seek funds for, apply for, acquire, use, or collaborate in using military equipment; or to acquire military equipment through any other means not specifically detailed in the statute.

(c) To continue to use military equipment acquired prior to January 1, 2022, the law enforcement agency must commence the process of adopting the Policy no later than May 1, 2022.

(d) In accordance with AB 481, the proposed Policy will be made available on the Town of Fairfax Police Department's website within 30 days of the public hearing by the Town Council to adopt the Policy. Once adopted, the Policy will be made publicly available on the Police Department's website for as long as the covered military equipment is available for use.

(e) In accordance with AB 481, the Policy is being placed on the agenda as an open session item at a regular meeting of the Town Council, and public comment on the item will be allowed in accordance with the Brown Act.

(f) This Ordinance shall be reviewed by the Town Council at least annually, and based on an annual military equipment report that must be submitted to the Town Council pursuant to AB 481, the Town Council shall determine whether each type of military equipment identified in the report has complied with the standards for continued approval. If the Town Council cannot make such a determination, it shall either disapprove a renewal of the authorization for that type of equipment, or require modifications to the Policy in a manner to resolve the lack of compliance.

ARTICLE 2. INCORPORATION OF RECITALS.

The Town Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

ARTICLE 3. FINDINGS.

Pursuant to Government Code § 7071(d)(1), as may be amended or renumbered from time to time, the Town Council hereby makes the following findings in support of its adoption of the Policy:

A. The military equipment identified in the Policy is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

B. The proposed Policy will safeguard the public’s welfare, safety, civil rights, and civil liberties.

C. If the Police Department purchases military equipment pursuant to the Policy, 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.

ARTICLE 4. MILITARY EQUIPMENT USE POLICY ADOPTED.

In light of the findings in Article 3, and in accordance with AB 481, the Policy, attached hereto as Exhibit “A” and incorporated in full by reference, is hereby adopted by the Town Council.

ARTICLE 5. SEVERABILITY.

Each of the provisions of this Ordinance is severable from all other provisions. If any article, section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

ARTICLE 6. NOT A CEQA PROJECT.

The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title

14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

ARTICLE 7. EFFECTIVE DATE.

This ordinance, or a summary thereof, shall be posted by the Town of Fairfax within 15 days of its passage and is to take effect thirty (30) days after its passage.

The foregoing ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax held on the 4th day of May, 2022.

ADOPTED and ordered posted at a regular meeting of the Town Council of the Town of Fairfax, held on the 1st day of June 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Stephanie Hellman, Mayor

Attest: _____
Michele Gardner, Town Clerk

Military Equipment

708.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

708.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the [Department/Office].

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

Fairfax Police Department

Fairfax PD Policy Manual

Military Equipment

708.2 POLICY

It is the policy of the Fairfax Police Department that members of this [department/office] comply with the provisions of Government Code § 7071 with respect to military equipment.

708.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this [department/office] to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying [department/office] equipment that qualifies as military equipment in the current possession of the [Department/Office], or the equipment the [Department/Office] intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Fairfax Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 - 1. Publicizing the details of the meeting.
 - 2. Preparing for public questions regarding the [department/office]'s funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the [department/office] website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the [Department/Office] will respond in a timely manner.

708.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the [Department/Office]:

A current inventory is listed on the department's website; fairfaxpd.org

708.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the [department/office] website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

Fairfax Police Department

Fairfax PD Policy Manual

Military Equipment

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (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 jurisdiction of this [department/office].
- (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.
- (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 above.

708.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

708.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the [department/office] website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in [department/office] inventory.

708.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the [Department/Office] shall hold at least one well-publicized and conveniently located community engagement meeting, at which the [Department/Office] should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

California Government Code § 7070(c) Military Equipment List

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.



Fairfax Police Department

Special or Military Equipment

Inventory Year 2022 – Current Date

Item #1

Patrol Rifle: .223 COLT AR-15 Rifle, Semi-Automatic (Standard Patrol Equipment)

Quantity: 7

Capabilities: Single Round

Expected Lifespan: 15 Years

Ammunition: .223 Caliber Rounds

Manufacturer's Description:

M4/AR-15 semi-automatic rifle, gas operated.

Purpose and Authorized Uses:

Officers may use deadly force to protect themselves or others from what they believe is an imminent threat of death or serious bodily injury.

Fiscal Impact: Fairfax PD already owns these items out right. An estimated maintenance cost would be about \$500/year. If a new purchase were necessary, the market cost for a new purchase would be approximately \$7,500 total for a quantity of 7.

Legal and Procedural Rules/Required Training/Compliance Mechanisms: Refer to Fairfax Police Department General Operations Policies available at fairfaxpd.org

Item #2

Patrol Less Lethal Shotgun: Remington 870 with Kinetic Energy Projectiles: 12 Guage "bean bag" rounds (Standard Patrol Equipment)

Quantity: 7

Capabilities: Single Round

Expected Lifespan: 15 Years

Ammunition: 12 Guage Cotton Sock

Manufacturer's Description: 12 Guage pump-action Shotgun (Orange Stock/Orange) Utilized as Less Lethal Delivery System.

Purpose and Authorized Uses:

To be used with Less-Lethal Rounds only. No regular shot gun ammunition is authorized. To compel an individual to cease his or her actions when such munitions present a reasonable option. A verbal warning of the intended use of the device should precede its application.

Fiscal Impact: Fairfax PD already owns these items out right. An estimated maintenance cost would be about \$500/year. If a new purchase were necessary, the market cost for a new purchase would be approximately \$5,500 total for a quantity of 7.

Legal and Procedural Rules/Required Training/Compliance Mechanisms: Refer to Fairfax Police Department General Operations Policies available at fairfaxpd.org