



TOWN OF FAIRFAX

STAFF REPORT

May 3, 2023

TO: Mayor and Town Council

FROM: Rico Tabaranza, Chief of Police
Heather Abrams, Town Manager
Janet Coleson, Town Attorney

SUBJECT: Renew Ordinance No. 862 Authorizing the Special or Military Equipment Use Policy and Equipment Inventory for the Fairfax Police Department, and Accept the Annual Report on Use of Military Equipment in 2022, Pursuant to California Assembly Bill 481

RECOMMENDATION

Staff recommends Fairfax Town Council (a) renew Ordinance No. 862 and (b) accept the annual report prepared as part of the annual review process of the Fairfax Police Department Special or Military Equipment Use Policy (“Policy”) and Equipment Inventory pursuant to California Assembly Bill 481.

BACKGROUND

In September 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 governing body for approval.

On May 4, 2022, Ordinance No. 862 was introduced at a Town of Fairfax Town Council Regular Meeting. Ordinance No. 862 was discussed and approved unanimously by the Fairfax Town Council at a Town of Fairfax Town Council Regular Meeting held on June 1, 2022.

AB 481 also requires the Police Department to obtain annual re-approval by the Town Council of the Policy in order to continue the use of previously acquired military equipment. The term “military equipment,” as used in AB 481, does not necessarily indicate equipment used by the military. Items deemed to be “military equipment” include, but are not limited to, unmanned aerial or ground vehicles, armored vehicles, command and control vehicles, pepper balls, less lethal shotguns, less lethal 40mm projectile launchers, long range acoustic devices, and flashbangs. The list of items considered “military equipment” by AB 481 are employed by many law enforcement agencies across the country as best practices for citizen and officer safety.

AB 481 further requires the submission of an annual military equipment report to the governing body which details information about how and when the military equipment was used in the preceding calendar year, including: 1) A summary of how the military equipment

was used and 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. 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 submission of the annual military equipment report. 5) The quantity possessed for each type of military equipment. 6) If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment. The annual military equipment report for the calendar year 2023 is attached.

DISCUSSION

As of April 27, 2023, there are no changes to the existing Fairfax Police Department Specialized or Military Equipment Inventory. None of these items have been used, except during training.

FISCAL IMPACT

None.

ATTACHMENTS

1. Ordinance No. 862 (uncodified) Existing Specialized or Military Equipment Use
2. Fairfax Police Department Policy 708 Specialized or Military Equipment
3. Fairfax Police Department Specialized and Military Equipment Inventory List
4. Annual Report: Inventory of Military Equipment Under AB 481

**ORDINANCE NO. 862
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: ACKERMAN, COLER, CUTRANO, GODDARD, HELLMAN
NOES: None
ABSENT: None
ABSTAIN: None



Chance Cutrano, Vice 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.

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).

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- 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.

ATTACHMENT 2

Fairfax Police Department

Fairfax PD Policy Manual

Military Equipment

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- (c) Conducting an inventory of all military equipment at least annually.
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- (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.

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Fairfax Police Department

Fairfax PD Policy Manual

Military Equipment

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- (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.
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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.



Fairfax Police Department

Special or Military Equipment

Report for Inventory Year 2023 – May 3, 2023

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

Use: Other than for training purposes, there was no use of Item #1 during the past year.

Item #2

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

Quantity: 7

Capabilities: Single Round

Expected Lifespan: 15 Years

Ammunition: 12 Gauge Cotton Sock

Manufacturer's Description: 12 Gauge 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
Use: Other than for training purposes, there was no use of Item #2 during the past year.

TOWN OF FAIRFAX

Annual Military Equipment Report, Prepared Pursuant to Government Code § 7072

In accordance with Government Code section 7072, the Fairfax Police Department hereby submits for City Council review and approval the following annual military equipment report.

1. A summary of how the military equipment was used and the purpose of its use.

All military equipment owned by the Department, which is detailed in Exhibit A to the Department's Military Equipment Use Policy, was used exclusively for the purposes designated by that Policy. In general, those purposes include use of patrol rifles for the protection of officers or the public from the threat of death or serious bodily injury; and use of less lethal shotguns and projectiles to cause individuals to cease their actions without use of deadly munitions, when a verbal warning has first been given. In 2022, the Department did not use any of the equipment identified herein. All officers received their requisite training and qualifications to commence or continue using the Department's equipment as appropriate.

2. A summary of any complaints or concerns received concerning the military equipment.

The Department did not receive any complaints or citizen outreach concerning the Department's Military Equipment Use Policy or ongoing use of said equipment.

3. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.

There were no violations of the Policy, and accordingly, no audits or actions took place in response.

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.

Costs associated with military equipment in 2022 included the maintenance of all Department equipment, as well as replacement ammunition when needed. These costs were accounted for in the City's 2022 budget. The Department will return to City Council for approval of any budgetary requests associated with the purchase of new military equipment in 2023.

5. The quantity possessed for each type of military equipment.

The quantity for each type of military equipment, including the new equipment purchased in 2022, is listed in Exhibit A to the Military Equipment Use Policy, available on the Town's website and in person at the Department.

6. If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

The Department does not presently have plans to acquire additional military equipment in the next year. If new equipment is required, the Department will return to the City Council for approval as appropriate, and will report back on any new acquisitions as part of its AB 481 updated report next year. Replacement ammunition for existing equipment will be purchased as needed, in accordance with Department procedures.