

ORDINANCE NO. 22-1000
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MONTCLAIR ADOPTING A POLICY FOR THE USE OF MILITARY
EQUIPMENT BY THE MONTCLAIR POLICE DEPARTMENT

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies; and

WHEREAS, Assembly Bill No. 481 (AB 481), codified as Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance adopting a "military equipment" use policy, at a regular meeting held pursuant to open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment. The term "military equipment" is defined in California Government Code section 7070; and

WHEREAS, AB 481 allows the governing body of a city to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it makes specified determinations; and

WHEREAS, the proposed military equipment use policy is attached hereto as Exhibit "A" and incorporated herein by this reference (the "Military Equipment Policy"); and

WHEREAS, the Military Equipment Policy was published on the Montclair Police Department's internet website on February 3, 2022, more than 30 days before the Military Equipment Policy was first considered at a public hearing before the City Council on March 7, 2022; and

WHEREAS, the Military Equipment Policy meets the requirements of California Government Code section 7070, subdivision (d).

THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I. Recitals. The above recitals are hereby declared to be true and correct and represent the findings of the City Council made in exercise of its independent judgement.

SECTION II. Determinations. Based on the above facts, in addition to information provided to the City Council at the public meeting, the City Council approves and adopts the Military Equipment Policy, based on the following findings:

1. The military equipment identified in the Military Equipment Policy is necessary because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.
2. The Military Equipment Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
3. The military equipment identified in the Military Equipment Policy is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
4. All prior military equipment use complied with the City's policies that were in effect at the time.

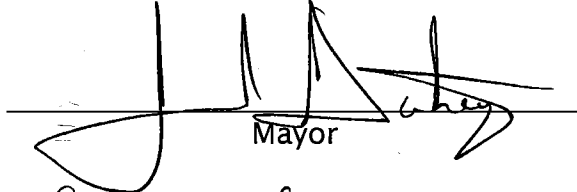
SECTION III. Environmental Review. This Ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential to result in physical change in the environment, directly or indirectly. This Ordinance is also exempt under CEQA Guideline 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

SECTION IV. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

SECTION V. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after passage.


SECTION VI. Posting. The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this 21st day of March, 2022.



Mayor

ATTEST:



City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 22-1000 of said City, which was introduced at a regular meeting of the City Council held on the 7th day of March, 2022, and finally passed not less than five (5) days thereafter on the 21st day of March, 2022, by the following vote, to-wit:

AYES: Lopez, Martinez, Johnson, Ruh, Dutrey
NOES: None
ABSTAIN: None
ABSENT: None



Andrea M. Myrick
City Clerk

Military Equipment

707.1 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).

707.1.1 DEFINITIONS

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

Governing body – The elected or appointed body that oversees the Department.

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.

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707.2 POLICY

It is the policy of the Montclair Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

707.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department 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 equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department 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 Montclair 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'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 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 will respond in a timely manner.

707.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

[See attachment: Military Equipment Inventory 020322.pdf](#)

707.5 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 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):

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- (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.
- (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.

707.6 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.

707.7 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 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 inventory.

707.8 COMMUNITY ENGAGEMENT

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

Attachments

Military Equipment Inventory 020322.pdf



Montclair Police Department **Military Equipment List**

1. Armored Personnel Carrier, vehicle with entry apparatus attached (Category 2)

a. Quantity, Description, Capabilities, and Purchase Cost:

One (1) "Peacekeeper" brand Armored Rescue Vehicle, Cadillac Gage Peacekeeper, built on a 1980 Dodge chassis; Cost: Obtained through the California State Agency for Surplus Property in 2002 as non-operable, and refurbished through donations by various local vendors; The Peacekeeper is designed to provide ballistic protection during tactical events (designed to withstand multiple bullet strikes from small arms fire as well as low level explosions). Equipped with emergency lights/siren and a public address system. Common uses for the Peacekeeper include citizen and officer rescues, evacuations, and the deployment of officers and approved equipment. The Peacekeeper is a regional mutual-aid asset that has been requested and deployed to surrounding cities as well as public community outreach events for display.

b. Purpose:

To be used in response to critical incidents to enhance officer and community safety, improve scene containment and stabilization, assist in resolving critical incidents, or display at a community event that is taking place.

c. Authorized Use:

The use of armored vehicles shall only be authorized by a Watch Commander based on the specific circumstances of a given critical incident. Armored vehicles shall be used only by officers trained in their deployment and in a manner consistent with Department policy and training.

d. Expected Lifespan:

25 years (Expired) Due for replacement.

e. Fiscal Impact:

Annual maintenance cost estimated between \$0 and \$1000 annually

2. Command and Control Vehicles (Category 5)

a. Quantity, Description, Capabilities, and Purchase Cost:

One (1) Model Year 2014 "Ultra Haulers" brand Command Trailer; Cost: \$37,286,. The Command Trailer is a mobile command post and an equipment storage trailer. Computerized screen used for tracking operations or projecting public information on the exterior. Desk with radios for dispatch on the interior.

Several storage areas for the different equipment used by department members. Water, generator, tables, chairs and televisions.

- b. **Purpose:**
To be used based on the specific circumstances of a given critical incident, large event, natural disaster, or display at a community event that is taking place.
- c. **Authorized Use:**
The Command Trailer shall be used by officers trained in its deployment and in a manner consistent with Department policy and training. The driver of the vehicle towing the trailer shall have a valid California driver's license.
- d. **Expected Lifespan:**
25 Years
- e. **Fiscal Impact:**
Annual maintenance cost estimated between \$0 and \$1000 annually.

3. **Specialized Firearms and Ammunition (Category 9)**

- a. **Quantity, Description, Capabilities, and Purchase Cost:**
Twenty-four (24) Colt Carbine Rifle LE6945CQB firearms, capable of accurately stopping an armed subject at various distances. The Colt Carbine Rifle is a lightweight, air-cooled, gas operated, magazine fed, shoulder fired weapon, designed for semi-automatic fire. The Carbine Rifle does not have an expiration and will need to be serviced or replaced when the rifle fails or breaks. The 5.56 NATO cartridge is used as a lethal option designed to stop a violent encounter. The projectile is capable of penetrating soft body armor worn by armed subjects. Cost: The purchase of the rifles was a "\$0" cost in 2015, as the Department was credited for an exchange of previously owned rifles. Optics for \$9,795 and suppressors for \$7,694 were purchased to make the rifle patrol ready.
 - I. The Hornady 5.56 NATO, 75 grain, BTHP T2 Tap Precision cartridge is the primary duty ammunition deployed during potential lethal encounters.
- b. **Purpose:**
To be used as precision weapons to address a threat with more precision and/or at greater distances than a handgun, if present and feasible within Department Policy and Applicable Law
- c. **Authorized Use:**
Only members that are POST certified Peace Officers, and have completed the POST Firearms / Tactical Rifle Course
- d. **Expected Lifespan:**
 - I. Carbine Rifle – No expiration.
 - II. The Hornady 5.56 NATO, 75 grain BTHP T2 TAP – No expiration.
- e. **Fiscal Impact:**
 - I. Carbine Rifle – Annual cost between \$0 - \$1000.
 - II. The Hornady 5.56 NATO, 75 grain BTHP T2 TAP– Annual cost between \$0-\$1,380 for all rifles combined, duty ammunition, excluding training rounds.

4. Tear Gas (Category 12)

a. Quantity, Description, Capabilities, and Purchase Cost:

Various Quantities of Chemical agent munitions, which are commonly referred to as "tear gas," are used by the Montclair Police Department as a non-lethal tool to disperse rioting suspects and on barricaded suspects per Montclair Police Department Policy and applicable law. The Montclair Police Department uses chemical agents which are used by law enforcement across the United States: CS (2 Chlorobenzylidenemalononitrile) and OC (Oleoresin Capsicum). CS is an irritating agent and lachrymator (irritates the eyes and causes tears to flow). CS has been medically tested in the UK and US, specifically by the U.S. Army. There are no known allergic reactions to CS. OC was de-regulated in California in 1996, is endorsed by the FBI, and is available to civilians to legally possess (2.5 oz. or less). OC is an inflammatory agent which causes involuntary closure of eyes (open in 2-5 minutes) and respiratory inflammation (subsides in approximately 2 minutes).

- I. Pocket Tactical SAF-Smoke White™ – Pyrotechnic grenade emitting non-irritant SAF Smoke through multiple emission ports for 20 to 30 seconds to cover small areas. May be launched or hand-thrown Cost: \$17.50 per munition.
- II. SAF-Smoke White™ – Pyrotechnic grenade emitting non-irritant SAF Smoke through multiple emission ports for 30 to 40 seconds to cover large areas. May be launched or hand-thrown Cost: \$33.83 per munition.
- III. 8230 – Pyrotechnic canister grenade emitting CS smoke through multiple emission ports for 20 to 30 seconds. May be launched or hand-thrown. Cost: \$17.50 per munition.
- IV. 9230 – The 9230 CS Jet-Lite Rubber Ball Grenade is one of the smaller diameter burning grenades that discharges a high volume of chemical agents through multiple emission ports. Can be hand thrown. Cost: \$29.26 per munition.
- V. 9590 – Stinger™ 32-Caliber Rubber Balls is designed to deliver rubber pellets from a handheld rubber ball grenade to disperse the intended target. Cost: \$56.80 per munition.
- VI. Spede-Heat SAF Smoke™ 40mm Short Range Round incorporates an aluminum shell and utilizes black powder as the propellant. The Spede-Heat™ 40mm Short Range Round is designed to deliver one dual-ported chemical canister from a 40mm launcher 75 yards to the intended target zone. Cost: \$26.40 per munition.
- VII. 4558 – 40mm Short Range Rubber Pellets incorporates an aluminum shell and utilizes black powder as the propellant. The 4558 40mm Short Range Round is designed to deliver 60 caliber rubber pellets from a 40mm launcher at close range to disperse the intended target. Cost: \$25.60 per munition.
- VIII. 4233 – 40mm Short Range CS Round incorporates an aluminum shell and utilizes black powder as the propellant. The 4233 40mm Short Range Round is designed to deliver three multi-ported chemical canisters from a 40mm launcher 75 yards to the intended target zone. Cost: \$40.05 per munition.
- IX. 5231 – CS Pyrotechnic grenade emitting CS smoke through three chemical canister that discharges a high volume of chemical agents through multiple emission ports to the intended target zone. Cost: \$34.61 per munition.

b. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for use of the less-lethal weapon systems may include, but are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

c. **Authorized Use:**

Only officers who have received POST certification or manufacturer-specific training in the use of chemical agents are authorized to use chemical agents.

d. **Expected Lifespan:**

- I. Pocket Tactical SAF-Smoke White™ – 5 years
- II. SAF-Smoke White™ – 5 years
- III. 8230 – 5 years
- IV. 9230 – 5 years
- V. 9590 – 5 years
- VI. Spede-Heat SAF Smoke™ 40mm – 5 years
- VII. 4558 – 5 years
- VIII. 4233 – 5 years
- IX. 5231 – 5 years

e. **Fiscal Impact:**

- I. Pocket Tactical SAF-Smoke White™ – Estimated between \$0 and \$140 annually.
- II. SAF-Smoke White™ – Estimated between \$0 and \$271 annually.
- III. 8230 – Estimated between \$0 and \$140 annually.
- IV. 9230 – Estimated between \$0 and \$234 annually.
- V. 9590 – Estimated between \$0 and \$341 annually.
- VI. Spede-Heat SAF Smoke™ 40mm – estimated between \$0 and \$211 annually.
- VII. 4558 – Estimated between \$0 and \$213 annually.
- VIII. 4233 – Estimated between \$0 and \$641 annually.
- IX. 5231 – Estimated between \$0 and \$347 annually.

5. **PepperBall Launcher (Category 12)**

a. **Quantity, Description, Capabilities, and Purchase Cost:**

Four (4) Launchers that a part of a system that uses high-pressure air to deliver PAVA powder projectiles (similar to a paintball delivery system). System capable of launching projectiles at a subject up to 60'. System capable of area saturation up to 160'. Non-lethal option to offer law enforcement officers to deliver chemical agents and kinetic energy impacts to subjects in a potentially violent encounter. De-Escalation tool used to avoid further injuries or lethal options on a subject; Cost: Unknown as items were purchased @ 20 years ago. Due for Replacement.

- I. PepperBall LIVE PROJECTILE, The basic PepperBall projectile contains 2.5 grams of PAVA pepper powder, and is designed for direct impact and area saturation, especially in confined, interior spaces. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-350 FPS. The projectile has a direct impact

of 60 feet and an area of saturation of 150+feet. The projectile contains 0.5% PAVA Powder; Cost: \$967.

- II. PepperBall Glass Breaker Projectiles, a solid projectile used to shatter windows only. Discharged from a PepperBall Launcher, the projectile has a velocity of 280-350 FPS; Cost: \$54.

b. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for use of the less-lethal weapon systems may include but, are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

c. **Authorized Use:**

Only those officers who have been trained in the use of PepperBall launchers are authorized to use the PepperBall launchers.

d. **Expected Lifespan:**

- I. PepperBall Launcher – No expiration
- II. Live Projectile – 3 year
- III. Glass Breaker Projectiles – No expiration

e. **Fiscal Impact:**

- I. PepperBall Launcher – Estimated between \$0 and \$1000 annually.
- II. Live Projectile – Estimated between \$0 and \$967 annually.
- III. Glass Breaker Projectiles – Estimated between \$0 and \$54 annually.

6. **Projectile Launch platforms and associated munitions (Category 14)**

a. **Quantity, Description, Capabilities, and Purchase Cost:**

Two (2) Defense Technology 40mm Single Launcher: Cost: Unknown, purchased @ 20 years ago. The Defense Technology 40mm Single Launcher is not a firearm, but a Less-Lethal launching system that uses smokeless powder to deliver 40MM projectiles from a safe distance. The Less-Lethal launcher is capable of launching 40MM munitions at a subject up to 40 yards. The Less-Lethal launcher is a single launcher, which allows the Officer to assess after every spent munition. Less-Lethal launcher does not have an expiration and will need to be serviced or replaced when the launcher fails or breaks.

- I. The 40MM munition is a Direct Impact Spin Stabilized Smokeless Sponge Munition. The Sponge Baton munition is used as a Less-Lethal weapon designed to de-escalate a potentially violent encounter; Cost: \$17.50 per unit.

b. **Quantity, Description, Capabilities, and Purchase Cost:**

Twenty-three (23) Remington 870 12 Gauge Multi-Shot Beanbag Launcher: Cost: Unknown, purchased over 25 years ago. The Remington 870 12 Gauge Multi-Shot Beanbag Launcher is a converted Remington 870 used as a Less-

Lethal launching system. The launching system uses smokeless powder to deliver a 12 gauge 40-gram lead-filled cotton-ballistic fiber blend projectile from a safe distance. The Less-Lethal launcher is capable of launching munitions at a subject up to 75 feet. The Less-Lethal launcher is a pump-action launcher, which allows the officer to assess after every spent munition. Less-Lethal launcher does not have an expiration and will need to be serviced or replaced when the launcher fails or breaks.

- I. ALS1212T – 12 gauge 40-gram lead-filled cotton-ballistic fiber blend stabilized bean bag munition is designed to produce blunt trauma and pain compliance. The bean bag munition is used as a Less-Lethal weapon designed to de-escalate a potentially violent encounter; Cost: \$1,117.

c. **Purpose:**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable.

d. **Authorized Use:**

Situations for use of the less-lethal weapon systems may include, but are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

e. **Expected Lifespan:**

- I. 40mm Launcher: No expiration
- II. 40mm Sponge Munition – 5 years
- III. Bean Bag Launcher – 5 years
- IV. Bean Bag Munitions – 5 years

f. **Fiscal Impact:**

- I. 40mm Launcher – Estimated between \$0 and \$1000 annually
- II. 40mm Sponge Munition – Estimated between \$0 and \$1000 annually.
- III. Bean Bag Launcher – Estimated between \$0 and \$1000 annually.
- IV. Bean Bag Munitions – Estimated between \$0 and \$1117 annually.

8. **Long Range Acoustic Device (Category 13)**

a. **Quantity, Description, Capabilities, and Purchase Cost:**

One (1). The Montclair Police Department shares a Genasys Systems Long Range Acoustic Device LRAD-1000 with the cities of Ontario, Chino, and Upland. The device is owned by the San Bernardino County Sheriff's Department. The device is a power-efficient, long-distance communication system designed for applications ranging from critical infrastructure protection, border and port security, and search and rescue applications. It features a rugged carbon fiber emitter head integrated with electronics and amplification has an extremely high decibel capacity. The device is used as a less-lethal weapon for crowd control and broadcasting emergency messages; Cost: \$0;

- b. **Purpose:**
To limit the escalation of conflict where deployment of higher force is prohibited or undesirable.

- c. **Authorized Use:**
Only Montclair officers who are trained in the use of the device shall be authorized to deploy the device. Situations for use of the less lethal weapon system may include, but are not limited to:
 - i. Riot/crowd control and civil unrest incidents.
 - ii. Circumstances where a tactical advantage can be obtained.
 - iii. Training exercises or approved demonstrations.

- d. **Expected Lifespan:**
 - I. Long Range Acoustic Device: No expiration

- e. **Fiscal Impact:**
 - I. Long Range Acoustic Device: \$0 annually.