

ORDINANCE NO. 647

AN ORDINANCE OF THE CITY OF FOSTER CITY REGARDING POLICE DEPARTMENT ACQUISITION AND USE OF MILITARY EQUIPMENT PURSUANT TO ASSEMBLY BILL 481 AND GOVERNMENT CODE SECTION 7070 ET SEQ. AND APPROVING THE MILITARY EQUIPMENT USE POLICY

CITY OF FOSTER CITY

The City Council of the City of Foster City does ordain as follows:

WHEREAS, effective January 1, 2022, Assembly Bill 481 (AB 481) (Government Code sections 7071 *et. seq.*) sets forth a process by which law enforcement agencies are to obtain approval from their governing bodies of a military equipment use policy through the adoption of an ordinance; and

WHEREAS, AB 481 added California Government Code Sections 7070, 7071, and 7072 to codify the requirements set forth in AB 481 including that the City Council of Foster City approve a Military Equipment and Use policy by Ordinance;

WHEREAS, pursuant to Government Code Section 7071(a)(1), requires that an ordinance must be timely adopted before a law enforcement agency may acquire or use new or existing military equipment and engage in other specified activities; and

WHEREAS, the Foster City Police Department currently has military equipment (as that term is defined in Government Code section 7070(c)) in its inventory; and

WHEREAS, the Foster City Police Department works closely with other local, county, state and federal law enforcement agencies within San Mateo County on police related matters, including safeguarding the public's welfare and safety, working on regional task forces, conducting training exercises, providing mutual aid and responding to emergencies; and

WHEREAS, in exigent circumstances, there is sometimes the need to deploy military equipment from or lend military equipment to outside entities to promote the safety and security of community members; and

WHEREAS, the continued collaboration with other law enforcement agencies in the deployment or other use of military equipment within the City is necessary to safeguard the public's welfare, safety, civil rights and civil liberties and there is no reasonable alternative that can achieve the same objective of officer and civilian safety; and

WHEREAS, Foster City Police Policy 709 sets forth a military equipment use policy that is consistent with the Police Department's current practices, has been posted on the Department's website for at least thirty (30) days, complies with all the requirements of AB 481, will ensure ongoing regulation and compliance with the law going forward and will provide a means of community engagement and transparency regarding use of military equipment by the Department; and

WHEREAS, public notice has been provided in accordance with applicable law;  
and

WHEREAS, the City Council desires to approve a military use policy in compliance with AB 481.

NOW, THEREFORE, the City Council of the City of Foster City, California, DOES HEREBY ORDAIN as follows:

SECTION 1. The City Council of the City of Foster City finds and determines as follows:

- A. The facts set forth in the recitals are true and correct and incorporated herein by this reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this ordinance.
- B. Authorizing the use of military equipment as set forth in this ordinance and Foster City Police Policy 709 is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety. The acquisition and use of the military equipment as set forth in Foster City Police Policy 709 is part of the Police Department's overall approach to Critical Incident Management, Use of Force, De-Escalation and public safety. The equipment will enable department members to properly respond to both planned and unplanned events efficiently and effectively.
- C. This ordinance and Foster City Police Policy 709 will safeguard the public's welfare, safety, civil rights, and civil liberties by ensuring required reporting out, the opportunity for community engagement and feedback, and transparency and oversight regarding the acquisition and use of the specified military equipment in the City of Foster City.
- D. The Foster City Police Department is not proposing to purchase any military equipment, as defined in AB 481, at this time.
- E. Prior military equipment use, as defined by AB 481, by the Foster City Police

Department complied with applicable policies in effect at the time of the use.

- F. This ordinance and Foster City Police Policy 709 comply with the requirements of AB 481.

Section 2. The City Council finds that this ordinance and Foster City Police Policy 709 are exempt from the provisions of the California Environmental Quality Act ("CEQA") because they will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project," as defined in Section 15378 of the CEQA Guidelines.

Section 3. Approval of Military Equipment Policy. The City Council adopts the 2022-2023 Military Equipment Use Policy, as set forth in Exhibit A. The City Council further directs staff to establish an annual review procedure to review and provide for approval of any renewal of the military equipment use policy, in accordance with Government Code section 7072, to occur before May 1st of each subsequent year.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. Effective Date. This ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Foster City shall cause this ordinance to be published pursuant to the provisions of Government Code Section 36933.

City Ordinance No. 647

This Ordinance was introduced and read on the 16th day of April, 2022, and passed and adopted on the 2nd day of May 2022, by the following vote:

AYES: Councilmembers Froomin, Gehani, Hindi, Sullivan, and Mayor Awasthi

NOES: None

ABSENT: None

ABSTAIN: None

DocuSigned by:

*Richa Awasthi*

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RICHA AWASTHI, MAYOR

ATTEST:

DocuSigned by:

*Priscilla Schaus*

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PRISCILLA SCHAUS, CITY CLERK

## CERTIFICATE OF POSTING

I, Priscilla Schaus, hereby certify as follows:

That I am, and at all time herein mentioned, was the duly acting and qualified City Clerk/District Secretary of the **City of Foster City**, Foster City, San Mateo County, California.

I further certify to the proper posting of:

Ordinance No. 647, "An Ordinance of the City of Foster City Regarding Police Department Acquisition and Use of Military Equipment Pursuant to Assembly Bill 481 and Government Code Section 7070 Et Seq. and Approving the Military Equipment Use Policy"

in the following three public places of the **City of Foster City**, Foster City, San Mateo County, California:

1. Recreation Center Lobby  
650 Shell Boulevard
2. Council Chambers  
620 Foster City Boulevard
3. Foster City Public Library  
1000 E. Hillsdale Boulevard

Executed at the **City of Foster City**, Foster City, San Mateo County, California this 3<sup>rd</sup> day of May 2022.

DocuSigned by:

*Priscilla Schaus*

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Priscilla Schaus  
City Clerk