

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF FOSTER CITY RENEWING ORDINANCE NO. 647 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

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 et seq. to codify the requirements set forth in AB 481 including that the City Council of Foster City annually review its Military Equipment and Use policy; 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, On April 18, 2022 and May 2, 2022, the Foster City City Council held a first and second reading, respectively, of Ordinance no 647 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; 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 since its adoption and complies with all the requirements of AB 481, and 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, Government Code section 7072 requires, the Foster City Police Department to submit to the governing body an annual military equipment report for each type of military equipment approved by the governing body, as well as make such report available on its website. And further that within 30 days of publicly releasing the annual report, the law enforcement agency shall hold a well-publicized and conveniently located community engagement meeting; and

WHEREAS, The Foster City Police Department did submit an annual report to the City Council and make it publicly available on its website on April 19, 2023. Further, the Foster City Police Department did publicize that the Department would present the annual report at the May 1, 2023, City Council Meeting where members of the community would be allowed to discuss and ask questions regarding the annual report; and

WHEREAS, on May 1, 2023, the Foster City Police Department did present the annual report, where public comment, and comments from the City Council were made, and the annual report was discussed; and

WHEREAS, On May 1, 2023, the City Council reviewed Ordinance No. 647, Regarding Police Department Acquisition and Use of Military Equipment Pursuant to Assembly Bill 481 And Government Code Section 7070 Et Seq. Approving The Military Equipment Use Policy; and

WHEREAS, the City Council has accepted the annual report and desires to renew Ordinance No. 647 in compliance with AB 481.

NOW, THEREFORE, the City Council of the City of Foster City, California, DOES HEREBY RESOLVE 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. That based on the annual military equipment report submitted pursuant to Section 7072, that each type of military equipment identified in that report has complied with the standards for approval set forth in Government Code section 7071(d).
- C. The City Council has reviewed Ordinance No. 647 Regarding Police Department Acquisition and Use of Military Equipment Pursuant to Assembly Bill 481 And Government Code Section 7070 et Seq. Approving The Military Equipment Use Policy, and wishes to renew that ordinance for an additional year, as the Council continues to find the following:
 - a. Authorizing the use of military equipment as set forth in Ordinance No. 647 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.
 - b. Ordinance no. 647 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.
 - c. The Foster City Police Department is not proposing to purchase any military equipment, as defined in AB 481, at this time.
 - d. 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.
 - e. Ordinance No. 647 and Foster City Police Policy 709 comply with the requirements of AB 481.

Section 2. The City Council finds that renewal of Ordinance No. 647 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. The City Council further directs staff to continue its 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.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JON FROOMIN, MAYOR

ATTEST:

PRISCILLA SCHAUS, CITY CLERK