



DATE: May 1, 2023

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager

FROM: Tracy Avelar, Police Chief

DEPARTMENT: Police

SUBJECT: AB 481 MILITARY EQUIPMENT USE ANNUAL REPORT FOR  
2022

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## RECOMMENDATION

It is recommended that the City Council receive and review the Foster City Police Department (the "Department") 2022 Annual Military Equipment Report (Attachment 2) and adopt a resolution 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 ("Policy 709").

## EXECUTIVE SUMMARY

California Assembly Bill 481 (AB 481), the California Government Code (Gov. Code § 7070 *et seq.*), and Policy 709, requires that the Department submit an annual military equipment report to the legislative body, and for the Department to hold a well-publicized community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report, including the funding, acquisition, or use of military equipment. This agenda item accomplishes that meeting.

In addition, Government Code section 7071(e)(1) requires that the legislative body review the ordinance that adopted Policy 709 and vote on whether to renew it annually.

The City Council shall review the ordinance adopting Foster City Police Department Policy 709, Military Equipment (“Policy 709” or “Military Equipment Policy”) and vote on whether to renew the ordinance by resolution.

The City Council shall make its determination based on the Military Equipment Annual Report. The Council is to consider whether the military equipment complied with the standards of use authorized, or if the military equipment identified in the report did not comply with the standards set forth and to either disapprove a renewal of the authorization for that type of equipment or require modifications to the policy that will resolve the lack of compliance.

## **BACKGROUND**

On September 30, 2021, AB 481 was signed into law. Subsequently, California Government Code Sections 7070 *et seq.* was adopted to codify the requirements set forth in AB 481. (Collectively referred to as “Applicable State Laws.”) Accordingly, the Department presented Policy 709 and a list of Military Equipment, (as defined by Government Code section 7070) to the City Council on April 18, 2022, where the City Council did review and voted to approve the Policy by Ordinance. A second reading was held on May 2, 2022, and Ordinance No. 647 was adopted.

The Applicable State Law and Policy 709 require that the Police Department now present an annual report regarding the use of the military equipment in the previous year. During the review, the City Council is directed to review the report to either disapprove a renewal of the authorization for a type of military equipment or amend the military equipment use policy if it determines that the military equipment use did not comply with the above-described standards for approval. And thereafter, the City Council is to review Ordinance No. 647, and vote on whether to renew it, by Resolution.

As discussed below, the Foster City Police Department did not deploy any military equipment in the preceding year, and thus, the use of the equipment has met the standards authorized by the Council in Ordinance 647 and Policy 709, and the Department recommends that the Council vote to renew Ordinance No. 647.

## **ANALYSIS**

### **2022 Annual Military Equipment Report**

Pursuant to Applicable State Law and Policy 709, the Department has prepared an annual report on its military equipment. The Annual Military Equipment Report includes the following information:

- (1) A summary of how the military equipment was used and the 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 following 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.

(Gov. Code, § 7072)

California Government Code Section 7070 and Policy 709 provides a list of sixteen (16) types of equipment that are to be considered "Military Equipment". Of the sixteen (16) types of equipment specified, the Police Department possesses only three (3) types. Equipment types that the Police Department possesses and information on each in regards to the Annual Report is described below and detailed in the attached Annual Report.

**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.**

The Department did not use this equipment in the preceding year and thus complied with the standards of Policy 709. The Department did not receive any complaints or have any reports of any internal audits regarding this equipment. Details as to the costs and quantity possessed can be found in the attached annual report. The Department does not intend to acquire additional equipment of this type at this time.

**"Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.**

The Department did not use this equipment in the preceding year and thus complied with the standards of Policy 709. The Department did not receive any complaints or have any reports of any internal audits regarding this equipment. Details as to the costs and quantity possessed can be found in the attached annual report. The Department does not intend to acquire additional equipment of this type at this time.

**The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.**

The Department did not use this equipment in the preceding year and thus complied with the standards of Policy 709. The Department did not receive any complaints, or have any reports of any internal audits regarding this equipment. Details as to the costs and quantity possessed can be found in the attached annual report. The Department does not intend to acquire additional equipment of this type at this time.

Additionally, the Department participates in a regional Special Weapons and Tactics (SWAT) team (NCR SWAT), which possesses and utilizes additional types of equipment that qualify as "Military Equipment" according to California Government Code Section 7070 and Policy 709. While the equipment possessed by NCR SWAT is not purchased, owned, or maintained by the Department, it could be used in the City of Foster City if NCR SWAT is deployed, and such equipment is therefore included in the Military Equipment Use Policy. It is important to note that NCR SWAT is generally only deployed in extreme circumstances such as active shooter incidents, hostage situations, and the execution of high-risk search and arrest warrants. The equipment NCR SWAT possesses is rarely deployed but could prove essential to emergency operations when needed.

Equipment types that the NCR SWAT Team possesses are noted in bold type.

**Unmanned, remotely piloted, powered aerial or ground vehicles.**

NCR SWAT did not use this equipment in the preceding year in Foster City. The Department did not receive any complaints or have any reports of any internal audits regarding this equipment. Details as to the costs, quantity possessed by NCR SWAT can be found in the attached report. A member agency of NCR SWAT (San Mateo Police Department) has indicated that it does intend to acquire additional Unmanned Aircraft Systems (UAS). Such additional equipment will not be owned or possessed by the Department.

**Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.**

NCR SWAT did not use this equipment in the preceding year in Foster City. The Department did not receive any complaints or have any reports of any internal audits regarding this equipment. Details as to the costs, quantity possessed by NCR SWAT can be found in the attached report. None of the member agencies of NCR SWAT appear to be seeking to acquire this type of military equipment for the following year.

**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.**

NCR SWAT did not use this equipment in the preceding year in Foster City. The Department did not receive any complaints or have any reports of any internal audits regarding this equipment. Details as to the costs, quantity possessed by NCR SWAT can be found in the attached report. None of the member agencies of NCR SWAT appear to be seeking to acquire this type of military equipment for the following year.

**Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.**

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**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.**

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**Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).**

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The Department finds that the use of the military equipment in the preceding year complies with Policy 709.

**Renewal of Ordinance**

Government Code section 7071(e)(1) requires that the City Council shall review any ordinance that it adopted approving the funding, acquisition, or use of military equipment at least annually, and vote on whether to renew the ordinance at a regular meeting. In considering whether to renew the Ordinance, the City Council shall determine based on the annual military equipment report submitted pursuant to Section 7072, whether each type of military equipment identified in that report has complied with the standards for approval. If the governing body determines that a type of military equipment identified in that annual military equipment report has not complied with the standards for approval, the governing body shall either disapprove a renewal of the authorization for that type of military equipment *or* require modifications to the military equipment use policy in a manner that will resolve the lack of compliance.

As detailed in the annual report, and above, the Department met the standards for use of the military equipment described in Policy 709. Although the Department did not deploy any such equipment, nor did NCR SWAT, continuing to have access to such equipment is vital to the Department in the event exigent circumstances occur. In such

situations, there is sometimes need to deploy military equipment to promote safety and security of the community. The Department has exhibited its ability to judiciously utilize such equipment. As such, the Department recommends that the City Council vote to renew Ordinance No. 647.

### California Environmental Quality Act

Not Applicable

### FISCAL IMPACT

There is no fiscal impact associated with renewing Ordinance No. 647 and approving the Military Use Policy.

### CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Public Safety and Social Equity

### ATTACHMENTS:

Attachment 1 – Resolution

Attachment 2 – Military Equipment Use Annual Report

Attachment 3 – Ordinance No. 647

Attachment 4 – Foster City Police Department Policy 709

Attachment 5 – Foster City Police Department Equipment List