

ORDINANCE 2022-002

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO APPROVING
SAN PABLO POLICE DEPARTMENT POLICY 709, MILITARY EQUIPMENT FUNDING,
ACQUISITION AND USE**

THE CITY COUNCIL OF THE CITY OF SAN PABLO DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings. The City Council of the City of San Pablo makes the following findings:

- A. Assembly Bill 481 approved September 30, 2021 (codified as Chapter 12.8 of the California Government Code and commencing with section 7070 et seq.) requires a local law enforcement agency, such as the San Pablo Police Department, to have a military equipment use policy approved by the City Council prior to requesting, seeking funding, acquiring, collaborating with other jurisdictions about the deployment of military equipment, or using military equipment.
- B. The San Pablo Police Department Policy 709, "Military Equipment Funding, Acquisition and Use Policy" ("Policy") is attached as Exhibit A and incorporated into this Ordinance.
- C. The Policy has been posted on the City's website for at least 30 days starting on March 16, 2022.
- D. The City Council has conducted a public hearing on the Policy during a regularly scheduled City Council meeting on April 18, 2022 and considered all written and verbal comments, as well as the report and presentation from staff.
- E. The City Council has reviewed the Policy and finds that it meets the requirements of State law and is consistent with the City's major policy goal, "Improve Public Safety," adopted by the City Council on March 1, 2021 pursuant to City Council Resolution 2021-026.
- F. The City Council determines that:
 1. 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.
 2. The proposed Policy attached as Exhibit A and identified as San Pablo Police Department Policy 709 will safeguard the public's welfare, safety, civil rights, and civil liberties.

3. If purchasing the equipment identified in the Policy, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
4. 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.

SECTION 2. Approval of the Policy. The City Council of the City of San Pablo approves the San Pablo Police Department Policy 709, "Military Equipment Funding, Acquisition and Use Policy," attached and incorporated as Exhibit A into this Ordinance. In doing so, the City Council directs that:

- a. Staff is authorized to request, seek funding, acquire, collaborate with other jurisdictions, and use military equipment consistent with this Policy.
- b. Staff shall maintain the Policy on the Police Department's website page.
- c. Annually, the Police Department shall hold a publicized community engagement meeting regarding the Policy and the Department's use of military equipment, pursuant to Cal. Gov't Code section 7072(b).
- d. Annually the City Council shall review this Ordinance, the Policy and the annual military equipment report prepared by the Police Department pursuant to Cal. Gov't Code section 7072 and determine by resolution, pursuant to Cal. Gov't Code section 7071 whether the use of the military equipment in the past year has complied with the Policy; and whether to continue the Ordinance and Policy or to take action by ordinance to modify such Policy or repeal the Ordinance.

SECTION 3. Severability. If any sections, subsections, sentences, clauses, phrases or portions of this Ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause of this Ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

SECTION 4. CEQA. This Ordinance is not a project under CEQA pursuant to Guidelines Section 15378(b)(5): Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. If a project, then the Ordinance is exempt from the provisions of the California Environmental Quality Act, (CEQA), under CEQA Guidelines § 15061(b)(3), in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The City Manager is directed to ensure that a notice of exemption is filed immediately with the County Clerk.

Military Equipment

709.1 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).

709.1.1 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.
- Area denial electroshock devices, microwave weapons, water cannons, long-range acoustic devices (LRADs), acoustic hailing devices, and sound cannons.
- 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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709.2 POLICY

It is the policy of the San Pablo Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment. Violations of this policy by member(s) of the San Pablo Police Department will be investigated in accordance with SPPD policy #1020.

709.3 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 City Council 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 City Council.
- (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 San Pablo 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 (prior to submission to the City Council per section 709.7) and ensuring that the report is made available on the department website (Government Code § 7072).

709.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the San Pablo Police Department, as well as provides legal and procedural rules for use and training requirements:

See attachment: SPPD Military Equipment Inventory.pdf

709.5 APPROVAL OF THIS POLICY

The Chief of Police or the authorized designee shall obtain approval from the City Council by way of an ordinance approving 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 City Council, a public hearing is held, and the policy 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 City Council prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.

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- (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 City Council.
- (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.

709.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment used by any member of this jurisdiction shall be approved for use and in accordance with this Department policy. Military equipment used by other jurisdictions that are providing mutual aid to this jurisdiction shall comply with their respective military equipment use policies in rendering mutual aid.

709.7 ANNUAL REPORT

Upon approval of this military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the City Council 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). In considering the annual report and ordinance annually, the City Council needs to consider whether it can continue to make the findings in California Government Code § 7071 (d)(1).

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.

709.8 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.

709.8.1 COMMUNITY CONCERNs AND COMPLAINTs

The San Pablo Police Department has established a Community Concerns and Complaints process with forms available in English and Spanish. The community will have the ability to provide

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verbal concerns/complaints over the telephone or in-person at the Police Facility (SPPD policy #1020).

709.9 CITY COUNCIL APPROVAL

Pursuant to California Government Code section 7071, the City Council of San Pablo approved this Policy pursuant to Ordinance #2022-002 on May 2, 2022. Further substantive amendments to the Policy need to be reviewed and approved by the City Council.