

Policy

**706****Hayward Police  
Department**

Hayward PD Policy Manual

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## Military Equipment

### 706.1 PURPOSE AND SCOPE

Assembly Bill 481 (AB 481), signed into law on September 30, 2021, requires law enforcement agencies to create a policy establishing guidelines and requirements for the funding, acquisition, and use of “military equipment” (Government Code § 7070, 7071, and 7072), including requirements to host informational meetings with the public, generate annual “military equipment” use reports, and seek annual approval from their respective governing bodies. The purpose of this policy is to make sure that safeguards exist, including transparency, governing body oversight, and accountability measures, to ensure the funding, acquisition, and use of “military equipment” is consistent with the provisions set forth by the governing body and as outlined in AB 481. This policy will also provide the public with a transparent view of the “military equipment” utilized by the Hayward Police Department.

#### 706.1.1 DEFINITIONS

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

**Governing body** – The City of Hayward’s Mayor and City Council.

**Exigent Circumstances** – A law enforcement agency’s good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person is occurring, has occurred, or is about to occur.

**Military equipment** – Includes but is not limited to the following:

- *Category 1* - Unmanned, remotely piloted, powered aerial or ground vehicles.
- *Category 2* - Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- *Category 3* - 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.
- *Category 4* - Tracked armored vehicles that provide ballistic protection to their occupants.
- *Category 5* - Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- *Category 6* - Weaponized aircraft, vessels, or vehicles of any kind.

- *Category 7* - Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- *Category 8 and 9* – Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- *Category 10* - 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 handguns.
- *Category 11* - Any firearm or firearm accessory that is designed to launch explosive projectiles.
- *Category 12* - Noise-flash diversionary devices, explosive breaching tools, “tear gas”, and “pepper balls”, excluding standard, service-issued handheld pepper spray.
- *Category 13* - TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- *Category 14* – Kinetic energy weapons and munitions.
- *Category 15* - Any other equipment as determined by a governing body or a state agency to require additional oversight.

## 706.2 POLICY

It is the policy of the Hayward Police Department that members of the department comply with the provisions of Government Code § 7071 with respect to qualifying “military equipment”. “Military equipment” shall be used by members of the Department who have completed applicable training, including training required by the Commission on Peace Officer Standards and Training (POST). See the Military Equipment Inventory List (section 706.5 below), attached hereto as **Exhibit A** for associated “military equipment” training requirements.

“Military equipment”, which has been approved for use by the governing body, shall be used in accordance with all other applicable department policies and laws. These policies and laws include, but are not limited to:

- Hayward Police Department Policy 300 (Use of Force)
- Hayward Police Department Policy 302 (Control Devices and Techniques)
- California Assembly Bill No. 48
- California Penal Code Section 13652 (Use of Kinetic Energy Projectiles and Chemical Agents)

The Hayward Police Department acknowledges the historical use of certain police equipment to intimidate and oppress certain communities and groups more than others, including those that are defined by a common race, ethnicity, religion, national origin, income level, sexual

orientation, or political perspective. As such, this policy expressly prohibits the use of “military equipment” on individuals or groups solely based on actual or perceived characteristics, such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability.

### **706.3 APPROVAL BY THE GOVERNING BODY**

The Hayward Police Department shall obtain approval from the governing body annually prior to engaging in any of the following activities:

- (a) Requesting “military equipment” made available pursuant to section 2576a of Title 10 of the United States Code.
- (b) Seeking funds for military equipment including, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring new “military equipment”, either permanently or temporarily, including by borrowing or leasing.
- (d) Absent exigent circumstances, collaborating with another law enforcement agency in the deployment or other use of “military equipment” within the territorial jurisdiction of the governing body.
- (e) Absent exigent circumstances, using any new or existing “military equipment” for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to policy.
- (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”.

The Hayward Police Department shall submit a proposed Military Equipment Use Policy (this policy), or associated amendments, to the governing body and the public via the Hayward Police Department’s website at least 30 days prior to any public hearing concerning the “military equipment” at issue.

### **706.4 MILITARY EQUIPMENT COORDINATOR**

The Chief of Police shall designate a member of the Hayward Police 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 Hayward Police 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. The inventory list shall include the following:

1. The manufacturer's description of the equipment.
  2. The capabilities of the equipment.
  3. The purposes and authorized uses for which the Hayward Police Department proposes to use the equipment.
  4. The expected lifespan of the equipment.
  5. The fiscal impact of the equipment, both initially and for ongoing maintenance.
  6. The quantity of the equipment, whether maintained or sought.
- (d) Collaborating with any allied agency that may use "military equipment" within the jurisdiction of Hayward 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 Hayward Police 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 Hayward Police Department's 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 Hayward Police Department will respond in a timely manner.

#### **706.5 MILITARY EQUIPMENT INVENTORY LIST**

The Hayward Police Department shall prepare a Military Equipment Inventory List, which shall include the following information:

- (a) A description of each type of "military equipment", the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the "military equipment".
- (b) The purpose and authorized use for which the Hayward Police Department proposes to use each type of "military equipment".
- (c) The fiscal impact of each type of "military equipment", including initial costs of obtaining the equipment and estimated annual cost of maintaining the equipment.
- (d) The legal and procedural rules that govern each authorized use.
- (e) The training, including any course required by POST, that must be completed before any Department member is allowed to use each specific type of "military equipment" to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the Military Equipment Use Policy.

The Military Equipment Inventory List shall be updated as necessary due to directives from the governing body or a change in the inventory. The Military Equipment Inventory List and associated amendment(s) shall be submitted to the governing body and the public via the Hayward Police Department's website at least 30 days prior to any public hearing concerning this policy.

The current Military Equipment Inventory List is attached hereto as **Exhibit A**.

#### **706.6 MILITARY EQUIPMENT EXCLUSIONS**

The Hayward Police Department acknowledges the list of "military equipment", as outlined in AB 481, is extensive and includes items that members of the department shall not seek to acquire, borrow, or use. These "military equipment" items include those that fall within the following categories:

- *Category 3* - 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.
- *Category 4* - Tracked armored vehicles that provide ballistic protection to their occupants.
- *Category 6* - Weaponized aircraft, vessels, or vehicles of any kind.
- *Category 8 and 9* - Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- *Category 11* - Any firearm or firearm accessory that is designed to launch explosive projectiles.
- *Category 13* - TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).

#### **706.7 PROCUREMENT AND USE IN EXIGENT CIRCUMSTANCES**

Notwithstanding the provisions of this policy, the Hayward Police Department may acquire, borrow, and/or use "military equipment" in exigent circumstances without following the requirements of this policy.

If the Hayward Police Department acquires, borrows, and/or uses "military equipment" in exigent circumstances, in accordance with this section, the following action must be taken:

- (a) The Chief of Police or the authorized designee must provide written notice to the governing body within 30 days following the commencement of the exigent circumstances, unless such information is confidential or privileged under local, state, or federal law.

- (b) If it is anticipated the use will continue beyond the exigent circumstances, the Chief of Police or the authorized designee must submit a proposed amendment to the Military Equipment Use Policy to the governing body within 90 days and the Hayward Police Department may only continue use if approved, as applicable, by the governing body.
- (c) The Chief of Police or the authorized designee must include the acquisition, borrowing, and/or use of the “military equipment” in the next annual Military Equipment Report.

#### **706.8 POLICY COMPLIANCE AND SUBMITTING COMPLAINTS**

The Chief of Police or the authorized designee will ensure that all Hayward Police Department employees comply with this policy. Suspected violations of the provisions set forth in this policy, or in other laws or policies governing the use of “military equipment”, shall be referred to the Internal Affairs Unit and handled in accordance with Hayward Police Department Policy 324 (Standards of Conduct). Additionally, violations of the provisions set forth in this policy, or in other laws or policies governing the use of “military equipment”, will be reported to the governing body via the annual Military Equipment Report.

Any member of the community can submit a complaint regarding the use of “military equipment” to any Hayward Police Department employee and in any form (e.g., in person, telephone, email, etc.). Once a complaint is received, it will be referred to the Internal Affairs Unit and handled in accordance with Hayward Police Department Policy 324 (Standards of Conduct).

#### **706.9 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.

#### **706.10 ANNUAL MILITARY EQUIPMENT REPORT**

Upon approval of this Military Equipment Use Policy, the Chief of Police or the authorized designee shall submit an annual Military Equipment Report to the governing body for each type of “military equipment” approved and in the Hayward Police Department inventory. This report must be submitted to the governing body within one year of approval, and annually thereafter for as long as the “military equipment” is available for use. Each annual report shall be made publicly available on the Hayward Police Department’s website for as long as the “military equipment” is available for use.

The annual Military Equipment Report must address each type of “military equipment” approved for department use and shall, at a minimum, include the following information for the preceding year for each type of “military equipment”:

- (a) A summary of how the “military equipment” was used and the purpose of its use.
- (b) A summary of any complaints or concerns received regarding the “military

equipment”.

- (c) The results of any internal audits, any information about violations of the Military Equipment Use Policy, and any actions taken in response.
- (d) The total annual cost for each type of “military equipment”, including acquisition costs, personnel costs, training costs, maintenance costs, and other ongoing costs, and from what funding source these costs came from.
- (e) The quantity possessed for each type of “military equipment”.
- (f) If the Hayward Police Department intends to acquire additional “military equipment” in the next year, including the nature of the items and quantity sought.

#### **706.11 COMMUNITY ENGAGEMENT**

Within 30 days of submitting and publicly releasing an annual Military Equipment Report, the Hayward Police Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the community may discuss and ask questions regarding the report. The community may also discuss and ask questions regarding the Hayward Police Department’s funding, acquisition, or use of “military equipment”.

#### **706.12 REVISIONS**

Adopted: XXX