



DATE: April 26, 2022

TO: Mayor and City Council

FROM: Chief of Police

SUBJECT: AB 481 Policy Review: Council Work Session to Review Proposed Policy Regarding the Hayward Police Department's Funding, Acquisition, and Use of "Military Equipment", as Defined by Assembly Bill 481

RECOMMENDATION

That the Council holds a work session to review a proposed policy (Attachment II) regarding the Hayward Police Department's (HPD) funding, acquisition, and use of military equipment, as defined in Assembly Bill (AB) 481 (Attachment III).

SUMMARY

On January 1, 2022, AB 481, which governs the funding, acquisition, and use of military equipment by law enforcement agencies in the State of California, went into effect. AB 481 specifically requires all law enforcement agencies in California to obtain the approval of their respective governing bodies before funding, acquiring, or using equipment now defined under AB 481 as "military equipment." As the governing body for the HPD, Council is tasked with reviewing and approving, via ordinance at a public meeting, a policy consistent with the requirements in AB 481. The purpose of this staff report and related documents is to present information to the Council regarding the proposed policy and the relevant equipment currently in HPD's inventory. Council has 180 days to approve the policy via adoption of the ordinance once the approval process has been initiated. In this case, Council was provided with copies of the HPD's proposed Military Equipment Use Policy on April 6, 2022, initiating the AB 481 approval process. This means Council has until September 3, 2022 to officially approve the policy via adoption of the ordinance. If Council does not approve the policy via adoption of the ordinance within the 180-day timeframe, the HPD must cease the use of all equipment now defined as "military equipment." HPD does not utilize all of the equipment outlined in AB 481. Given the equipment that is deployed in specialized circumstances, ceasing to have this equipment available for use could be detrimental to HPD and the safety of community members and officers alike, as outlined in this report.

BACKGROUND

On September 30, 2021, Governor Newsom signed a series of eight (8) pieces of policing reform legislation aimed at increasing transparency around policing. AB 481 was one of those pieces of legislation. AB 481, which became effective on January 1, 2022, was created to address transparency issues in the funding, acquisition, and use of law enforcement equipment that lawmakers have deemed to be “military equipment.” AB 481, codified at California Government Code Section(s) 7070 through 7075, requires law enforcement agencies to “commence a governing body approval process,” for the adoption of a military equipment use policy by ordinance, in a public forum, by May 1, 2022, to continue the use of previously acquired “military equipment.” The bill also requires such approval (of the policy by ordinance), by the governing body in a public forum, before a law enforcement agency may fund, acquire, or use new “military equipment.” Moreover, the bill requires further public review and approval actions by the governing body, annually, to continue the use of “military equipment,” and requires the City to host annual community meetings regarding the agency’s use of “military equipment” under the bill. These requirements are more specifically outlined below.

The term “military equipment,” as used in the legislation, does not necessarily indicate equipment used by the military. Items deemed to be “military equipment,” include, but are not limited to equipment such as unmanned vehicles, command and control vehicles, armored vehicles, pepper balls, less lethal shotguns, and long-range acoustic devices. These types of equipment, as well as others considered “military equipment” under AB 481, are commonly used and employed by law enforcement agencies across the country to enhance resident and officer safety.

AB 481 “Military Equipment”:

The following law enforcement equipment is now deemed to be “military equipment” for purposes of adhering to AB 481 under §7070(c):

1. Unmanned, remotely piloted, powered aerial or ground vehicles.
2. Mine-resistant ambush-protected vehicles or armored personnel carriers.
3. Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
4. Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
5. Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
6. Weaponized aircraft, vessels, or vehicles of any kind.
7. Battering rams, slugs, and breaching apparatuses that are explosive in nature.
8. Firearms of .50 caliber or greater. Standard issue shotguns excluded.
9. Ammunition of .50 caliber or greater. Standard issue shotgun ammunition is excluded.
10. 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.

11. Any firearm or firearm accessory that is designed to launch explosive projectiles.
12. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls."
13. Taser Shockwave, microwave weapons, water cannons, and the Long-Range Acoustic Device (LRAD).
14. The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.
15. Any other equipment as determined by a governing body or a state agency to require additional oversight.
16. Notwithstanding paragraphs (1) through (15), "military equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.

A current list of equipment (Attachment IV) contained in HPD's inventory is attached to this staff report. The department does not currently utilize some of the equipment on the above list – the list in Attachment IV identifies under which category from the above list HPD's equipment falls.

AB 481 Legal Requirements:

To continue to use, seek funding for, or acquire any of the above equipment, a law enforcement agency must obtain approval of its governing body (the City Council) "by an ordinance adopting a military equipment use policy at a regular meeting of the governing body held pursuant" to the Brown Act. Gov't Code. § 7071(a)(1). The law enforcement agency must "commence" the "governing body approval process," in accordance with AB 481, by "no later than May 1, 2022." § 7071(a)(2). The process is "commenced" by "submission of the proposed military equipment use policy to the governing body." *Id.* Once the proposed policy is provided to the governing body, the governing body (City Council) has 180 days to approve of the continuing use of military equipment, including by adoption of the proposed policy. *Id.* If the use of military equipment and proposed policy are not approved within that timeframe, the agency must cease all use of such equipment until such approval is received. *Id.*

For transparency purposes, the bill requires that the proposed policy (to be submitted to the governing body for approval), be made available "on the law enforcement agency's internet website at least 30 days prior to any public hearing concerning the military equipment at issue." § 7071(b). Moreover, the governing body (City Council) is required to consider the proposed policy, "as an agenda item for an open session of a regular meeting and provide for public comment in accordance with" the Brown Act. § 7071(c).

The proposed policy, must, at a minimum, contain the following: (1) a description of each type of military equipment, quantity sought, its capabilities, expected lifespan, and product descriptions from manufacturer; (2) the purposes and authorized uses for which the

agency proposes to use each type of equipment; (3) the fiscal impact of each type of equipment, including initial costs of obtaining the equipment and the estimated annual cost for maintaining the equipment; (4) the legal and procedural rules that govern each authorized use; (5) the training that must be completed before an employee is allowed to use each type of equipment; (6) the mechanisms in place to ensure compliance with the policy, including which independent persons or entities have oversight/authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy; and (7) the procedures by which members may register complaints or concerns about the use of equipment and how the agency will ensure the complaints or concerns are received and responded to in a timely manner. HPD's proposed policy is included with this report as Attachment II. § 7070(d).

In reviewing the proposed policy, the City Council shall only approve the policy if it determines the following: (1) the equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; (2) the proposed policy will safeguard the public's welfare, safety, civil rights and civil liberties; (3) the equipment, if being purchased, is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety; and (4) prior military equipment use complied with the military equipment use policy that was in effect at the time, or if it did not, corrective action has been taken to remedy nonconforming uses and ensure future compliance. § 7071(d)(1).

Following the approval of any such policy, the proposed or final policy must be made publicly available on the law enforcement agency's website for as long as the military equipment is available for use. §7071(d)(2). Moreover, the law enforcement agency must submit, to the City Council, within a year of approval, and annually thereafter for as long as the military equipment is available for use, a "military equipment report for each type of military equipment approved by the governing body." § 7072. The report must include the following information: (1) A summary of how the military equipment was used and the purpose of its use; (2) a summary of complaints or concerns received regarding military equipment; (3) the results of internal audits, any information about violations of the Policy, and actions taken in response; (4) the total annual cost for each piece of equipment, including the cost of acquisition, personnel, training, transportation, maintenance, storage, upgrade, ongoing costs and information about where source funds will be provided from in the calendar year following the submission of the annual report; (5) the quantity of each type of equipment possessed; and (6) whether the agency intends to acquire additional military equipment next year and the quantity sought for each. *Id.*

Within 30 days of submitting and publicly releasing the annual military equipment report, the law enforcement agency must hold "at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report" and the funding/use of equipment. § 7072(b)

Additionally, the City Council must review the ordinance that it has adopted, approving of the funding, acquisition, or use of military equipment, at least annually, and vote on

whether to renew the ordinance at a regular meeting held pursuant to the Brown Act. § 7071(e)(1). During the review process, the City Council must determine, based on the military equipment report submitted under § 7072, whether each type of military equipment in the report has complied with the standards for approval set forth in §7071(d)(1). §7071(e)(2). If it determines a type of equipment identified in the report has not complied with the standards for approval, the City Council must either disapprove of the renewal or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance.

DISCUSSION

By its very nature, law enforcement is an increasingly difficult and dangerous job. History has shown that armed encounters between law enforcement officers in the United States and heavily armed, violent offenders can be traced back to the prohibition era of the 1920s. During this time, communities were impacted by offenders and organized crime groups who were often armed with automatic weapons, wearing body armor, and using military style tactics to commit offenses (e.g., bank robberies, shootings, etc.). Since that time, law enforcement officers continued encountering heavily armed individuals and groups who were willing to engage in armed confrontations. Traditional methods of law enforcement response placed officers and community members at risk, so new equipment and methods of response had to be developed.

In addition to increased contacts with heavily armed, violent offenders, high-profile international, state, and local incidents contributed to the evolution of law enforcement response and equipment. While this is certainly not an exhaustive list, below are several incidents that led to changes in methods of response and equipment for law enforcement agencies in the United States, including the HPD:

- *Los Angeles, California:* In the 1960s, the first Special Weapons and Tactics (SWAT) Team was formed in response to several incidents involving snipers firing upon community members and officers during rioting.
- *Munich, Germany:* Multiple Israeli athletes were killed during a hostage taking in the Olympic Village during the 1972 Olympic Games in Munich, Germany. During a failed rescue attempt, 9 hostages were killed as the German Police were not trained or equipped to deal with such a sophisticated threat.
- *Hayward, California:* In the mid-1970s, HPD officers responded to a call for service and were fired upon by a subject armed with a high-powered rifle. A 72-hour stand-off ensued after the subject barricaded himself inside his residence and HPD officers were not trained or equipped to deal with such a sophisticated threat. Some HPD officers were sent to retrieve their personal hunting rifles as they were not able to get close enough to the residence without being fired upon. This led to the creation of HPD's Special Response Unit (SRU).
- *Los Angeles, California:* Two subjects, armed with high-powered rifles and body armor, robbed a bank in the North Hollywood neighborhood of Los Angeles. LAPD officers, armed only with pistols, revolvers, and shotguns, were considerably outmatched as the subjects were armed with AK-47 and AR-15 style rifles, which can defeat body

armor. In total, nearly 2,000 rounds were fired, 12 LAPD officers were shot, 8 community members were shot, and both subjects were ultimately killed after LAPD officers retrieved rifles from a nearby firearms dealer. After this incident, every law enforcement agency in the United States moved to equip officers with carbine rifles.

Law enforcement officers must have access to equipment that will allow them to perform their duties safely and to address sophisticated threats like those highlighted in the examples above. Much of the equipment listed in AB 481 and included in the HPD's inventory is to address some of the critical incidents our community members expect us to safely resolve, such as:

- High-risk offender apprehension
- Barricaded subjects
- Hostage rescue
- Dignitary protection
- Crowd control
- Active shooter response

At the same time, it is critically important that a balance is struck between providing law enforcement officers with the equipment they need and the need to ensure accountability for its use. It is incumbent upon law enforcement agencies to develop appropriate policies, procedures, and training to ensure such equipment is being used properly. The HPD's equipment inventory, contained in Attachment IV, is governed by policies and procedures and can only be used by HPD officers who have met all training requirements. Much of the equipment listed in HPD's inventory can only be used by members of the SRU during critical incidents and only after SRU members have been trained and have shown proficiency.

It should be noted that much of the equipment listed in AB 481 has never been in HPD's inventory nor has HPD sought to acquire it. Categories of equipment NOT utilized by HPD:

- Category 3 (Humvees, 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 and utilize a tracked system instead of wheels for forward motion)
- Category 6 (Weaponized aircraft, vessels, or vehicles of any kind.)
- Category 8 (Firearms of .50 caliber or greater. Standard issue shotguns excluded.)
- Category 9 (Ammunition of .50 caliber or greater. Standard issue shotgun ammunition is excluded.)
- Category 11 (Any firearm or firearm accessory that is designed to launch explosive projectiles.)
- Category 13 (Taser Shockwave, microwave weapons, water cannons, and the Long-Range Acoustic Device (LRAD)).

In proposing this policy and, in the near future, an ordinance, the HPD seeks to retain the ability to continue using the equipment listed in Attachment IV.

FISCAL IMPACT

There is no fiscal impact associated with this agenda item.

NEXT STEPS

The HPD intends to use the April 26, 2022, Work Session (April 26th Work Session) to provide Council with a better understanding of the approval process required by AB 481, including the public meeting at which Council will be asked to approve the Proposed Policy via adoption of the ordinance (AB 481 Public Meeting), and HPD's plans to adhere to that process. After the April 26th Work Session and prior to the AB 481 public meeting, City staff hopes to engage the community in a discussion of the Proposed Military Use Policy via the following:

1. Staff hopes that during the April 26th Work Session, City Council will direct the Chief's Advisory Panel (CAP) to review and comment on the Proposed Policy prior to the AB 481 Public Meeting; and
2. City staff will host a community engagement meeting with the public, incorporating Council and community feedback, prior to the AB 481 Public Meeting.

The HPD is hopeful that through the joint efforts of the City Council, City staff, and the community, that the City of Hayward is able to adhere to the time-sensitive requirements of AB 481 and to create a more transparent process for the procurement and use of equipment now deemed "military equipment."

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