**DATE:** June 25, 2024

**TO:** Mayor and City Council

**FROM:** Dustin Claussen, Interim City Manager
Bryan Matthews, Chief of Police

**SUBJECT:** Adopt a Resolution Approving the Hayward Police Department's Annual Military Equipment Use Report for April 2023 Through March 2024 and Renewing Ordinance 22-06 Adopting Military Equipment Use Policy No. 706 in Compliance With Assembly Bill No. 481.

## RECOMMENDATION

That Council adopts a resolution (Attachment II): (1) Approving of the Hayward Police Department's (HPD) Annual Military Equipment Use Report for April 2023 through March 2024 (Attachment III) after reviewing the report and identifying whether each type of military equipment identified in the report has complied with the standards for approval; and (2) Vote to renew Ordinance 22-06 (Attachment IV) which adopts HPD's Military Equipment Use Policy (Attachment V) and the Inventory List (Attachment VI) which is an exhibit to that Policy.

## SUMMARY

AB 481, which went into effect on January 1, 2022, requires California law enforcement agencies to obtain the approval of a Military Equipment Use Policy via the adoption of an Ordinance by their respective governing bodies before funding, acquiring, or using law enforcement equipment now defined under AB 481 as "military equipment." Annually, thereafter, law enforcement agencies must submit a report to Council on the use of Military Equipment for that year. The Council must then, on an annual basis, review the annual report submitted by law enforcement pursuant to Gov't Code § 7071(e)(2), and approve of the funding, acquisition and use of each type of military equipment. Subject to that review and approval, Council must also vote on whether to renew Ordinance 22-06.

In this case, Council adopted Ordinance 22-06, approving the Military Equipment Use Policy No. 206, on July 5, 2022. In accordance with AB 481, the Hayward Police Department then submitted its first annual Military Equipment Use Report to City Council on June 20, 2023, at a regularly scheduled City Council meeting, at which time the use of equipment in the report was approved and Ordinance 22-06 renewed.

Now, Council is again being presented with this year's annual Military Equipment Use Report and being asked to do the following:

1. Determine, based on the annual military equipment report, whether each type of military equipment identified in the report has complied with the standards for approval; and

    a. The Standards for Approval are as follows: The Council must find all of the following:
        i. The equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;
        ii. Policy 706 will safeguard the public's welfare, safety, civil rights, and civil liberties;
        iii. If purchasing equipment—that the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective f officer and civilian safety;
        iv. Prior military equipment use complied with Policy 706 that was effective at the time, or, if prior use did not comply, corrective action has been taken to remedy the nonconforming use and ensure future compliance.

2. Review Ordinance 22-06 and, subject to No. 1, vote on whether to renew the ordinance.

Notably, if Council determines, under No. 1, that a certain type of military equipment identified in the annual Military Equipment Use Report has not complied with the standards for approval, Council must 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.

Additionally, if Council does not renew Ordinance 22-06, the HPD must cease the use of all equipment defined as "military equipment," which would be detrimental to the HPD and the safety of community members and officers alike, as explained further, below.

**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 in California Government Code section(s) 7070 through 7075, required 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 required approval, by the

governing body in a public forum, before a law enforcement agency could fund, acquire, or use new "military equipment."

Moreover, the bill requires annual public review and approval actions by the governing body to continue the use of "military equipment". The bill also required the City to host an annual community meeting 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 community members' and officers' safety.

***AB 481 "Military Equipment":***

The following law enforcement equipment is now deemed to be "military equipment" as defined in AB 481 and Government Code §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 V) contained in HPD's inventory is attached to this staff report. The HPD does not currently utilize some of the equipment on the above list – the list in (Attachment V) 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 by 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 § 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 the 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 Military Equipment Use Policy is included with this memo as Attachment IV. § 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.

***Review of AB 481 Action Taken by Council in 2023***

On June 20, 2023, the Council was presented with HPD's first Annual Military Equipment Use Report for the period of July 2022 through March 2023, as well as Ordinance No 22-06, which approved of HPD Military Equipment Use Policy No. 706. The Council approved the policy through the adoption of the ordinance at a regular meeting where public comment was allowed. In accordance with AB 481, the proposed policy was made available on HPD's website 30 days prior to June 20, 2023.

***Action Taken by HPD in 2024 to Satisfy the Annual Requirements of AB 481***

On June 11th, 2024, HPD's 2024 Annual Military Equipment Use Report was added to the HPD's website. On May 29th, 2024, a presentation on HPD's Annual Military Equipment Report was conducted at the Council Public Safety Committee Meeting where community members were allowed to participate through discussion and asking questions. This meeting was recorded and can be viewed by community members on the City's and HPD's website.

Now, we are before the Council requesting that Council: (1) Review the 2024 Annual Military Equipment Use Report (Attachment II) identifying whether each type of military equipment identified in the report has complied with the standards for approval; and (2) Vote to renew Ordinance 22-06 (Attachment III) which adopts HPD's Military Equipment Use Policy (Attachment IV).

**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 U.S 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 the 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, eight 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.
- *Uvalde, Texas:* A subject, armed with an AR-15 style rifle, shot his grandmother, then drove to an elementary school where he shot multiple students and school staff members in one of the deadliest school shootings in United States history. In total, 19 students and two teachers were killed, and 17 others were critically wounded. The law enforcement response is being investigated by the Department of Justice and has sparked debate regarding methods of response and "military equipment."

In addition to these historical events, recent national events have highlighted the need to continually evaluate methods of response and to maintain "military equipment" in the HPD's inventory, including the following:

- *Monterey Park, California (January 21, 2023):* A subject, in the aftermath of a Lunar New Year Celebration, entered a dance studio and shot multiple people with a "variant of a MAC-11" with an extended, high-capacity magazine. In total, 11 people died and 10 were injured.
- *Half Moon Bay, California (January 23, 2023):* A subject shot and killed 5 men and 2 women, and injured another man, at 2 separate locations before being located in his vehicle and arrested by San Mateo County Sheriff's Deputies.

According to The Gun Violence Archive, there have been 210 mass shootings in the United States this year (as of June 11, 2024), which the website describes as shooting incidents where at least four people were killed or wounded.

Additionally, the following statistics from 2022 were shared during several community engagement events:

- According to a study published by the FBI in April 2023, there were 50 active shooter events in the United States in 2022 (a 18% decrease from 2021 and a 66.7% increase from 2017).
- HPD officers responded to 210 calls for service in 2023 where a firearm was shot, either striking a person or an object (car, residence), attempting to strike a person and missing, or reported being heard by a community member.
- HPD officers seized 227 firearms in the City of Hayward in 2023, an increase from 2022.

In May of 2023, multiple countries, including Canada, Australia, and the U.K, issued United States travel warnings due to increased gun violence. According to the Newsweek article, only 4 percent of all homicides in the U.K. are gun-related killings compared to 13 percent in Australia, 37 percent in Canada, and 79 percent in the United States.

Now, perhaps more than ever, 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 No. 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 (Attachment V) 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 No. 481 has never been in HPD's inventory nor has HPD sought to acquire it. These categories include:

- 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).

***HPD "Military Equipment" Usage***

The following data includes the uses of the items contained in the HPD equipment inventory for the period of 4/1/2023 – 3/31/2024:

- Robot **(1)**
- Unmanned Aircraft Systems **(64)**
- Armored Personnel Carrier **(19)**
- Command and Control Vehicle **(2)**
- Breaching Shotgun **(0)**
- Carbine Rifles / Precision and Long Rifles **(2)**
- Noise and Flash Diversionary Devices **(2)**
- CS/OC Munitions **(2)**
- FN 303 Less Lethal Launcher **(0)**
- 40 mm Less Lethal Launcher **(0)**
- Specialty Ammunition **(0)**

***Community Engagement Efforts***

As part of the HPD's ongoing efforts to be transparent, provide information, and engage the community in dialogue regarding AB No. 481 and the "military equipment" contained in the HPD's equipment inventory, the following steps have been taken:

- On April 11, 2022, the HPD and City staff created an informational page, which is prominently displayed on the front of the HPD website and contains information regarding AB No. 481, the HPD's equipment inventory, and policy documents.
- A Council Work Session was held on April 26, 2022, during which the provisions set forth in AB no. 481, the HPD's equipment inventory, and draft policy documents were discussed with the Council. This Council Work Session was a public meeting, which included a public comment period and provided a space for Council members to engage in dialogue with HPD staff regarding "military equipment."
- The HPD held virtual community engagement meetings on May 26, 2022, and June 6, 2022, during which information regarding the HPD's equipment inventory was shared, questions were asked and answered, and community members expressed concerns and shared perspectives on the impacts of possessing "military equipment." These meetings were recorded and can be viewed by community members on the HPD website.

- The HPD held an in-person community engagement event at the North Resource Center on June 11, 2022, during which HPD's "military equipment" was displayed and HPD staff members were present to engage in dialogue with community members.
- The HPD created an informational video regarding AB 481 and the HPD's equipment inventory, which can be viewed by community members on the HPD website.
- The HPD held a virtual community engagement meeting on May 3, 2023, during which information regarding the HPD's July 2022-March 2023 Annual Military Equipment Use Report was shared, questions were asked and answered regarding the report. The meeting was recorded and can be viewed by community members on the HPD website.
- The HPD provided final drafts of the proposed Military Equipment Use Policy, the ordinance, and the HPD equipment inventory prior to the June 21, 2022 City Council meeting to the following community groups:
    - The Community Advisory Panel (CAP) to the Chief of Police
    - The Hayward Community Coalition
    - The Hayward Concerned Citizens
- The HPD attended the Hayward Executive Airport Open House on September 24, 2023, during which HPD's "military equipment" was displayed and HPD staff members were present to engage in dialogue with community members.
- The HPD held two recruitment events, on November 4, 2023, and April 6, 2024, during which HPD's "military equipment" was displayed and HPD staff members were present to engage in dialogue with community members.

***Community Feedback***

During conversations and written feedback regarding AB No. 481, the Military Equipment Use Policy, the HPD equipment inventory, and the HPD's Annual Military Equipment Use Report, there were several themes and concerns that surfaced. These themes and concerns included the following:

- *Concerns Regarding the Inclusion of CS (commonly referred to as "tear gas") in the HPD's inventory:*

  CS, or "tear gas", is equipment commonly possessed by law enforcement agencies across California and the United States. It is a less-lethal force option designed for use during high-risk incidents, including riots and certain critical incidents (e.g., barricaded subjects, tactical operations, etc.). The use of CS during such high-risk incidents is strictly governed by HPD policy, AB No 48, and California Penal Code section 13652 and can only be used during qualifying incidents with the approval of an Incident Commander. Additionally, there is no effective alternative to CS the HPD, or any other California law enforcement agency, is aware of.

- *Concerns Regarding the International Chemical Weapons Convention Ban on the Use of Riot Control Agents (RCAs) During Warfare:*

According to the International Committee of the Red Cross (ICRC), the 1925 Geneva Convention led to the adoption of the Geneva Gas Protocol as international law and prohibits the use of asphyxiating, poisonous, or "any other" gases during war (the protocol does not specifically list CS or other gases). Additionally, according to the Organization for the Prohibition of Chemical Weapons (OPCW), the International Chemical Weapons Convention (CWC) confirmed the restriction of using "riot control agents (RCAs)," which are defined as "any chemical…which can produce rapidly in humans' sensory irritation or disabling physical effects which disappear within a short time following termination of exposure (Article II (7))," as methods of warfare. However, Article II (9) provides for "Purposes Not Prohibited Under This Convention" and includes an exception for the use of RCAs by law enforcement for domestic riot control purposes (Article II (9)(d)), among others. Additionally, the UN, including the United States Military, has used RCAs during riots while assigned to peacekeeping missions. Further, the United States Naval Handbook acknowledges the international agreement to prohibit the use of RCAs as "methods of warfare," but notes the CWC does not define that term (Section 10.3.2). The United States Naval Handbook also provides for the use of RCAs, with presidential approval, in "defensive military modes to save lives," including "riot control situations in areas under effective U.S. military control, to include rioting prisoners of war (Section 10.3.2.1)."

- *Concerns Regarding the HPD's Use of "Military Equipment" During Protests/Demonstrations:*

  There exists a legal distinction between a protest or demonstration, which is a public expression of disapproval and is an individual right granted under the First Amendment of the United States Constitution's Bill of Rights, and a riot. According to the California Penal Code Section 404(a), a riot is defined as "any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without the rule of law." As such, the HPD would not use "military equipment," including CS, during a protest or demonstration nor would "military equipment" be used indiscriminately on a crowd. Additionally, there exist HPD policies that restrict the use of "military equipment" during protests or demonstrations as a matter of routine and several statutes that clearly define the circumstances under which CS can be used in a riot (e.g., AB No. 48, California Penal Code Section 13652, etc.).

- *Concerns Regarding the HPD's "Military Equipment" Inventory Volume and Current Deployment Model:*

  The HPD's equipment inventory volume, particularly the number of carbine rifles, rounds of ammunition, and CS/OC munitions, are based upon annual anticipated operational and training needs. Because the HPD cannot predict when or where critical incidents will happen, the HPD has carbine rifles in every patrol vehicle and motorcycle in the field, which has been a standard deployment model for years among California law enforcement agencies. In addition, the HPD maintains a pool of carbine

rifles for training and to replace those pulled from service for maintenance or repairs. Ammunition needs are assessed annually and take into account projected training, including continuous professional training (CPT), SRU training, hiring (lateral officers and trainees in the academy), etc. CS/OC munitions have a five-year shelf life and, once they reach that point, they are used for training and replaced. The HPD often maintains overstock on these items as experiencing supply chain, shipping, or product manufacturing delays is commonplace, as we compete with other law enforcement agencies and the military when purchasing this equipment.

- *Authorization for the Use of "Military Equipment":*

  Most of the items included in the HPD's equipment inventory are specifically maintained and used by the SRU during high-risk, critical incidents. Like the HPD, the SRU has a hierarchical structure, with a Commander (Lieutenant), Assistant Commander (Sergeant), and Team Leaders (Sergeants). When critical incidents occur, including those that don't rise to the level of an SRU activation, the HPD utilizes the Incident Command Structure (ICS) where a Lieutenant is designated as the Incident Commander with operational control over HPD's response. Authorization to use the "military equipment," including the robot, UAS, command and control vehicles, breaching shotgun, NFDDs, chemical agents, or specialty impact munitions, rests with the Incident Commander and/or the Tactical Commander.

- *Requests to Incorporate Exclusionary Language and Relevant Policy/Statute References in the Military Equipment Use Policy:*

  During the community engagement events referenced above, two specific requests surfaced regarding the HPD's Military Equipment Use Policy (Policy 706). The first was to incorporate exclusionary language in the Military Equipment Use Policy to address the categories of "military equipment" not contained in the HPD's inventory. In response to this request, the HPD included Section 706.6 (Military Equipment Exclusions) and incorporates language preventing the HPD from seeking to acquire, borrow, or use items that fall with in Category 3, Category 4, Category 6, Category 8, Category 9, Category 11, and Category 13 as outlined in AB No. 481. The second request was to specifically reference other relevant laws and/or policies in the Military Equipment Use Policy. In response to this request, Section 706.2 incorporates language requiring "military equipment" be used in accordance with all other applicable policies and laws. Those specifically referenced include HPD Policy 300 (Use of Force), HPD Policy 302 (Control Devices and Techniques), AB No. 48, and California Penal Code Section 13652.

***Law Enforcement Support Office (LESO) Program***

Formerly known as the 1033 Program, the U.S. Department of Defense Law Enforcement Support Office (LESO) Program permits the Secretary of Defense to transfer excess Department of Defense supplies and equipment to state and local law enforcement agencies for use in their law enforcement duties. This property is procured at no cost to the agency except for any shipping or transportation costs. The type of property available includes, but is not limited to, tactical gear, vehicles, watercraft, weapons, night vision, exercise equipment, office furniture, clothing, and other miscellaneous items. All equipment must be strictly accounted for and when no longer needed, agencies must request permission to turn in, transfer, or dispose of.

The LESO Program predominately assists with the agencies' general equipment needs, such as file cabinets, blankets, and toolboxes that they need but perhaps are unable to afford. More than seventy percent (70%) of equipment through the program is DEMIL A which includes gym equipment, toilet paper, and first aid kits to name only a few of the DEMIL A items available. DEMIL A property saves California's taxpayers millions of dollars annually.

As of June 2020, there are around 8,200 federal, state, and local law enforcement agencies from 49 states and four U.S. territories participating in the program.

**FISCAL IMPACT**

The items listed below are needed to replace, supplement, or upgraded items currently in the HPD's inventory. All purchases have been forecasted and are included in HPD's Operating and Capital Improvement Program budgets.

| | |
|---|---:|
| Robot | $16,000 |
| UAS (6) | $75,000 |
| Sniper Rifles (5) | $10,000 |
| Specialty Ammunition | $50,000 |
| NFDD's (12) | $1,017 |
| Specialty Impact Munition Systems | $4,740 |
| **TOTAL** | **$156,757** |

**NEXT STEPS**

Upon renewal of the ordinance by Council, the HPD will continue to possess and use the authorized items in accordance with applicable policies and laws.

*Prepared by*: Garett Wagner, Lieutenant

*Recommended by*: Dustin Claussen, Interim City Manager
Bryan Matthews, Chief of Police

Approved by:

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Dustin Claussen, Interim City Manager