DATE: July 5, 2022

TO: Mayor and City Council

FROM: City Clerk
Police Chief

SUBJECT: Adopt an Ordinance of the City of Hayward Adding Article 15 to Chapter 3 of the Hayward Municipal Code Relating to the Use of Military Equipment by Law Enforcement

RECOMMENDATION

That the Council adopts the Ordinance introduced at the regular City Council meeting held on June 21, 2022.

SUMMARY

This item entails adoption of an Ordinance approving Miliary Equipment Use Policy, No. 706 (Attachment III), adding Article 15 to Chapter 3 of the Hayward Municipal Code. The Ordinance was introduced on June 21, 2022, by Council Member Zermeño.

BACKGROUND

The Ordinance adopting Military Equipment Use Policy, No. 706 (Attachment III), was drafted in order to comply with California Assembly Bill 481. The Ordinance was introduced by Council Member Zermeño at the June 21, 2022, regular meeting of the City Council, with the following vote:

AYES:	COUNCIL MEMBERS: Andrews, Lamnin, Márquez, Salinas, Wahab, Zermeño MAYOR Halliday
NOES:	NONE
ABSENT:	NONE
ABSTAIN:	NONE

The motion included amendments as follow below and these are reflected in the revised Policy (Attachment III):

1) remove the three items from HPD's equipment inventory ((6) Model 1088 CS Stingerballs, (9) Model 1090 Stingerballs, and (6) Model 1089 OC Stingerballs);

2) enhance complaint language and mirror existing complaint policy;

3) under Military Equipment Inventory List, consider language that indicates a rifle is a firearm capable of harming or killing an armed subject at various distances; and

4) further clarify the breakdown between authorized use, authorized users, and the purpose for each piece of equipment; and further articulate the minimum uses for the equipment.

The motion also included additional recommendations: 1) during the first year of this requirement, conduct a six-month review of uses and policy implementation and share this with the City Council; prioritize work on the complaint system project identified in the policy innovation workshops; and evaluate having pre-recorded warning messages in different languages when using CS gas during incidents.

Based on the amendments recommended above, HPD made the following changes to Policy 706 and the Military Equipment Inventory in Exhibit A to the Policy (Attachment III):

1) The three items, which HPD recommended be eliminated from the equipment inventory, were removed from HPD Policy 706 – Exhibit A (HPD's equipment inventory).

2) The following language was added to HPD Policy 706 (sub-section 706.8): *"Any member of the community can submit a complaint regarding the use of "military equipment" to any City Council member, the City Manager's Office, the City Attorney's Office, the Human Resources Office, via Access Hayward, or to any Hayward Police Department employee. Complaints can be submitted in any form (e.g., in person, telephone, email, etc.)."* Additionally, the HPD's military equipment webpage has been updated to reflect the same.

3) The following language was added to HPD Policy 706 – Exhibit A (HPD's equipment inventory) under section 6 (Specialized Firearms and Ammunition – Category 10): *"Use of the firearms listed above are governed under HPD Policy 300 (Use of Force), which defines deadly force as that which is likely to cause serious bodily injury or death."* This language is consistent with other relevant HPD policies.

4) The following language was added to HPD Policy 706 – Exhibit A (HPD's equipment inventory): *"The following is a list of "military equipment", as defined in AB 481, which HPD currently has in its inventory. The equipment items listed below are authorized for use to resolve high-risk and/or critical incidents, including but not limited to the following:*
   - *High-risk offender apprehension*
   - *Barricaded subjects*
   - *Hostage rescue*

- *Dignitary protection*
- *Riot control*
- *Active shooter response*
- *In-progress violent crimes*
- *Response to armed subjects or subjects wearing body armor*
- *Other situations which could result in great bodily injury or death to officers or community members*

The use of the equipment items below must be proportionate to each incident officers respond to and the HPD's Risk Assessment Matrix is designed to assist in such decision making."

While staff acknowledges the intent of this amendment recommendation, maintaining a responsible balance between transparency and confidentiality when providing detailed individual equipment capabilities, detailed tactical applications, and discussing specific operational details is critical to community and officer safety. The language added attempts to strike this balance.

STRATEGIC ROADMAP

This agenda item is a routine operational item and does not relate to one of the priorities outlined in the Council's Strategic Roadmap.

FISCAL IMPACT

There is no fiscal impact associated with this report.

PUBLIC CONTACT

The summary of the Ordinance (Attachment II) was published in the Daily Review c/o Bay Area News Group-East Bay on Friday, July 1, 2022. Adoption, at this time, is therefore appropriate.

NEXT STEPS

The Hayward Municipal Code and other related documents will be updated accordingly.

Prepared and Recommended by: Miriam Lens, City Clerk
Toney Chaplin, Chief of Police

Approved by:

Kelly McAdoo, City Manager