

ORDINANCE NO. 22-06

AN ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA, ADDING ARTICLE 15 TO CHAPTER 3 OF THE HAYWARD MUNICIPAL CODE RELATING TO THE USE OF MILITARY EQUIPMENT BY LAW ENFORCEMENT

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, (creating Government Code Section 7070, et seq.) relating to the use of military equipment by law enforcement agencies; and

WHEREAS, Assembly Bill No. 481 ("AB 481"), requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance adopting a "military equipment" use policy, at a regular meeting held pursuant to open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment. The term "military equipment" is defined in California Government Code section 7070; and

WHEREAS, AB 481 allows the governing body of a City to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it makes specified determinations; and

WHEREAS, the proposed Military Equipment Use Policy is attached hereto as Exhibit "A" and incorporated herein by this reference (the "Military Equipment Use Policy"); and

WHEREAS, the proposed Military Equipment Use Policy No. 706 and a list of "military equipment" in the current possession of the Hayward Police Department was submitted to the City Council and published, and has remained published, on the Hayward Police Department's internet website on April 11, 2022, more than 30 days before the Military Equipment Use Policy was considered at a public hearing before the City Council on June 21, 2022; and

WHEREAS, the Military Equipment Use Policy meets the requirements of California Government Code section 7070, subdivision (d).

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 15 is added to Chapter 3 of the City of Hayward Municipal Code of the City of Hayward to read as follows:

SEC. 3-15.00 Title.

A. This Article shall be known as the "Military Equipment Use Policy."

SEC. 3-15.10 Definitions.

- A. **"Military Equipment"** includes all of the following (Per CA Gov. Code § 7070)
1. Unmanned, remotely piloted, powered aerial or ground vehicles.
 2. Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.
 3. High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.
 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. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.
 8. Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.
 9. Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.
 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," excluding standard, service-issued handheld pepper spray.
 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.

- B. **"City"** means any department, agency, bureau, and/or subordinate division of the City of Hayward.
- C. **"Police Department"** means any division, section, bureau, employee, volunteer and/or contractor of the Hayward Police Department.
- D. **"City Council"** means the governing body that is the Hayward City Council.
- E. **"Military Equipment Use Policy"** means a publicly released, written document that includes, at a minimum, all the following:

1. 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.
2. The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of Military Equipment.
3. The fiscal impact of each type of Military Equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.
4. The legal and procedural rules that govern each authorized use.
5. The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency 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.
6. The mechanisms to ensure compliance with the Military Equipment use 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.
7. For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

F. **"Exigent Circumstances"** means 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.

G. **"State agency"** means the law enforcement division of every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

H. **"Type"** means each item that shares the same manufacturer model number.

SEC. 3-15.11 Military Equipment Use Policy Requirement.

- A. The Hayward Police Department shall obtain City Council approval of a Military Equipment Use Policy in accordance with Government Code Section 7071 at a regular meeting of the City Council held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) prior to engaging in any of the following:
1. Requesting Military Equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
 2. 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.
 3. Acquiring Military Equipment either permanently or temporarily, including by borrowing or leasing.
 4. Collaborating with another law enforcement agency in the deployment or other use of Military Equipment within the territorial jurisdiction of the City of Hayward.
 5. 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 this chapter.
 6. 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.
 7. Acquiring Military Equipment through any means not provided by this section.
- B. No later than May 1, 2022, if seeking to continue the use of any Military Equipment that was acquired prior to January 1, 2022, the Hayward Police Department shall commence a City Council approval process in accordance with this section. If the City Council does not approve the continuing use of Military Equipment, including by adoption pursuant to a Military Equipment Use Policy, within 180 days of submission of the proposed Military Equipment Use Policy to City Council, the Hayward Police Department shall cease its use of the Military Equipment until it receives the approval of City Council.
- C. In seeking the approval of City Council, the Hayward Police Department shall submit a proposed Military Equipment Use Policy to the City Council and make those documents available on the Police Department's internet website at least 30 days prior to any public hearing concerning the Military Equipment at issue.
- D. The City Council shall only approve a Military Equipment Use Policy pursuant to this chapter if it determines all the following:
1. The Military Equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
 2. The proposed Military Equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

3. If purchasing the equipment, 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.
- E. In order to facilitate public participation, any proposed or final Military Equipment Use Policy shall be made publicly available on the internet website of the Police Department for as long as the Military Equipment is available for use.
- F. The City Council shall review this ordinance at least annually and vote on whether to renew it at a regular meeting held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

SEC. 3-15.12 Use in Exigent Circumstances.

- A. Notwithstanding the provisions of this Chapter, the Police Department may acquire, borrow and/or use Military Equipment in Exigent Circumstances without following the requirements of this code.
- B. If the Police Department acquires, borrows, and/or uses Military Equipment in Exigent Circumstances, in accordance with this section, it must take all the following actions:
1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state or federal law.
 2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed amended Military Equipment Use Policy to the City Council within 90 days following the borrowing, acquisition and/or use, and receive approval, as applicable, from the City Council.
 3. Include the Military Equipment in the Police Department's next annual Military Equipment Report.

SEC. 3-15.13 Military Equipment Use Reports.

- A. The Police Department shall submit to City Council an annual Military Equipment Report for each type of Military Equipment approved by the City Council within one year of approval, and annually thereafter for as long as the Military Equipment is available for use.
- B. The Police Department shall also make each annual Military Equipment Report required by this section publicly available on its internet website for as long as the Military Equipment is available for use.

- C. The annual Military Equipment Report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of Military Equipment:
1. A summary of how the Military Equipment was used and the purpose of its use.
 2. A summary of any complaints or concerns received concerning the Military Equipment.
 3. The results of any internal audits, any information about violations of the Military Equipment Use Policy, and any actions taken in response.
 4. The total annual cost for each type of Military Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the Military Equipment in the calendar year following submission of the annual Military Equipment Report.
 5. The quantity possessed for each type of Military Equipment.
 6. If the law enforcement agency intends to acquire additional Military Equipment in the next year, the quantity sought for each type of Military Equipment.
- D. Within 30 days of submitting and publicly releasing an annual Military Equipment Report pursuant to this section, the Police Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the public may discuss and ask questions regarding the annual Military Equipment report and the law enforcement agency's funding, acquisition, or use of Military Equipment.
- E. The City Council shall determine, based on the annual Military Equipment Report submitted pursuant to this section, whether each type of Military Equipment identified in that report has complied with the standards for approval set forth in this code and the Military Equipment Use Policy. If the City Council determines that a type of Military Equipment identified in that annual Military Equipment Report has not complied with the standards for approval, the City Council shall 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.

SEC. 3-15.14 City Council Findings.

The Hayward City Council has made the following determinations:

- A. In accordance with Government Code § 7071:
- (1) The military equipment inventoried and presented to the City Council is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; and

- (2) The Military Equipment Use Policy ("Policy") will safeguard the public's welfare, safety, civil rights, and civil liberties; and
 - (3) The military equipment identified in the Military Equipment Use Policy 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 applicable Equipment Use Policy (which included equipment now defined as military equipment) 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.
- B. The Hayward Police Department commenced a City Council approval process in accordance with Government Code § 7071 subdivision (a) paragraph (2) prior to May 1, 2022.
 - C. The Hayward Police Department submitted a proposed Military Equipment Use Policy and Military Equipment Inventory List to the City Council and made those documents available on the Hayward Police Department's website at least 30 days prior to the public hearing concerning the military equipment at issue in accordance with Government Code § 7071 subdivisions (a) and (b).
 - D. The Policy was considered by the City Council as an agenda item in an open session of a regular meeting, noticed in accordance with the Ralph M. Brown Act, at which public comment was permitted in accordance with Government Code § 7071 subdivision (c).
 - E. The Policy shall be made publicly available on the Hayward Police Department's website for as long as the military equipment is available for use.
 - F. The Hayward Police Department shall submit an annual Military Equipment Report to the City Council, containing the information required in Government Code § 7072, and the City Council shall determine whether each type of military equipment identified in that report has complied with the standards for approval set forth in Section (A) subdivisions (1) through (4), above.
 - G. The City Council shall review this ordinance, and vote on whether to renew it, on an annual basis at a regular meeting, in accordance with Government Code § 7071 subdivision (e) paragraph (2).
 - H. The City Council approves the use of the Military Equipment Use Policy and finds that it satisfies the requirements of Government Code § 7070(d).

SEC. 3-15.15 CEQA.

This Ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential to result in physical change in the environment, directly or indirectly. This Ordinance is also exempt under CEQA Guideline 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

SEC. 3-15.16 Severance.

Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

SEC. 3-15.17 Effective Date.

In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 21st day of June, 2022, by Council Member Zermeño.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 5th day of July, 2022, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS: Lamnin, Márquez, Salinas, Wahab, Zermeño

MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBER: Andrews

APPROVED:

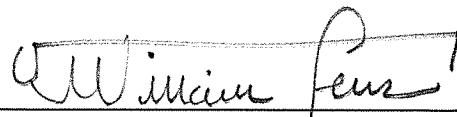


Mayor of the City of Hayward

DATE: _____

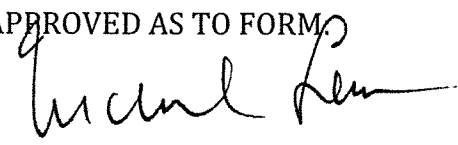
July 7, 2022

ATTEST:



City Clerk of the City of Hayward

APPROVED AS TO FORM



City Attorney of the City of Hayward

