

AB 481 Staff Report – AB 481 Background and Community Engagement Efforts
(Attachment VII)

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.

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.

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 previously 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:
 - o The Community Advisory Panel (CAP) to the Chief of Police
 - o The Hayward Community Coalition
 - o 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.
- The HPD attended the Hayward Executive Airport Open House on September 15, 2024, during which HPD’s “military equipment” was displayed and HPD staff members were present to engage in dialogue with community members.
- The HPD attended the City of Hayward’s Trunk-or-Treat event on October 26, 2024, during which HPD’s “military equipment” was displayed and HPD staff members were present to engage in dialogue with community members and pass out candy.
- The HPD attended the City of Hayward Bring Your Child to Work Day on April 24, 2025, during which HPD’s “military equipment” was displayed and HPD staff members were present to engage in dialogue with attendees.
- The HPD presented the current inventory, use during the reporting period of April 2024-March 2025, and discussed future acquisitions of “Military Equipment” with the Public Safety Committee on May 28, 2025. The public was welcome to attend and ask questions. The meeting was recorded and can be viewed by community members on the HPD website.

- The HPD attended the Hayward Executive Airport Open House on September 21, 2025, during which HPD's "military equipment" was displayed and HPD staff members were present to engage in dialogue with community members.
- The HPD attended the City of Hayward's Trunk-or-Treat event on October 25, 2025, during which HPD's "military equipment" was displayed and HPD staff members were present to engage in dialogue with community members and pass out candy.
- The HPD attended the City of Hayward Bring Your Child to Work Day on April 23, 2026, during which HPD's "military equipment" was displayed and HPD staff members were present to engage in dialogue with attendees.
- The HPD presented the current inventory, use during the reporting period of April 2025-March 2026, and discussed future acquisitions of "Military Equipment" with the Public Safety Committee on May 14, 2026. The public was welcome to attend and ask questions. The meeting was recorded and can be viewed by community members on the HPD website.

It should be noted that community engagement regarding "military equipment" possessed and used by the HPD takes place during other public events and is ongoing in a variety of different environments, which are not listed above.

Community Feedback

During previous 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 within 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.