



Contra
Costa
County

To: Board of Supervisors
From: David O. Livingston, Sheriff-Coroner
Date: August 2, 2022
Subject: Assembly Bill 481 Ordinance

RECOMMENDATION(S):

ADOPT Ordinance No. 2022-29, an ordinance adopting and approving a military equipment use policy for the Contra Costa County Sheriff's Office.

FISCAL IMPACT:

There is no fiscal impact associated with the adoption of the proposed ordinance.

BACKGROUND:

The Office of the Sheriff is requesting that the Board adopt an ordinance, as required by Assembly Bill 481 (AB 481), related to the use and acquisition of certain types of equipment. AB 481, enacted in 2021, requires law enforcement agencies to obtain governing body approval of a "Military Equipment Use Policy" by an ordinance before the agency can use existing qualifying equipment or obtain new qualifying equipment. "Military equipment" is defined in Government Code 7070(c), and includes equipment such as drones, robots, certain firearms, and mobile command vehicles. There is some indication that AB 481 was intended to only apply to equipment actually used by the military or purchased as military surplus items. The Office of the Sheriff has no such equipment.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **08/02/2022** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: August 2, 2022

Monica Nino, County Administrator and Clerk of the Board of Supervisors

Contact: Assistant Sheriff Melissa Klawuhn, 925-655-0069

By: June McHuen, Deputy

cc:

However, many law enforcement agencies have interpreted the law more broadly to include the types of equipment listed in AB 481, which are not purchased from military sources. In the interest of transparency, the Office of the Sheriff has created a military equipment use policy that covers the types of equipment listed in AB 481, even if not purchased from military sources, and is bringing it to the Board for approval.

The policy will ultimately be found within the Contra Costa County Office of the Sheriff General Policy and Procedure Section 1.07.30. The draft policy and associated appendix of inventory (acquired before January 1, 2022) have been publicly available on the Office of the Sheriff's website since May 2, 2022:

BACKGROUND: (CONT'D)

<https://www.cocosheriff.org/community-information/government-code-section-7070-defined-equipment>.

The Office of the Sheriff is now submitting the policy and ordinance to the Board for approval and adoption pursuant to Government Code section 7071. Pursuant to Government Code section 7071(c), the Board shall approve the policy only if the Board determines that:

- (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; and
- (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.

Military Equipment Use Policy and Equipment

The draft policy meets these conditions and complies with all AB 481 requirements, which include:

- (1) a description of each type of equipment, the quantity sought, its capabilities, expected lifespan, and manufacturer product descriptions;
- (2) the purposes and authorized uses for which the Office of the Sheriff proposes to use each type of equipment;
- (3) the fiscal impact of each type of 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 that must be completed before an officer is allowed to use each specific type of equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties;
- (6) the mechanisms to ensure compliance with the policy; and
- (7) the procedure by which members of the public may register complaints or concerns or submit questions about the use of the equipment.

The policy also provides for the preparation and publishing of the annual equipment report, and the hosting of the annual community engagement meeting.

The appendix reflects that the Office of the Sheriff owns and uses (on occasion) the following items listed in AB 481:

1. Unmanned, remotely piloted, powered aerial or ground vehicles. This includes small unmanned aircraft systems (sUAS) and robots.
2. Wheeled vehicles, commonly referred to as "BearCats," with entry apparatus attached.
3. A command vehicle used as a mobile office for critical incidents, search and rescue missions, natural disasters, and other events.
4. Breaching apparatuses attached to each BearCat and apparatuses that can be explosive in nature.
5. Specialized firearms, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code.
6. Diversionary "flashbang" grenades, "tear gas," and "pepper balls."
7. Long Range Acoustic Devices (LRADs).
8. 40mm projectile launchers and associated munitions.

The sUAS (drones) and robots allow Office of the Sheriff personnel to obtain real-time vital situational awareness in a quick and safe manner. Drones are used to find missing persons or search for suspects, map crime scenes, respond to major incidents and events, and gather evidence. Staff utilize robots during dangerous situations to assess the situation before sending in personnel.

BearCats are used to transport personnel to and from hostile situations and assist with the recovery and protection of civilians in harm's way. The vehicles have the ability to mount a breaching apparatus to the front of the vehicle to create an entry point into the location, as well as safely deploy a chemical agent into a location while maintaining the safety of personnel.

The Mobile Command Vehicle (MCV) is essential to coordinate public safety units at large-scale events, frequently involving personnel from various agencies and disciplines. The MCV serves as a command post that allows for a unity of command during law enforcement incidents, search and rescue missions, and natural disasters such as fires and flooding. The command vehicle is equipped with mobile dispatching equipment.

Breaching equipment, including breaching shotguns, nonelectric delay detonators, and detonating cords, are utilized in high-risk operations to facilitate entry into locations to ensure the safety of innocent persons, suspects, officers, and the public. This equipment is deployed only by tactical personnel trained in its proper use.

The specialized firearms as defined by Government Code 7070(c)(10) in the Office of the Sheriff's inventory are used only by tactical personnel trained in the firearms' proper use. Two of the models in the inventory, HK G36C and HK MP5, are only used for training purposes. The .308 rifles are utilized by tactical personnel who attend ongoing specialized training. These firearms protect both law enforcement and the public with their high degree of accuracy during violent assaults or hostage situations involving heavily armed or armored suspects.

The pepper ball launchers, chemical (tear gas) munitions and associated launchers, less lethal munitions and launchers, and diversionary devices are all considered less lethal tools designed to be used in situations where lethal force may be avoided.

The Long Range Acoustical Devices (LRADs) are portable communication systems used to communicate critical announcements safely and deescalate critical incidents by ensuring communications are clear and effectively delivered. Office of the Sheriff personnel typically use the LRADs during high-risk operations, but they can also be used for search and rescue missions or other situations as needed for clear communication of information.

The policy and appendix reference the specific and authorized uses of the equipment. Personnel must be trained on the equipment before any deployment. The Office of the Sheriff's use of force policy requires employees to exercise any use of force judiciously and with respect for human rights, dignity, and life. Deputies may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of threat. It is the policy of the Office of the Sheriff not to interfere with, harass, intimidate, or discriminate against persons engaged in the lawful exercise of their rights. All use of force incidents are also documented and reviewed to ensure compliance with agency policy and the law. Any use of the sUAS must comply with constitutional and privacy rights and FAA regulations.

Much of the equipment included in the policy is highly specialized and designed to perform a specific task as described above. Frequently, there is no cost-effective alternative available. When there are alternatives available, staff members will conduct testing on and research regarding similar products from different manufacturers to determine the most cost-effective product, while considering performance and durability.

Prior to the creation of this policy, the use of equipment defined by Government Code section 7070 was regulated by the internal policies of the Office of the Sheriff and applicable law. Any use of the equipment was reviewed and investigated. If the use was deemed outside of policy, corrective action would have been taken through retraining or disciplinary action.

Anticipated Equipment Purchases

For this initial ordinance adoption, the Office of the Sheriff is providing a list of projected equipment purchases for the next fiscal year.

Annual Report and Community Engagement Meeting

Pursuant to Government Code section 7072, beginning in 2023, the Office of the Sheriff will prepare an annual military equipment report and present the ordinance to the Board for annual review and renewal. The Office of the Sheriff will also hold annual community engagement meetings related to the release of the equipment report. The annual report will address any use of AB 481 equipment during the prior year and will include information regarding any complaints, the costs associated with the equipment, and the quantity of each type of equipment. If applicable, the report will address any requests for changes to the inventory.

Ordinance No. 2022-29 was introduced at the July 26, 2022 Board of Supervisors meeting.

CONSEQUENCE OF NEGATIVE ACTION:

The Office of the Sheriff would not be able to perform its requisite public safety duties to safeguard the lives of Contra Costa citizens.

CHILDREN'S IMPACT STATEMENT:

None.

CLERK'S ADDENDUM

Speakers: No name given; Melvin Willis; Stephanie.

ATTACHMENTS

Military Equipment Ordinance

Government Code Section 7070 Defined Equipment Inventory

Appendix 16_ Government Code Section 7070 Defined Equipment Inventory

Projected Purchases of Military Equipment