



DATE: April 26, 2022

CATEGORY: Public Hearing

DEPT.: City Attorney's Office,
Police Department

TITLE: **Ordinance Approving a Military
Equipment Funding, Acquisition, and Use
Policy**

RECOMMENDATION

Introduce an Ordinance of the City of Mountain View Adding Section 2.69.3, Entitled "Military Equipment Policy," to the Mountain View City Code in Compliance with Assembly Bill 481, to be read in title only, further reading waived, and set second reading for May 10, 2022 (Attachment 1 to the Council report).

DISCUSSION

On September 30, 2021, Governor Newsom signed a series of police reform bills, including Assembly Bill 481 (AB 481), which states the public has a right to know and participate in the decision-making processes related to the funding, acquisition, or use of military equipment by State or local government officials in an effort to increase transparency, accountability, and oversight. AB 481 calls for local agencies to give strong consideration to the public's welfare, safety, civil rights, civil liberties, and public input. Furthermore, the legislation requires that local law enforcement agencies, which seek to continue the use of military equipment acquired prior to January 1, 2022, accomplish the following:

1. Draft a military equipment funding, acquisition, and use policy that describes each piece of military equipment and the authorized uses for each piece of equipment;
2. Seek approval of the policy from their governing body by ordinance for the continued use of existing military equipment before acquiring new military equipment or seeking funds for equipment purposes; and
3. Make publicly available any proposed or final military equipment use policy, for as long as the military equipment is available for use, on the agency's website.

At least annually, following the adoption of the Military Equipment Funding, Acquisition, and Use Policy, the law enforcement agency shall:

1. Prepare an annual military equipment report with at least one “well-publicized and conveniently located community-engagement meeting” to allow for public discussion of the report; and
2. Present the policy for review, renewal, and approval at a Regular Meeting of the governing body. During this review, the governing body shall consider the Annual Report and determine whether each type of military equipment has complied with specified standards for approval.

AB 481 requires that the process for adopting the Military Equipment Funding, Acquisition, and Use Policy commence no later than May 1, 2022. The purpose of this Ordinance is to formally approve the draft policy. If the City Council does not approve the continuing use of military equipment within 180 days of submission of the proposed policy, the Mountain View Police Department (MVPD) must cease its use of the military equipment until MVPD receives City Council approval in accordance with AB 481.

AB 481 Definition of Military Equipment

AB 481 defines “military equipment” as follows and differentiates the equipment by category:

- **Category 1:** Unmanned, remotely piloted, powered aerial or ground vehicles.
- **Category 2:** Mine-resistant, ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.
- **Category 3:** High-mobility multi-purpose 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.
- **Category 4:** Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- **Category 5:** Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- **Category 6:** Weaponized aircraft, vessels, or vehicles of any kind.

- **Category 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.
- **Category 8:** Firearms of .50-caliber or greater. However, standard-issue shotguns are specifically excluded from this subdivision.
- **Category 9:** Ammunition of .50-caliber or greater. However, standard-issue shotgun ammunition is specifically excluded from this subdivision.
- **Category 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.
- **Category 11:** Any firearm or firearm accessory that is designed to launch explosive projectiles.
- **Category 12:** “Flashbang” grenades and explosive breaching tools, “tear gas,” and “pepper balls,” excluding standard, service-issued handheld pepper spray.
- **Category 13:** Taser Shockwave, microwave weapons, water cannons, and the Long-Range Acoustic Device (LRAD).
- **Category 14:** The following projectile launch platforms and their associated munitions: 40-millimeter projectile launchers, “bean bag,” rubber bullet, and specialty impact munition (SIM) weapons.
- **Category 15:** Any other equipment as determined by a governing body or a State agency to require additional oversight.

AB 481 does not prohibit law enforcement from obtaining and using the above equipment; rather, it creates a public process for obtaining approval of these types of equipment and their authorized uses. As described further below, MVPD possesses equipment in eight of the 15 categories listed.

Current MVPD Equipment Meeting Military Equipment Designation

The MVPD carefully assesses what equipment is needed to accomplish the objectives of saving lives, protecting law enforcement personnel, reducing risk for the City, and enhancing public safety. Certain equipment is also beneficial in providing information and creating cover, distance, and time that help to slow down the decision-making process during critical incidents (defined as

any event or situation that creates a significant risk of substantial or serious harm to the physical or mental health, safety, or well-being of a community member). This allows responding officers to take in and evaluate the totality of the circumstances, which results in increased safety and reduced risk for everyone involved.

In general, all of the equipment listed below is highly specific in its use and is not carried day-to-day (the exception being patrol AR-15 rifles, which are stored and locked in each patrol vehicle). Items below may be used a few times a year, and their deployment automatically triggers notifications up the chain of command. More information about frequency of use for various types of equipment is provided below, following the equipment list.

Many of the items designated by AB 481 as military equipment have been in MVPD’s equipment inventory for decades. The MVPD’s operating procedures and training program instructs staff in the proper use of this equipment. The following table summarizes the types of military equipment in the MVPD’s possession along with examples of how this equipment has and can be utilized.

Category 1—Unmanned, Remotely Piloted, Powered Aerial or Ground Vehicles In use by the MVPD since September 11, 2019.		
Purpose	Authorized Use	Examples of Uses
To remotely gain visualization of a scene or incident to help provide information. (These are commercially available drones which are not weaponized.)	Only assigned operators who have completed the required FAA training and certification shall be permitted to operate the equipment. Use is established/authorized by the Incident Commander. When and where it can fly is used pursuant to MVPD Policy No. 613, Unmanned Aerial System (UAS) Operations.	<ul style="list-style-type: none"> • Disaster response and damage assessment. • Locate missing persons and rescue events. • Identify, locate, and apprehend noncompliant, threatening, or combative persons who pose a threat of injury or death to themselves, others, or officers. • Locate fleeing suspects. • Video/photographic documentation of crime. • Roof inspections of City-owned buildings (by Public Works Department).

Category 5—Command and Control Vehicle		
In use by the MVPD since April 25, 2017.		
Purpose	Authorized Use	Examples of Uses
To serve as a mobile command post at critical incidents (such as barricaded subjects, SWAT operations), disasters, or special events.	The vehicle is used by officers and staff who have been properly trained in the safe handling of the vehicle, which is similar to a commercial bus or recreational vehicle. (It is not a military-grade vehicle.)	<ul style="list-style-type: none"> • Provide safe, secure workspace for staff on scene of a crime or critical incident. • Mobile office for Shoreline Amphitheatre events or special events downtown. • Carry equipment needed at incident or event sites.
Category 7—Explosive Breaching Equipment		
Acquired in 2002.		
Purpose	Authorized Use	Example of Use
To create an entryway into a building during emergency hostage rescue situations.	Used only by a SWAT officer specifically trained and certified in its use. Deployment of this equipment requires specific authorization from Incident Commander.	Creating a hole in a wall or door that would allow for immediate entry by a SWAT team to rescue hostages.
Categories 8, 9, and 10—Specialized Firearms and Ammunition, and Rifles		
In use by the MVPD since early 1990s.		
Purpose	Authorized Use	Examples of Uses
To address a threat with more precision and/or at greater distances than possible with a handgun.	<p>Only personnel that are POST-certified are authorized to use a rifle. All officers are trained and certified to carry and operate patrol AR-15 rifles.</p> <p>Certain equipment requires completion of standard SWAT Operator training and/or a POST certified sniper course. Currently, only two MVPD officers are certified to use sniper rifles.</p>	<ul style="list-style-type: none"> • Stopping automobiles being used as weapons. • Addressing imminent threat to life (e.g., active shooter incidents, someone using a deadly weapon). • When the officer is faced with a situation that may require accurate and effective fire at long range.

Categories 12 and 14—Less Lethal Launchers and Ammunition and Chemical and Nonchemical		
In use by the MVPD since early 1990s.		
Purpose	Authorized Use	Examples of Uses
<p>To apply a lawful, less lethal use of force with the intent to subdue a subject and/or render them nonthreatening.</p> <p>Noise-Flash Diversionary Devices: To create a diversion to allow for the safe entry and/or arrest or rescue during emergency situations. This equipment is specifically designed to not create projectiles or be incendiary in nature.</p>	<p>Only personnel who have completed the required training are authorized to use the equipment. Certain equipment requires 24-Hour Less-Lethal Instructor course, and/or a 40-Hour Chemical Agent Instructor course.</p> <p>Diversionary Devices require tactical commander approval and officers trained, specifically, to employ them in a manner to avoid injury to anyone inside a location when used.</p>	<ul style="list-style-type: none"> • Nonlethal tool (e.g., bean bag, pepperball, or 40-millimeter rubber baton) to stop a subject at various distances. • Device to create a temporary diversionary tactic when trying to take a dangerous suspect into custody.

Frequency of Equipment Use

As mentioned above, most of the equipment covered by AB 481 is for limited, specific use and is used infrequently, as further described below:

- **Drones:** Used a few times last year. In one incident, a drone was deployed to help give the MVPD key information to rescue a couple trapped in their second-floor room when an intruder broke into their house. In another deployment, it was used to fly over the home of a cold-case homicide suspect just prior to officers arriving to serve an arrest and search warrant. This was done to give officers awareness of what may be around the house and, in case the suspect fled, allowing for a safer way to follow and apprehend the suspect. MVPD staff presented a Study Session to the City Council on a proposed drone program in April 2019. Council adopted Policy K-23, Use of Unmanned Aircraft Systems, in September 2019 regarding use of drones by City staff. MVPD’s use of drones complies with this policy.
- **Mobile Command Vehicle:** Deployed last year in the incident described above to help coordinate the rescue of the couple trapped in their house. The MVPD also deploys it at special events around the City and concerts at Shoreline Amphitheatre to allow MVPD leadership a place to meet and oversee events.

- **Noise-Flash Diversionary Devices:** Generally deployed infrequently and exclusively by specially trained SWAT officers at high-risk incidents. The MVPD averages one to three SWAT activations per year. Recently, officers were attempting to arrest suspects wanted in a drive-by shooting on El Camino Real. The suspects were not surrendering, and officers used flash-bangs to create a sound and light diversion to enter the house safely and arrest the suspects.
- **Chemical Munitions:** Though the SWAT team trains with chemical munitions annually, the MVPD has not deployed chemical munitions for over two decades. Chemical munitions provide alternative tactics to encourage peaceful surrender of armed or barricaded subjects.
- **Sniper Rifles:** Sniper rifles can only be deployed by specifically trained SWAT officers (currently two within MVPD). The sniper officers' primary duty is to observe and provide information to department leadership during a critical incident, but they may use their rifles if there is an imminent threat to life. Sniper officers train and qualify on a monthly basis. The last time they were deployed was in 2017 to provide observation of a subject known to carry assault weapons, who was under the influence of drugs, and had broken into a house and barricaded himself.
- **Explosive Breaching Equipment:** Like sniper rifles, explosive breaching equipment may only be used and deployed by specified staff. Currently, there is one officer on the SWAT team who is trained and certified in its use. This equipment has never been deployed by the MVPD as there has not been a critical incident that has required its use.

Current Policies and Procedures for Equipment Purchase and Use

Funding for the purchase of MVPD equipment is approved by the City Council at a high level as part of the budget adoption process. MVPD adheres to City purchasing policies and procedures when procuring its equipment. The use of equipment is governed by MVPD Policy No. 300, Use of Force and Deescalation Policy, and Policy No. 308, Control Devices and Techniques.

In addition, California Peace Officer Standards and Training (POST) establishes requirements for operation and deployment of this equipment, and compliance with these requirements is managed by the MVPD's Special Weapons and Tactics Team and the Range Cadre. In many cases, as new legislation and tools are deployed, MVPD participates in POST vendor-provided trainings or cross-training with neighboring law enforcement agencies.

All MVPD policies and procedures that govern safe-handling, storage, and qualification related to specified equipment remain in effect. This includes, but is not limited to, California Occupational Safety and Health Agency (OSHA) certification of energetic breaching operators; Bureau of

Alcohol, Tobacco, Firearms and Explosives (ATF) oversight of energetic breaching materials; and ATF oversight of Noise-Flash Diversionary Devices.

Draft MVPD Military Equipment Purchase and Use Policy

The MVPD's existing procedure manual addresses appropriate use and deployment of controlled equipment while taking into consideration the protection of civil rights and civil liberties.

AB 481 requires law enforcement agencies to publicly release a written document governing the use of military equipment by a law enforcement agency or a State agency that addresses, at a minimum, the topics described above. The Policy must be approved by a City Council-adopted ordinance, with the following findings:

- The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;
- The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties;
- 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
- 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.

In accordance with AB 481, this report includes the draft policy, which was distributed to the City Council and posted on the City's website prior to the City Council meeting where the following items are reviewed:

- The quantity possessed for each type of military equipment as of the date of the annual report;
- Summary of how the military equipment was used and the purpose of its use;
- Summary of any concerns or complaints received involving the use of military equipment;
- The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response;

- Total annual cost of each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs; and
- Acquisition plans (including source of funds) for the coming year, type, and quantity.

The draft Military Equipment Funding, Acquisition, and Use Policy includes each element required per AB 481 and includes an inventory of military equipment in the MVPD's possession effective January 1, 2022. As any future purchases are made, equipment which meets the military equipment designation will be added to the inventory list and included in the annual report.

Community Engagement

MVPD exceeded the requirements of AB 481 and conducted a discussion at the March 24, 2022 meeting of the Public Safety Advisory Board (PSAB). Overall, PSAB members were supportive of the continued use of the Police Department's existing equipment, particularly in response to critical incidents. PSAB members asked clarifying questions regarding particular types of equipment and their uses, mutual aid, and the use of military equipment belonging to other jurisdictions. One community member suggested the annual report also be presented to PSAB. Staff supports this recommendation.

FISCAL IMPACT

There is no fiscal impact in adopting this Ordinance and the Military Equipment Funding, Acquisition, and Use Policy.

CONCLUSION

AB 481 requires each law enforcement agency's governing body to adopt a military use policy by ordinance in order to continue the use of this previously acquired equipment. The policy describes each piece of military equipment and the authorized uses for each piece of equipment. If adopted, the MVPD will prepare an annual military equipment report to include each use of military equipment, any complaints received, and any internal audits or other information about violations of the policy. Annually, at a regular meeting of the City Council, the policy will be presented for review and renewal.

ALTERNATIVES

1. Decline to introduce the ordinance.
2. Provide other direction.

PUBLIC NOTICING—Agenda posting.

Prepared by:

Megan Marevich
Assistant City Attorney

Christopher S. Hsiung
Police Chief

Approved by:

Jannie Quinn
Interim City Attorney

Kimbra McCarthy
City Manager

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- Attachments:
1. Ordinance
 2. Draft Police Department Policy No. 706—Military Equipment Funding, Acquisition, and Use Policy, Including AB 481 Defined List of Military Equipment in MVPD’s Possession