



COUNCIL REPORT

DATE: May 14, 2024
CATEGORY: Public Hearing
DEPT.: Police
TITLE: **AB 481 Military Equipment Annual Report and Policy Adoption**

RECOMMENDATION

1. Find and determine that Mountain View Police Department’s 2023 AB 481 Annual Report has complied with Government Code Section 7071(d) (Attachment 1 to the Council report).
2. Introduce an Ordinance of the City of Mountain View Repealing Chapter 2, Article IV, Division I, Section 2.69.3 of the Mountain View City Code and Finding That This Action Is Not Subject to the California Environmental Quality Act, to be read in title only, further reading waived, and set a second reading for May 28, 2024 (Attachment 2 to the Council report).
3. Introduce an Ordinance of the City of Mountain View Adopting a Military Equipment Use Policy Governing the Funding, Acquisition, and Use of Military Equipment by the Mountain View Police Department Pursuant to California Assembly Bill 481 and Finding That This Action Is Not Subject to the California Environmental Quality Act, to be read in title only, further reading waived, and set a second reading for May 28, 2024 (Attachment 3 to the Council report).

BACKGROUND

On September 30, 2021, Governor Newsom signed a series of police reform bills, including Assembly Bill 481 (AB 481), which stated that 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, codified in Government Code Sections 7070-7075, called for local agencies to develop a policy and prepare an annual report in accordance with the requirements below. In so doing, the legislation encouraged agencies to give strong consideration to the public’s welfare, safety, civil rights, civil liberties, and public input.

The Mountain View City Council adopted Ordinance No. 7.22 on May 10, 2022 (“Ordinance”), which approved Mountain View Police Department Policy 709: Military Equipment (“Policy”), in accordance with AB 481.

In addition to the above requirements, AB 481 also requires, at least annually, that the law enforcement agency:

- 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
- Present the Ordinance for review and renewal 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.

Council renewed the Ordinance on May 9, 2023 (Resolution No. 18799), at which time it also reviewed the 2022 Annual Report.

Required Annual Report Contents

Government Code Section 7072(a) requires that the annual report 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.

The 2023 AB 481 Military Equipment Annual Report (“2023 Annual Report”) (Attachment 1) provides the aforementioned information, and this memorandum summarizes its salient points.

DISCUSSION

AB 481 Definition of Military Equipment

AB 481 defines “military equipment” as follows and differentiates the equipment by category. AB 481 does not prohibit law enforcement from obtaining and using military equipment as defined; rather, it creates a public process for obtaining approval for these types of equipment and their authorized uses. The Mountain View Police Department (MVPD) possesses equipment in eight of the 15 categories listed, as noted with an asterisk (*). The 2023 Annual Report includes full descriptions of the equipment in each 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.

Current MVPD Equipment Meeting Military Equipment Definition

The MVPD continues to carefully assess what equipment is needed to protect the public and Officers when resolving critical incidents, such as active shooter response, apprehending violent offenders, hostage rescue, and barricaded subjects, among others. Certain equipment is also beneficial in providing information and creating cover, distance, and time that help to improve the decision-making process during critical incidents. 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.

For the most part, the equipment listed in the report is highly specific in its use and is not carried day-to-day. Items may be used a few times a year, and their deployment requires departmental notifications. **In 2023, the equipment was minimally used, largely related to training and certification.** While in certain appropriate circumstances equipment may be taken into the field, it does not mean that any equipment was used or fired. More information about the frequency and manner of use for various types of equipment is provided in Attachment 1.

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 instruct staff in the proper use of this equipment.

The AR-15 rifles and associated .223 caliber ammunition, which are issued to Officers by MVPD, were originally included in the 2022 AB 481 Annual Report but have been removed from the 2023 AB 481 Annual Report as they do not fall within the definition of “military equipment” under Government Code Section 7070(c)(10), which excludes “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.”

Use of equipment defined as “military equipment” in AB 481 is common in neighboring jurisdictions. Attachment 4 to this memorandum includes a table showing the use of such equipment in other police departments.

Current Policies and Procedures for Equipment Purchase and Use

MVPD adheres to the City’s budget process and purchasing policies and procedures when procuring its equipment. The acquisition of new or replacement equipment or items meeting the reporting requirements of AB 481 is funded from MVPD’s budget in accordance with MVPD Policy No. 709—Military Equipment (Exhibit A of Attachment 3) and the approval of the City Council.

As noted and anticipated in the 2022 AB 481 Annual Report, MVPD purchased two indoor unmanned aerial systems (UAS) and two general-use UAS to replace existing systems that had reached the end of their anticipated life. In addition, purchases may occur to replace materials used up during the year for training or operational purposes, potentially including ammunition, specialty munitions, noise flash diversionary devices, and breaching equipment.

MVPD Policy No. 300, Use of Force and Deescalation Policy, and Policy No. 308, Control Devices and Techniques, govern the use of equipment. In addition, the State of California Commission on Peace Officer Standards and Training (POST) establishes operational guidelines and training recommendations for certain equipment and tactics, and MVPD’s designated subject matter experts manage compliance with these guidelines.

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.

In 2023, the City received no complaints or concerns regarding the use of equipment specified in AB 481. There was one violation of MVPD Policy No. 709—Military Equipment, which involved the improper storage of a bean bag launcher. The department addressed the violation in accordance with its internal policies and procedures, which included conducting an internal investigation.

Proposed Purchases/Changes in Inventory

The 2023 Annual Report does include new equipment that will be purchased in the next fiscal year that falls within the definition of “military equipment” under AB 481; however, plans for future equipment purchases meeting the reporting requirements of AB 481 are minimal and mostly focused on replacing or replenishing equipment used throughout the year. In 2024, MVPD plans to purchase the following:

- Approximately 500 rounds of .50 caliber ammunition at the cost of \$900.
- Approximately 1,000 rounds of .308 caliber ammunition at a cost of \$1,500.
- 36 Noise-Flash Diversionary Devices (NFDD) to replace expired NFDDs at a cost of approximately \$5,000.
- Chemical munitions to replace munitions used in training, operationally, or expiring, at a cost of approximately \$5,000.
- Primcord and 14 related Blasting Caps to replace materials used in training in 2023 at a cost of \$1,000.
- 500 bean bag munitions to replace munitions used in training in 2023 at a cost of \$3,000.

Additionally, as part of the Fiscal Year 2024-25 City Budget process, MVPD has requested funds to purchase forty (40) 40mm LMT Single-Shot Sponge Round Launchers, at an approximate cost of \$50,433 to replace the 12-gauge bean bag launchers currently used by Patrol Officers. MVPD has also requested \$15,700 to purchase related 40mm foam impact projectiles. The funding for new purchases, and any ongoing costs for existing equipment, will be included in MVPD’s budget from the General Operating Fund.

Since August 1, 2023, the department has been working with California Office of Emergency Services (CalOES) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to return twenty (20) AR-15 rifles acquired through the 1033 program. The 1033 program was created in 1997 to enable the Department of Defense to transfer surplus military equipment to federal, state, local, and tribal law enforcement. The department applied for their return to ATF and an inventory certification on August 2, 2023. In December 2023, while awaiting approval from ATF, the Law Enforcement Support Office instituted a moratorium on the return of 1033 program rifles until further notice. MVPD has since stored these rifles and has no plans to deploy them operationally or in training. MVPD will continue to communicate with the ATF to ensure timely notification of authorization to return the rifles and is currently exploring alternative methods to remove the rifles permanently from inventory.

April 25 Community Engagement Meeting

The 2023 Annual Report was presented on April 25, 2024 at the meeting of the Public Safety Advisory Board (PSAB) to satisfy the first annual requirement of facilitating public discussion of the 2023 Annual Report and MVPD funding, acquisition, or use of military equipment in a well-publicized and conveniently located community engagement meeting. The PSAB meeting took place within 30 days of the submittal of the 2023 Annual Report to the City Council and its publication on the City's website in accordance with AB 481, which was submitted to Council and published on the City's website on the MVPD AB 481 webpage on April 19, 2024. In addition, the PSAB meeting was noticed through the City's biweekly e-newsletter (*City Hall Connection*) and emails to established distribution lists. An opportunity was provided for meeting participants to pose and receive answers to questions.

Following the presentation of the 2023 Annual Report by staff, PSAB members raised several questions. These inquiries focused on drone size and battery charging, clarification on CS gas (including situations and frequency of use by MVPD), and the definition of kinetic energy weapons.

PSAB members also explored the rationale behind purchasing infrequently used items that need to be replaced upon expiration. They inquired about the possibility of trading in unused equipment for newer equipment.

The questions also addressed the proposed purchase of sponge round launchers to replace the existing 12-gauge bean bag Launchers. PSAB members sought information on their improved functionality compared to the existing equipment. In response to a question posed by the Chair about the PSAB's thoughts regarding the purchase of sponge round Launchers, two PSAB members highlighted benefits such as increased range, accuracy, softer projectiles, and enhanced Officer safety. A PSAB member emphasized the importance of effective, less-lethal tools to minimize lethal confrontations with individuals in crisis.

Additional inquiries addressed equipment sharing with neighboring departments, deployment protocols for less-lethal versus lethal force weapons, and MVPD's most recent firearm replacements.

Public comments, delivered virtually by two attendees, requested further information about expired equipment disposal and destruction. One comment questioned the term "less-lethal," suggesting lethality cannot be a spectrum. Concerns were also raised about one recent policy violation with the current bean bag system, along with the suggestion to redirect funds for less-lethal launchers towards mental health services.

Proposed Ordinances

In order to comply with the requirements of AB 481, Council must introduce a new ordinance to adopt an updated policy to include the newly purchased equipment, as well as equipment that may be purchased in the next fiscal year. Council must also review the 2023 Annual Report and determine whether the military equipment identified in the 2023 Annual Report has complied with the standards for approval as set forth in Government Code Section 7071(d).

The proposed new ordinance will replace Ordinance No. 7.22, as codified in Section 2.69.3 of the Mountain View City Code and includes all of the required elements of AB 481, including adoption of the revised Policy 709. Due to the nature of AB 481's requirements, such as annual review, renewals, and modifications to the Policy, the proposed ordinance will be uncodified to allow for ease of compliance.

AB 481 requires a public hearing to take place after a proposed policy has been published on the City's website. The proposed policy was published on the MVPD's AB 481 webpage on April 19, 2024, and the public hearing will take place during the City Council meeting on May 14, 2024.

FISCAL IMPACT

The MVPD proposes the purchase of 40 less-lethal sponge round launchers and their accompanying ammunition to replace the existing inventory of 12-gauge shotgun bean bag launchers. The MVPD anticipates purchasing ammunition, less-lethal projectiles, explosive breaching equipment, noise flash diversionary devices, and chemical munitions to replace those anticipated to be used or to expire in the next fiscal year. The MVPD anticipates receiving limited-period (one-time) funding as part of the Fiscal Year 2024-25 Recommended Budget to purchase the less-lethal sponge round launchers and accompanying ammunition, at an estimated cost of \$66,133. All other items will be funded through the MVPD budget.

ALTERNATIVES

1. Do not introduce the proposed ordinances, and do not adopt a revised MVPD Policy No. 709—Military Equipment.
2. Determine that MVPD's 2023 Annual Report does not meet the standards of Government Code Section 7071(d).
3. Provide other direction.

PUBLIC NOTICING—Agenda posting.

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- Attachments:
1. 2023 MVPD AB 481 Annual Report
 2. Ordinance Repealing Mountain View City Code Section 2.69.3
 3. Ordinance Adopting MVPD Policy 709—Military Equipment
 4. Use of Military Equipment in Neighboring Jurisdictions