

**AGENDA
ITEM**

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CITY COUNCIL

AGENDA STAFF REPORT

DATE: October 18, 2023
TO: Mayor and City Council
APPROVED BY: Esperanza Colio Warren, City Manager *Esperanza Colio Warren*
PREPARED BY: Victor Legaspi, Interim Police Chief *VL*
SUBJECT: Ordinance Adopting Calexico Police Department Military Equipment Use Policy
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Recommendation:

Staff recommends that the City Council conduct a first reading, but title only, of an Ordinance adopting a military equipment use policy consistent with the requirements of Assembly Bill 481.

Background:

Law enforcement incidents can be unpredictable and complex. Sometimes, special equipment, tools, or other resources can be used to de-escalate violent and tense situations, reduce potential harm to law enforcement and community members, and increase the likelihood of a positive outcome. This special equipment can otherwise be known as "military equipment," which includes unmanned aerial (Drones) or ground vehicles, bulletproof vehicles, pepper balls, less lethal 40mm projectile launchers, and distraction devices. These tools have been tested in the field and are used to help enhance citizen safety, officer safety, and reduce the need for escalation of force. They are commonly utilized by law enforcement and their use is considered a best practice.

According to Assembly Bill 481, before law enforcement can acquire or use military equipment, it must obtain governing body approval of a Military Equipment Use Policy by ordinance. This bill defines military equipment, requires City Council approval prior to its use, and incorporates a public participation component.

"Military equipment," as used in AB 481, does not necessarily indicate the equipment the military has used. It includes drones, pepper balls, flashbangs, and long-range acoustic devices, which can all be used deescalate a dangerous crowd situation. These items provide peace officers with the ability to safely resolve volatile situations which otherwise might rise to the level of a lethal force encounter. The inability to use these items would jeopardize the welfare of citizens and peace officers within the Calexico Police Department.

AB 481 requires the police department to create a Military Equipment Use Policy to be reviewed and approved by City Council at a public meeting.

Prior to AB 481, many police departments, include the Calexico Police Department, have responsibly acquired and used "military equipment" for decades. In light of the new law and in efforts to promote transparency, the Police Department has created a Military Equipment Use Policy in compliance with AB 481, published the Policy on their website for several months prior to this public meeting, and will participate in informing the community about its use of "military equipment" to serve and protect the community.

Discussion and Analysis:

The Calexico Police Department seeks City Council approval of the attached Ordinance which adopts the Police Department's Military Equipment Use Policy (Policy No. 706) and provides guidance for military equipment use in exigent circumstances.

The proposed Ordinance adopts Calexico Police Department Policy 706 regarding Military Equipment. Policy No. 706 provides guidelines for the approval, acquisition, and reporting requirements of Military Equipment, pursuant to Government Code section 7070 *et seq.* The Policy includes definitions, describes the role of the Department's military equipment coordinator, includes an inventory of the Department's military equipment, requires the Department to obtain annual approval of its Policy by City Council, and requires the Department to hold at least one community meeting annually to review each annual report on the Policy.

The proposed Ordinance also includes an exception for use of military equipment in exigent circumstances. If the Police Department acquires, borrows, and/or uses Military Equipment during exigent circumstances (i.e. emergencies that require swift action by law enforcement officials to prevent imminent danger to life), it must take all of 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 circumstances, 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 circumstances, submit a proposed amended 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 Department's annual military equipment Report.

Fiscal Impact:

There will be no financial impact on the Calexico General Fund.

Attachment(s):

1. Ordinance No. _____ (includes Military Equipment Use Policy as an attachment)

ORDINANCE NO. 2023-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, ADOPTING A MILITARY EQUIPMENT USE POLICY CONSISTENT WITH THE REQUIREMENTS OF ASSEMBLY BILL NO. 481

The City Council of the City of Calexico does hereby ordain as follows:

SECTION 1. Findings.

A. On September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill No. 481 (“AB 481”), relating to the use of military equipment by law enforcement agencies and which requires law enforcement agencies to adopt a military equipment use policy (“Policy”) prior to taking certain actions relating to the funding, acquisition, or use of military equipment as defined by the law.

B. AB 481, codified at Government Code Sections 7070 through 7075, 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 Government Code Section 7070.

C. AB 481 requires adoption of the military equipment policy by City Council before the law enforcement agency can take action to request military equipment as defined by the statute; seek funds (such as grants or in-kind donations) for acquiring military equipment; actually acquire military equipment, either permanently or temporarily by owning, borrowing, or leasing; collaborate with other law enforcement agencies to deploy or use military equipment in the agency’s territorial jurisdiction; use new or existing military equipment in a manner not previously subject to AB 481 scope; solicit or respond to a proposal for, or enter into an agreement with, any person or entity to seek funds for, apply for, acquire, use, or collaborate in using military equipment; or to acquire military equipment through any other means not specifically detailed in the statute.

D. AB 481 allows the governing body of a city to approve the funding, acquisition, or use of defined military equipment within its jurisdiction only if it makes specified determinations.

E. The Calexico Police Department has developed such a policy in coordination with Lexipol. The policy is contained in the Calexico Police Department Policy Manual as Policy 706 (“Policy”).

F. The Calexico Police Department posted the draft Policy on its website and more than 30 calendar days elapsed before the City Council conducted a first reading of the proposed Ordinance adopting the Policy. The Policy is currently posted on the Police Department’s website.

H. The City Council adopted the Policy temporarily on March 1, 2023 and July 19, 2023. The temporary approval is set to expire on November 26, 2023.

J. At the October 4, 2023 regularly scheduled City Council meeting, the City Council conducted a public hearing to consider the proposed Policy, the Police Department's presentation, and public testimony. Based on the foregoing, the City Council finds as follows:

i. The acquisition and use of military equipment, as that term is defined in Assembly Bill No. 481 and the Policy, is necessary to ensure officer and civilian safety as there are no reasonable alternatives available that can achieve the same level of protection.

ii. The proposed Policy has been carefully designed to safeguard the public's welfare, safety, civil rights, and civil liberties. It includes comprehensive guidelines and oversight mechanisms to prevent abuse or misuse of the equipment.

iii. Experience shows that when purchasing the equipment, the equipment defined as "military equipment" in Assembly Bill No. 481 is reasonably cost-effective compared to available alternatives that do not meet the definition of "military equipment" set forth in Assembly Bill No. 481, that can achieve the same objective of officer and civilian safety; and

iv. Prior use of equipment by the Calexico Police Department that is now defined as "military equipment" by Assembly Bill No. 481, 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 non-conforming uses and ensure future compliance.

K. In accordance with AB 481, the Policy is on the agenda as an open session item at a regular meeting of the City Council, and public comment on the item will be allowed in accordance with the Brown Act.

L. The Policy shall be reviewed by the City Council at least annually, and based on an annual military equipment report that will be submitted to the City Council pursuant to AB 481, the City Council shall determine whether each type of military equipment identified in the report has complied with the standards for continued approval.

SECTION 2. Adoption of Military Equipment Use Policy. The City Council hereby affirms and adopts the Calexico Police Department Policy No. 706, Military Equipment Policy ("Policy"), which is attached hereto as **Exhibit "A."**

SECTION 3. Use in Exigent Circumstances. In Exigent Circumstances (defined below), the Calexico Police Department may acquire, borrow and/or use Military Equipment (as defined in the Policy) that is not included in the Military Equipment Policy, if the Department takes 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.

“Exigent Circumstances” means the Police Department'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.

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause, or phrase of this Ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses, or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. Environmental Review. The City Council finds that adoption and implementation of this Ordinance is not a “project” for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) sections 15061(b)(3), and 15378(b)(5). The proposed Ordinance adopts a Military Equipment Use Policy for the Police Department. No new development will result from the proposed action. No impact to the physical environment will result. The City Council also alternatively finds that the adoption and implementation of this Ordinance is exempt from the provisions of CEQA as an administrative activity by the City of Calexico, in furtherance of its police power, that will not result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and 15378(b)(5) of the CEQA Guidelines.

SECTION 6. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 7. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published on the City's website and published once in a newspaper of general circulation published and circulated within the City.

APPROVED, PASSED, AND ADOPTED at a regular meeting of the City Council held on the _____ day of _____, 2023.

Raul Ureña, Mayor

ATTEST:

Veronica L. Alvarado, Interim City Clerk

APPROVED AS TO FORM:

Carlos Campos, City Attorney

EXHIBIT "A"
MILITARY EQUIPMENT USE POLICY

CERTIFICATION

State of California)
County of Imperial) s.s.
City of Calexico)

I, Veronica L. Alvarado, City Clerk, do hereby certify the above Ordinance No. 2023-_____ is a full, true, and correct copy, and was adopted at a regular meeting of the Calexico City Council on _____, 2023 by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set by hand and affixed the official seal of the City of Calexico, California, this _____ day of _____, 2023.

Veronica L. Alvarado, City Clerk