



STAFF REPORT

AGENDA NO: 10a

MEETING DATE: April 21, 2025

To: Honorable Mayor and City Council

Date: April 21, 2025

**From: Michael Guina, City Attorney – (650) 558-7204
Bob Boll, Interim Chief of Police – (650) 777-4100**

Subject: Introduction and First Reading of an Ordinance Renewing the Burlingame Police Department Military Equipment Use Policy; CEQA Determination: Exempt pursuant to State CEQA Guidelines Sections 15378, 15061(b)(3)

RECOMMENDATION

Staff recommends that the City Council hold a Public Hearing to introduce the first reading of a proposed Ordinance renewing the Burlingame Police Department Military Equipment Use Policy (“Policy”). Staff recommends the following procedure:

Recommended Procedure and Order of Operations:

- A. Receive the staff report and ask any questions of staff.
- B. Conduct a public hearing.
- C. Discuss the Ordinance and by motion determine whether to bring it back for second reading and adoption. If the Council is in favor of the Ordinance, direct the City Clerk to publish a summary of the Ordinance at least five days before its proposed adoption.

BACKGROUND

On September 30, 2021 Governor Newsom signed a series of policing reform legislation into law. These laws are aimed at increasing police transparency. As part of that package, AB 481 (codified in Government Code section 7070 et. seq), effective January 1, 2022, 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 that term is defined by the statute. The Policy must be adopted by ordinance at a regular meeting of the governing body for that law enforcement agency. In the case of the Burlingame Police Department (“BPD”), the City Council is the governing body. Thereafter, the Policy must be reviewed and renewed by the City Council on an annual basis for continued use of the military equipment.

On May 2, 2022, the City Council adopted Ordinance No. 2005, adopting BPD’s Military Equipment Use Policy and list of military equipment (Exhibit A).

Definition of Military Equipment

AB 481 designates the following categories of items as military equipment¹:

1. Unmanned, remotely piloted, powered aerial or ground vehicles.
2. Mine-resistant ambush-protected vehicles or armored personnel carriers.
3. High mobility multipurpose wheeled vehicles (HMMWV), 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 and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
9. Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code §30515, with the exception of standard-issue handguns.
10. Any firearm or firearm accessory that is designed to launch explosive projectiles.
11. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.
12. Taser Shockwave, microwave weapons, water cannons, and long-range acoustic devices.
13. Projectile launch platforms and their associated munitions including 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition weapons.
14. Any other equipment as determined by a governing body or a state agency to require additional oversight.

The Burlingame Police Department does not possess any tactical equipment obtained from the military, nor does it possess any equipment that was designed for military use. The Department does possess some types of police equipment that fall under the broad definition of military equipment in AB 481, including the following:

- AR-15 semiautomatic rifle is capable of firing 5.56mm projectile bullet.
- M4 Select fire rifle.
- 40mm Less Lethal Launchers and Kinetic Energy Munitions
- Pepperball FTC Pepperball less lethal Pepperball launchers and Pepperball munitions

A complete description of this equipment is attached to the adopted Policy as Exhibit A, "Section One: Qualifying Equipment Owned / Used by the Burlingame Police Department."

The Burlingame Police Department participates in the North County Regional SWAT Team (NCR SWAT). Some equipment is owned and operated by NCR SWAT through partner law enforcement

¹ Government Code section 7070(c)

agencies (San Mateo PD, Foster City PD, San Bruno PD, South San Francisco PD, and Brisbane PD). While the Burlingame Police Department does not own or operate this equipment, it could be used in Burlingame by NCR SWAT if they are deployed to an incident within City limits. The list of military equipment available to Burlingame PD through its participation in NCR SWAT is attached to the Policy as Exhibit A, "Section Two: Qualifying equipment not already listed in this policy, which is known to be owned and/or utilized by the North County Regional SWAT Team, for which the Burlingame Police Department is a participating agency."

DISCUSSION

Annual Review

A law enforcement agency that receives approval for a military equipment use policy is required to submit an annual military equipment report for each type of military equipment approved by the governing body within one year of approval, and annually thereafter for as long as the military equipment is available for use². The annual report is also required to be made publicly available on the department's website.

The annual report must contain, at a minimum, the following information for the immediately preceding calendar year for each type of military equipment³:

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.

In addition, 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 meeting at which the general public may discuss and ask questions regarding the annual report and the law enforcement agency's funding, acquisition, or use of military equipment⁴.

The Department prepared its 2024 Annual Report (Exhibit B) and posted it on the BPD's website. The Annual Report provides the information required by AB 481. In summary, there have been no complaints or concerns regarding the military equipment owned by BPD, and no internal audits or violations of the Policy.

² Government Code section 7072(a)

³ Id.

⁴ Government Code section 7072(b)

Following the public release of the Annual Report, on April 8, 2025, Interim Chief Boll held a publicized meeting at the Community Center that was open to the general public. Staff provided a presentation of the Annual Report and answered questions about BPD's military equipment.

Renewal of Ordinance Approving Military Equipment

AB 481 requires the City Council to annually review the ordinance authorizing the funding, acquisition, or use of military equipment, and thereafter vote on whether to renew the ordinance. The review must occur at a regular meeting of the City Council. In reviewing the ordinance and determining whether to renew it, the City Council shall consider the annual military equipment report and determine whether it complies with the standards originally required for initial adoption of the military equipment Policy⁵. The Council may renew the ordinance if it determines all of the following:

- The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;
- The proposed Policy will safeguard the public's welfare, safety, civil rights, and civil liberties;
- If purchasing 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 complied with the Policy that was in effect at the time, or if prior uses did not comply with the Policy, that corrective action has been taken to remedy nonconforming uses and ensure future compliance.

For the military equipment used by the Burlingame Police department, staff believes the City Council is able to make the required findings. The military equipment used by BPD is necessary because there are no reasonable alternatives that can achieve the same objective for officer and civilian safety. The BPD military equipment is designed to safeguard the public welfare, safety, and civil rights: the Policy and the Annual Report describe the purpose and use of each type of equipment, the fiscal impacts, the rules of use for the equipment, and the training required. For the upcoming year (2025), the Department is not proposing to purchase additional military equipment. Over the last reporting period (2024), there was no violation of the Policy, no investigation for any Policy violations, and therefore no need for corrective action.

FISCAL IMPACT

Since the Department is not proposing to purchase new military equipment, but only seeks to continue using current equipment, there is no fiscal impact associated with approval of this ordinance.

Exhibits:

- Exhibit A: Burlingame Police Department Policy 708: Military Equipment
 - Section One: Equipment Owned/Utilized by the Burlingame Police Department
- Exhibit B: 2024 Annual Report
- Proposed Ordinance

⁵ Government Code section 7071(e)(1),(2); 7071(d)