



Item No. 14 Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARING

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: STEVE MCCULLEY, CHIEF OF POLICE

DATE: JUNE 15, 2022

**SUBJECT: INTRODUCTION AND 1ST READING OF AN ORDINANCE
APPROVING A POLICY FOR THE USE AND ACQUISITION OF
MILITARY EQUIPMENT AS REQUIRED BY ASSEMBLY BILL
481 LAW ENFORCEMENT AND STATE AGENCIES**

RECOMMENDATION

Introduce for 1st Reading and Waive Future Reading of Ordinance No. ___, “military equipment use policy and approving the use, acquisition, collaboration, and seeking of funding for military equipment,” as required by California Government Code § 7071 (a)(1) per Assembly Bill (AB) 481.

BACKGROUND

AB 481 creates a new statutory mandate for the Police Department. Specifically, the law concerns the funding, acquisition, and use of military equipment by law enforcement agencies. The language of the new Military Equipment Policy provides a non-exhaustive list of examples and definitions for such equipment. Agencies may also consult Government Code § 7070, 7071, and 7072 for the source of these definitions, as well as comprehensive information about state law requirements and processes for military equipment.

AB 481 requires agencies to obtain policy approval through adoption of an Ordinance. Following approval, agencies are further required to submit an annual military equipment report to the governing body for as long as the equipment is available for use. Agencies must also publish their Military Equipment Policy on their website 30 days prior to hearing. On January 19, 2022, the City Council reviewed and approved the Lexipol Policy 709 – Military Equipment. Lexipol Policy 709 – Military Equipment was published on the Town’s website on April 27, 2022:

<https://www.ci.atherton.ca.us/DocumentCenter/View/10174/Lexipol-Policy-709-Military-Equipment>

ANALYSIS

The Department is not in possession of any military equipment obtained through the Federal Surplus Property Acquisition Law of 1945 as identified in AB 481. Standard issued weaponry for officers include a Glock 9mm pistol, Remington shotgun, Colt .223 patrol rifle, and an Axon taser. Per the definitions of military equipment in AB 481, this weaponry is not considered military equipment.

However, the Police Department does possess and deploy three 40mm launchers during each patrol shift. All officers receive 40mm launcher handling and deployment certification training and receive annual requalification training. The 40mm launchers provide a platform to deliver less lethal sponge rounds designed to incapacitate a violent suspect without having to use hands on force or a higher level of force. The launcher can also be used to deploy chemical agents for crowd control and barricaded suspects. The launchers and chemical agents are considered military equipment per AB 481.

Draft Ordinance No. ____, “military equipment use policy and approving the use, acquisition, collaboration, and seeking of funding for military equipment” has been drafted per AB 481 and was published on the Town’s website 30 days prior to this hearing.

FISCAL IMPACT

There is no fiscal impact for the approval of Ordinance No. ____, “military equipment use policy and approving the use, acquisition, collaboration, and seeking of funding for military equipment.”

GOAL ALIGNMENT

This Report and its contents are in alignment with the following Council Policy Goal:

- Goal E – Strengthen Community Engagement and Transparency

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about this item is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ____ has or X has not been before a Town Committee or Commission.

____ Audit/Finance Committee (meets every other month)

- ___ Bicycle/Pedestrian Committee (meets as needed)
- ___ Environmental Programs Committee (meets every other month)
- ___ Park and Recreation Committee (meets each month)
- ___ Planning Commission (meets each month)
- ___ Rail Committee (meets every other month)
- ___ Transportation Committee (meets every other month)

ATTACHMENTS

- A. Assembly Bill 481 Law Enforcement and State Agencies: Military Equipment Funding, Acquisition, and Use.
- B. Lexipol Policy 709, “Military Equipment.”
- C. Ordinance No. ___, “military equipment use policy and approving the use, acquisition, collaboration, and seeking of funding for military equipment.”



AB-481 Law enforcement and state agencies: military equipment: funding, acquisition, and use. (2021-2022)

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Date Published: 10/01/2021 09:00 PM

Assembly Bill No. 481

CHAPTER 406

An act to add Chapter 12.8 (commencing with Section 7070) to Division 7 of Title 1 of the Government Code, relating to military equipment.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 481, Chiu. Law enforcement and state agencies: military equipment: funding, acquisition, and use.

Existing law designates the Department of General Services as the agency for the State of California responsible for distribution of federal surplus personal property, excepting food commodities, and requires the department to, among other things, do all things necessary to the execution of its powers and duties as the state agency for the distribution of federal surplus property, excepting food commodities, in accordance with specified federal law. Existing law, the Federal Surplus Property Acquisition Law of 1945, authorizes a local agency, as defined, to acquire surplus federal property without regard to any law which requires posting of notices or advertising for bids, inviting or receiving bids, or delivery of purchases before payment, or which prevents the local agency from bidding on federal surplus property. Existing federal law authorizes the Department of Defense to transfer surplus personal property, including arms and ammunition, to federal or state agencies for use in law enforcement activities, subject to specified conditions, at no cost to the acquiring agency.

This bill would require a law enforcement agency, defined to include specified entities, to obtain approval of the applicable governing body, by adoption of a military equipment use policy, as specified, by ordinance at a regular meeting held pursuant to specified open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment, as defined. The bill would also require similar approval for the continued use of military equipment acquired prior to January 1, 2022. The bill would allow the governing body to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it determines that the military equipment meets specified standards. The bill would require the governing body to annually review the ordinance and to either disapprove a renewal of the authorization for a type, as defined, of military equipment or amend the military equipment use policy if it determines, based on an annual military equipment report prepared by the law enforcement agency, as provided, that the military equipment does not comply with the above-described standards for approval. The bill would specify these provisions do not preclude a county or local municipality from implementing additional requirements and standards related to the purchase, use, and reporting of military equipment by local law enforcement agencies.

This bill would also require a state agency, as defined, to create a military equipment use policy before engaging in certain activities, publish the policy on the agency's internet website, and provide a copy of the policy to the Governor or the Governor's designee, as specified. The bill would also require a state agency that seeks to continue use of military equipment acquired prior to January 1, 2022, to create a military equipment use policy.

This bill would also include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

By adding to the duties of local officials with respect to the funding, acquisition, and use of military equipment, this bill would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The acquisition of military equipment and its deployment in our communities adversely impacts the public's safety and welfare, including increased risk of civilian deaths, significant risks to civil rights, civil liberties, and physical and psychological well-being, and incurment of significant financial costs. Military equipment is more frequently deployed in low-income Black and Brown communities, meaning the risks and impacts of police militarization are experienced most acutely in marginalized communities.

(b) The public has a right to know about any funding, acquisition, or use of military equipment by state or local government officials, as well as a right to participate in any government agency's decision to fund, acquire, or use such equipment.

(c) Decisions regarding whether and how military equipment is funded, acquired, or used should give strong consideration to the public's welfare, safety, civil rights, and civil liberties, and should be based on meaningful public input.

(d) Legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before military equipment is funded, acquired, or used.

(e) The lack of a public forum to discuss the acquisition of military equipment jeopardizes the relationship police have with the community, which can be undermined when law enforcement is seen as an occupying force rather than a public safety service.

SEC. 2. Chapter 12.8 (commencing with Section 7070) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 12.8. Funding, Acquisition, and Use of Military Equipment

7070. For purposes of this chapter, the following definitions shall apply:

(a) "Governing body" means the elected body that oversees a law enforcement agency or, if there is no elected body that directly oversees the law enforcement agency, the appointed body that oversees a law enforcement agency. In the case of a law enforcement agency of a county, including a sheriff's department or a district attorney's office, "governing body" means the board of supervisors of the county.

(b) "Law enforcement agency" means any of the following:

(1) A police department, including the police department of a transit agency, school district, or any campus of the University of California, the California State University, or California Community Colleges.

(2) A sheriff's department.

(3) A district attorney's office.

(4) A county probation department.

(c) "Military equipment" means the following:

(1) Unmanned, remotely piloted, powered aerial or ground vehicles.

(2) Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.

(3) High mobility multipurpose 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.

(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. 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.

(8) Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.

(9) Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.

(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.

(11) Any firearm or firearm accessory that is designed to launch explosive projectiles.

(12) "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.

(13) Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).

(14) The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.

(15) Any other equipment as determined by a governing body or a state agency to require additional oversight.

(16) Notwithstanding paragraphs (1) through (15), "military equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.

(d) "Military equipment use policy" means a publicly released, written document governing the use of military equipment by a law enforcement agency or a state agency that addresses, at a minimum, all of the following:

(1) A description of each type of military equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the military equipment.

(2) The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of military equipment.

(3) The fiscal impact of each type of military 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, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of military equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the military equipment use policy.

(6) The mechanisms to ensure compliance with the military equipment use policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.

(7) For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of military equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

(e) "State agency" means the law enforcement division of every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(f) "Type" means each item that shares the same manufacturer model number.

7071. (a) (1) A law enforcement agency shall obtain approval of the governing body, by an ordinance adopting a military equipment use policy at a regular meeting of the governing body held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable, prior to engaging in any of the following:

(A) Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code.

(B) Seeking funds for military equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(C) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.

(D) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body.

(E) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.

(F) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, military equipment.

(G) Acquiring military equipment through any means not provided by this paragraph.

(2) No later than May 1, 2022, a law enforcement agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2022, shall commence a governing body approval process in accordance with this section. If the governing body does not approve the continuing use of military equipment, including by adoption pursuant to this subdivision of a military equipment use policy submitted pursuant to subdivision (b), within 180 days of submission of the proposed military equipment use policy to the governing body, the law enforcement agency shall cease its use of the military equipment until it receives the approval of the governing body in accordance with this section.

(b) In seeking the approval of the governing body pursuant to subdivision (a), a law enforcement agency shall submit a proposed military equipment use policy to the governing body and make those documents available on the law enforcement agency's internet website at least 30 days prior to any public hearing concerning the military equipment at issue.

(c) The governing body shall consider a proposed military equipment use policy as an agenda item for an open session of a regular meeting and provide for public comment in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.

(d) (1) The governing body shall only approve a military equipment use policy pursuant to this chapter if it determines all of the following:

(A) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

(B) The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(C) 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.

(D) 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.

(2) In order to facilitate public participation, any proposed or final military equipment use policy shall be made publicly available on the internet website of the relevant law enforcement agency for as long as the military equipment is available for use.

(e) (1) The governing body shall review any ordinance that it has adopted pursuant to this section approving the funding, acquisition, or use of military equipment at least annually and, subject to paragraph (2), vote on whether to renew the ordinance at a regular meeting held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.

(2) The governing body shall determine, based on the annual military equipment report submitted pursuant to Section 7072, whether each type of military equipment identified in that report has complied with the standards for approval set forth in subdivision (d). If the governing body determines that a type of military equipment identified in that annual military equipment report has not complied with the standards for approval set forth in subdivision (d), the governing body shall either disapprove a renewal of the authorization for that type of military equipment or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance.

(f) Notwithstanding subdivisions (a) to (e), inclusive, if a city contracts with another entity for law enforcement services, the city shall have the authority to adopt a military equipment use policy based on local community needs.

7072. (a) A law enforcement agency that receives approval for a military equipment use policy pursuant to Section 7071 shall submit to the governing body 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 use. The law enforcement agency shall also make each annual military equipment report required by this section publicly available on its internet website for as long as the military equipment is available for use. The annual military equipment report shall, at a minimum, 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.

(b) Within 30 days of submitting and publicly releasing an annual military equipment report pursuant to this section, the law enforcement agency shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment.

7073. (a) A state agency shall create a military equipment use policy prior to engaging in any of the following:

(1) Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code.

(2) Seeking funds for military equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(3) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.

(4) Collaborating with a law enforcement agency or another state agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body.

(5) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.

(6) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, or to apply to receive, acquire, use, or collaborate in the use of, military equipment.

(7) Acquiring military equipment through any means not provided by this subdivision.

(b) No later than May 1, 2022, a state agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2022, shall create a military equipment use policy.

(c) A state agency that is required to create a military equipment use policy pursuant to this section shall do both of the following within 180 days of completing the policy:

(1) Publish the military equipment use policy on the agency's internet website.

(2) Provide a copy of the military equipment use policy to the Governor or the Governor's designee.

7074. The Legislature finds and declares that ensuring adequate oversight of the acquisition and use of military equipment is a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this chapter applies to all cities, including charter cities and shall supersede any inconsistent provisions in the charter of any city, county, or city and county.

7075. Nothing in this chapter shall preclude a county or local municipality from implementing additional requirements and standards related to the purchase, use, and reporting of military equipment by local law enforcement agencies.

SEC. 3. The Legislature finds and declares that Section 1 of this act, which adds Chapter 12.8 (commencing with Section 7070) to Division 7 of Title 1 of the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

Requiring local agencies to hold public meetings prior to the acquisition of military equipment further exposes that activity to public scrutiny and enhances public access to information concerning the conduct of the people's business.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ADOPTING A MILITARY EQUIPMENT USE POLICY AND APPROVING THE USE,
ACQUISITION, COLLABORATION, AND SEEKING OF FUNDING FOR MILITARY
EQUIPMENT**

WHEREAS, California Government Code § 7071 (a)(1) requires a law enforcement agency to obtain approval of the applicable governing body, by adoption of a Military Equipment Use Policy prior to taking certain actions relating to the funding, acquisition, collaboration, or use of military equipment; and,

WHEREAS, no later than May 1, 2022, a law enforcement agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2022, is required to commence a governing body approval process in accordance with the Government Code section 7070 et seq., as added by Assembly Bill 481; and,

WHEREAS, if the governing body does not approve the continued use of military equipment, including adoption of a Military Equipment Use Policy, within 180 days of submission of the proposed Military Equipment Use Policy to the City Council, the law enforcement agency must cease its use of military equipment until it receives the approval of the Council; and,

WHEREAS, California Government Code section 7072 (a) requires the governing body to annually review the ordinance and to either disapprove a renewal of the authorization of military equipment or amend the Military Equipment Use Policy if it determines, based on an annual military equipment report prepared by the law enforcement agency, that the military equipment does not comply with described standards for approval; and,

WHEREAS, the Atherton Police Department uses military equipment, as defined by State law; and,

WHEREAS, the Atherton Police Department desires to continue using military equipment and/or or collaborate with other law enforcement agencies in using military equipment, as now defined by State law.

NOW, THEREFORE, the City Council of the Town of Atherton does hereby ordain as follows:

Section 1. Findings. The Atherton City Council first considered the adoption of a Military Equipment Use Policy at its meeting on January 19th, 2022. At a regular meeting on June 15th, 2022, the City Council considered the adoption of this Ordinance at a public meeting, and, on the basis of the record thereof, finds the following facts to be true:

ATTACHMENT 2

A. Assembly Bill 481, codified at California 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, collaboration, or use of military equipment. The term “military equipment” is defined in California Government Code section 7070(c) and,

B. Assembly Bill 481 allows the City Council to approve the funding, acquisition, collaboration, and/or use of military equipment within its jurisdiction only if it makes specified findings.

C. The proposed military equipment use policy is titled “Military and Other Specifically Identified Equipment – Approval and Reporting” (“Military Equipment Use Policy”), a copy of which is attached hereto as EXHIBIT A and incorporated herein as if set forth in full, and shall be added to the Atherton Police Department Policy Manual.

D. The Military Equipment Use Policy, which includes a list of current “military equipment,” as that term is defined in the Policy, held by the Atherton Police Department, was published on the City's website on April 27th, 2022, and a copy of the same was provided to the City Council on May 18, 2022 as part of the City Council agenda packet.

E. The Military Equipment Use Policy meets the requirements of California Government Code section 7070(d).

Section 2. Determinations.

Based on the findings above, in addition to information provided to the City Council at the public meeting on May 18, 2022, the City Council determines as follows:

A. The “military equipment,” as defined by California Government Code section 7070(c) identified in Military Equipment Use Policy is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;

B. The Military Equipment Use Policy will safeguard the public’s welfare, safety, civil rights, and civil liberties;

C. The current “military equipment” identified in the Military Equipment Use Policy and the purchasing of any future “military equipment” on the list of approved “military equipment” is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety;

D. Prior “military equipment” use complied with the use policy that was in effect at the time; E. The Military Equipment Use Policy, attached hereto as EXHIBIT A and incorporated herein as if set forth in full, is approved and adopted and the City Council and authorizes the use, acquisition, collaboration, and seeking of funds for “military equipment,” as defined by California Government Code section 7070(c) and Policy.

Section 3. Publication. The City Clerk shall certify the passage of this ordinance and cause a summary of this ordinance to be published after its passage, with the names of

ATTACHMENT 2

those members of the City Council voting for and against the ordinance, in a newspaper of general circulation, published and circulated in the City in accordance with Section 36933 of the Government Code. The full text of this ordinance will be available for viewing in the City Clerk's office.

Section 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

Section 4. Effective Date and Publication. This ordinance shall take effect thirty (30) days after its adoption. The City Clerk is hereby directed to publish this ordinance within fifteen (15) days after its passage in a newspaper of general circulation published in the Town of Atherton or to post it in at least three (3) public locations in the Town of Atherton.

I, Anthony Suber, City Clerk of the Town of Atherton, hereby certify this ordinance was **introduced** at a regular meeting of the Atherton City Council on _____, **2022** and **PASSED and ADOPTED** by the City Council of the Town of Atherton at a regular meeting on _____, 2022.

AYES:

NOES:

ABSENT:

ABSTAIN:

INTRODUCED at the regular meeting of the City Council of the Town of Atherton on May 10, 2022, by motion of _____ and second by _____.

PASSED, APPROVED AND ADOPTED by the City Council of the Town of Atherton on _____, 2022, by the roll-call vote taken as follows:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Rick DeGolia

ATTEST:

Anthony Suber, City Clerk/ACM

Military Equipment

709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the Department.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- 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.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- 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.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

Atherton Police Department

Atherton PD Policy Manual

Military Equipment

709.2 POLICY

It is the policy of the Atherton Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

709.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Atherton Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 1. Publicizing the details of the meeting.
 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

709.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

Type: 40MM Less Lethal Launcher

Description: Single shot launcher

Quantity: 3

Capabilities: Operational range 10-100 ft.

Expected Lifespan: 10-20 yrs.

Manufacturer's Description: 40MM tactical single shot launcher.

Purpose and Authorized Uses: To compel an individual to cease his/her actions when such munitions present a reasonable option.

Fiscal Impact: \$2,442.00 initial purchase of 3 launchers.

Legal and Procedural Rules: Refer to policies 306, 306.3, 306.4, 306.9, 306.10, 306.11.

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Required Training: Initial orientation course including qualification; annual recertification including qualification.

Compliance Mechanisms: Use is subject to the applicable policies (306, 306.3, 306.4, 306.9, 306.10, 306.11).

Type: 40MM kinetic energy projectiles

Description: Less lethal 40MM foam-tipped kinetic energy fired from an agency-authorized 40mm launcher.

Quantity: 30

Capabilities: Operational range 10-75 ft.

Expected Lifespan: 5 yrs.

Manufacturer's Description: 40MM sponge baton projectile delivering a blunt trauma effect.

Purpose and Authorized Uses: To compel an individual to cease his/her actions when such munitions present a reasonable option.

Fiscal Impact: \$572.00 initial purchase for 30 projectiles.

Legal and Procedural Rules: Refer to policies 306, 306.3, 306.4, 306.9, 306.10, 306.11

Required Training: Initial orientation course including qualification; annual recertification including qualification.

Compliance Mechanisms: Use is subject to the applicable policies (306, 306.3, 306.4, 306.9, 306.10, 306.11).

Type: 40MM CS kinetic energy projectile

Description: Less lethal 40MM CS crushable foam kinetic energy round fired from an agency-authorized 40mm launcher.

Quantity: 15

Capabilities: Operational range of 10-75 ft.

Expected Lifespan: 5 yrs.

Manufacturer's Description: 40MM direct impact extended range round.

Purpose and Authorized Uses: Used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances.

Fiscal Impact: \$450.00 initial purpose for 15 projectiles.

Legal and Procedural Rules: Refer to policies 306, 306.3, 306.4, 306.6, 306.9, 306.10, 306.11

Required Training: Initial orientation course including qualification; annual recertification including qualification.

Compliance Mechanisms: Use is subject to the applicable policies (306, 306.3, 306.4, 306.6, 306.9, 306.10, 306.11).

709.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is

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submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

709.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

709.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

709.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.