

ORDINANCE NO. 22-0006

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH APPROVING
A MILITARY EQUIPMENT USE POLICY PURSUANT TO ASSEMBLY
BILL 481 AND GOVERNMENT CODE §7070, ET SEQ.

THE MANHATTAN BEACH CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings and Purpose.

A. On September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies.

B. Assembly Bill 481, codified in California Government Code §§ 7070 through 7075, requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance approving 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. AB 481 also requires that in seeking the approval of the governing body, a law enforcement agency shall submit a proposed military equipment use policy to the governing body and make the policy available for public review on the law enforcement agency’s internet website at least 30 days prior to any public meeting concerning the proposed policy.

C. Assembly Bill 481 allows the governing body of a city to approve the funding, acquisition, and/or use of military equipment within its jurisdiction only if it makes specified determinations.

D. Manhattan Beach Police Department Policy 703, attached hereto as Exhibit “A”, was published on the Manhattan Beach Police Department’s public internet website for not less than 30 days commencing on April 1, 2022. This Ordinance and proposed Policy 703 were presented to City Council at a public meeting held on May 17, 2022, at which time the public was provided the opportunity to comment on the proposed Ordinance and Policy.

E. The City Council finds that the Military Equipment Use Policy, Policy 703, approved herein, will apply to military equipment acquired prior to January 1, 2022, and complies in all respects with the requirements of Government Code §7070(d).

SECTION 2. Authority.

This ordinance is adopted pursuant to AB 481, codified in Government Code §§7070 through 7075. These statutes provide for funding, acquisition, and use of military equipment for law enforcement agencies throughout the State of California.

SECTION 3. "Military Equipment" Defined.

- A. "Military Equipment" is defined in Government Code §7070(c) as follows:
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 (a) through (o), "military equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.

SECTION 4. Specific Policy Requirements.

A. Government Code §7070(d) requires the Military Equipment Use Policy to address, at a minimum, all 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.

Note: “Type” means each item that shares the same manufacturer model number.

SECTION 5. City Council Determinations (Government Code § 7071(d)).

A. Based on the findings above, in addition to information provided to the City Council at the public meeting and in the Staff Report, the City Council determines as follows:

1. The equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
2. The proposed Military Equipment Use Policy will safeguard the public’s welfare, safety, civil rights, and civil liberties.
3. 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.
4. Prior equipment use complied with the equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

B. Based on the findings and determinations in Subsections A. 1 through 4, above, the City Council hereby approves the Military Equipment Use Policy, Policy 703, attached hereto as Exhibit “A” and incorporated by reference herein.

SECTION 6. Annual Report and Renewal.

A. Following adoption of this Ordinance, the Manhattan Beach Police Department shall submit an annual report for each type of military equipment approved by the City Council within one year of approval, and annually thereafter for as long as the military equipment is in use. The Manhattan Beach Police Department shall also make the annual military equipment report publicly available on its internet website for as long as the military equipment is available for use. The 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 Department intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

B. Upon receipt of the report City Council shall review this ordinance and current Policy during a public hearing and determine whether to: renew its approval of the Policy and authorization to use military equipment as set forth in the ordinance; disapprove such renewal; or amend the Policy if it determines, based on the annual report that the equipment does not comply with the standards for approval set forth in Government Code §7071(d)(1). The Policy under review shall be posted on the Manhattan Beach Police Department website for at least 30 days prior to any public hearing concerning the Policy.

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

D. Pursuant to Government Code § 7071(a)(1), any proposed military equipment policy must be approved by the City Council prior to engaging in any of the following:

1. Requesting military equipment made available pursuant to 10 USC § 2576a.
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 another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this Department.
5. Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the City Council.

6. 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.

7. Acquiring military equipment through any means not provided above.

SECTION 7. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such section, subsection, sentence, clause, or phrase shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and every section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 8. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 9. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

ADOPTED on June 7, 2022.

AYES:

NOES:

ABSENT:

ABSTAIN:

STEVE NAPOLITANO
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney

EXHIBIT A
MILITARY EQUIPMENT USE POLICY

Military Equipment

703.1 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).

703.2 POLICY

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

703.3 MILITARY EQUIPMENT COORDINATOR

The Administrative Lieutenant shall be the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the City Council 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 City Council.
- (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 Manhattan Beach 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) Coordinating the processing of complaints and concerns submitted pursuant to this policy.

703.4 MILITARY EQUIPMENT USE

The following shall apply to any military equipment acquired and authorized by the department:

- (a) Use of the equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
- (b) Use of the equipment will serve to safeguard the public's welfare, safety, civil rights, and civil liberties.

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- (c) The equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
- (d) The equipment shall only be used by Department employees who have received required training, including any courses required by the Commission on Peace Officer Standards and Training (POST), and/or who otherwise possess established qualifications for each item type of equipment, unless an emergency or other exigent circumstances exist.
- (e) Use of the equipment shall comply with all other applicable Department policies.

703.5 APPROVAL FOR USE OF MILITARY EQUIPMENT

The Chief of Police or the authorized designee shall obtain approval for use of military equipment from the City Council by way of an ordinance adopting a new or revised 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 submitted to the City Council 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 City Council 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 City Council.
- (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.

703.6 REPORTING

Upon approval of a military equipment policy, the Chief of Police or the authorized designee shall submit a military equipment report to the City Council for each type of military equipment approved within one year of approval of this policy, 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 shall also make each annual military equipment report publicly available on the Department website for as long as the military equipment is

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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 the Department's inventory.

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:

- (a) A summary of how the military equipment was used and the purpose of its use.
- (b) A summary of any complaints or concerns received concerning the military equipment.
- (c) The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
- (d) 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.
- (e) The quantity possessed for each type of military equipment.
- (f) If the Department intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

703.7 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing an annual military equipment report, the Department 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 Manhattan Beach Police Department's funding, acquisition, or use of military equipment. This should occur as a part of the Department's presentation to the City Council.

703.8 COMPLIANCE

The Manhattan Beach Police Department will have legally enforceable safeguards, including transparency, oversight, and accountability measures in place to protect the public's welfare, safety, civil rights, and civil liberties before military equipment is funded, acquired, or used.

The Administrative Lieutenant shall ensure that all Department members comply with this policy and will conduct the annual audit. The Chief of Police or designee will be notified of any policy violations and, as appropriate, the violation(s) will be handled in accordance with the Personnel Complaints Policy. All instances of non-compliance will be reported to City Council via the annual military equipment report.

Members of the public with concerns or questions about the use of each specific type of military equipment may contact the Administrative Lieutenant, or the department designee, via telephone. A public records request may be submitted to obtain non-exempt records concerning military equipment used by the Department. The Administrative Lieutenant will ensure each concern or question receives a response in a timely manner.

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Any member of the public can submit a complaint to any member of the Department and in any form (i.e., in person, telephone, email, etc.). Once the complaint is received, it will be handled in accordance with the Personnel Complaints Policy.

703.9 FUNDING

The Department shall obtain City Council approval, by way of ordinance, to adopt a new or revised military equipment use policy, prior to 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.

The Manhattan Beach Police Department has authority to apply for funding prior to obtaining City Council approval in the case of exigent circumstances. In such case, the Department shall obtain City Council approval as soon thereafter as practicable. In seeking such approval, the Administrative Lieutenant, or designee, will submit to the City Council a written report explaining the nature of the exigency and why prior approval could not be obtained.

The Department may replenish used, or damaged, military equipment as necessary without additional City Council approval. The Administrative Lieutenant, or designee, shall report replenishment purchases on the annual military equipment report.

703.10 COORDINATION WITH OTHER JURISDICTIONS

Military equipment used by any member of this Department shall be approved for use and in accordance with this policy. Military equipment used by other jurisdictions that are providing mutual aid to this Department shall comply with their respective military equipment use policies and applicable statutes when rendering mutual aid.

703.11 MILITARY EQUIPMENT DEFINED

Military Equipment - Government Code §7070 defines "military equipment" as including:

- 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.

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- 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 firearms.
- 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 the City Council; or a state agency to require additional oversight.

703.12 MILITARY EQUIPMENT INVENTORY REQUIREMENTS

All military equipment kept and maintained by the Manhattan Beach Police Department shall be cataloged in a way which addresses each of the following requirements:

- (a) The manufacturer's description for each type of equipment.
- (b) The capabilities of each type of equipment.
- (c) The purposes and authorized uses for which the Department proposes for each type of equipment.
- (d) The expected lifespan of each type of equipment.
- (e) The fiscal impact of each type of equipment, both initially and for on-going maintenance.
- (f) The quantity of each type of equipment, whether maintained or sought.

703.13 GOVERNMENT CODE § 7070 INVENTORY

See Attachment