

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA APPROVING
THE CHULA VISTA POLICE DEPARTMENT'S MILITARY
EQUIPMENT POLICY

WHEREAS, on September 30, 2021, the Governor of the State of California approved AB 481, "Funding, Acquisition and Use of Military Equipment," which is codified in Chapter 12.8 of the California Government Code, Sections 7070 to 7075; and

WHEREAS, this Chapter requires a law enforcement agency to obtain annual approval of a military equipment policy by its governing body before it may seek funding for, acquire new, or use existing military equipment, as defined; and

WHEREAS, this Chapter requires a local law enforcement agency to develop a written policy that addresses military equipment use, description, purpose and authorized use, fiscal impact, legal and procedural rules for authorized use, required training, mechanisms to ensure policy compliance, and procedures for public complaints, concerns, and questions (Cal Gov. Code Section 7070(d)); and

WHEREAS, this Chapter requires a law enforcement agency to post the proposed military equipment policy on its website 30 days before holding a public hearing for the governing body to consider the policy for approval (Cal. Gov. Code Section 7071(b)); and

WHEREAS, this Chapter requires the governing body to consider the proposed policy at a regular meeting held in compliance with the Ralph M. Brown Act, and if approved, adopt the military equipment policy in an ordinance after making the determinations required in California Government Code Section 7071(d)(1)(A)-(D); and

WHEREAS, this Chapter imposes annual ongoing requirements on law enforcement agencies: a) a law enforcement agency must post on its website an annual report with specified content within one year of initial governing body approval of its military equipment policy; b) within 30 days of releasing the annual report a law enforcement agency must hold a community meeting to discuss and answer questions on the annual report; and c) the law enforcement agency must post the military equipment annual report on its website for as long as it uses the military equipment (Cal. Gov. Code Section 7072); and

WHEREAS, this Chapter imposes annual ongoing requirements on governing bodies: a) after initial adoption of an ordinance approving a military equipment policy, a governing body must at least annually review the ordinance; b) at a regular meeting held in compliance with the Ralph M. Brown Act, the governing body must vote on whether to renew the military equipment ordinance; and c) based on a law enforcement agency's annual report published pursuant to Cal. Gov. Code Section 7072, determine whether each type of military equipment identified in the report has complied with the standards set forth in Cal. Gov. Code Section 7071(d)(1)(A)-(D).

NOW THEREFORE the City Council of the City of Chula Vista does hereby ordain as follows:

Section I. Determinations

- A. The Chula Vista Police Department posted the proposed Military Equipment Policy, designated as Number 714 in its Department Policy Manual, on its website on March 28, 2022, 30 days before submitting the policy to the Chula Vista City Council for its consideration and approval on April 26, 2022, as required by California Government Code Section 7071(b), and the Department's webpage also provided a link for public comments and questions on the proposed policy.
- B. The Chula Vista Police Department's Military Equipment Policy, which is 9 pages with a 28-page attachment listing the Department's military equipment with photos, meets all the requirements of California Government Code 7070(d). Specifically, it is a publicly released written document that governs the Department's use of military equipment; describes each type of military equipment by quantity and capability, expected lifespan and manufacturer product description; addresses the purposes and authorized use for each type of listed equipment; addresses fiscal impact, including initial cost and annual maintenance costs; addresses the legal and procedural rules that govern authorized use and training required before use to ensure the full protection of the public's welfare, safety, civil rights and civil liberties; requires compliance with the policy, addresses mechanisms to ensure compliance with the policy and sanction for policy violations; and addresses the procedures for registering public complaints, concerns and questions and timely response to same.
- C. The City Council of the City of Chula Vista, having carefully reviewed the staff report, proposed policy and ordinance, staff presentation and public input on the proposed military policy and ordinance in its regular public meetings on April 26, 2022, hereby makes the following determinations as required by California Government Code Section 7071(d)(1)(A)-(D): (A) the Department's military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; (B) the Department's proposed military equipment policy will safeguard the public's welfare, safety, civil rights and civil liberties; (C) the Department's existing military equipment was purchased pursuant to the City's existing procurement requirements and best-practice protocols and is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety; and (D) prior military equipment uses complied with existing Department policies as well as the proposed military equipment policy, any future such uses will be evaluated according to the military equipment policy in effect at the time, and corrective action will be taken to remedy any future nonconforming uses and to ensure future compliance.
- D. The City Council of the City of Chula Vista held a duly noticed public hearing to consider this Ordinance at the time and place advertised in the Council Chambers, 276 Fourth Avenue, and said hearing was thereafter closed.

Section II. Action

The City Council of the City of Chula Vista in this Ordinance hereby approves the Chula Vista Police Department's Military Equipment Policy.

Section III. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Roxana Kennedy
Chief of Police

Glen R. Googins
City Attorney