



**CITY OF SALINAS
COUNCIL STAFF REPORT**

DATE: AUGUST 23, 2022

DEPARTMENT: SALINAS POLICE DEPARTMENT

FROM: ROBERTO FILICE, CHIEF OF POLICE

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TITLE: AN ORDINANCE ADDING SECTIONS TO CHAPTER 27 OF THE SALINAS MUNICIPAL CODE PERTAINING TO MILITARY EQUIPMENT

RECOMMENDED MOTION:

A motion to adopt an Ordinance adding sections to Chapter 27 of the Salinas Municipal Code pertaining to Military Equipment Funding, Acquisition, and Use as required by Assembly Bill 481.

RECOMMENDATION:

Staff recommends that City Council adopt an Ordinance adding sections to Chapter 27 of the Salinas Municipal code pertaining to Military Equipment Funding, Acquisition, and Use, as required by Assembly Bill 481.

EXECUTIVE SUMMARY:

Assembly Bill 481 (AB 481 or the Bill), codified in Government Code sections 7070 through 7075 requires a law enforcement agency (LEA) to obtain approval from the applicable governing body prior to the funding, acquisition, or use of “Military Equipment” as defined by the Bill. This approval is obtained via the adoption of a “Military Equipment” policy by Ordinance. The Salinas Police Department (SPD) seeks Salinas City Council adoption of the attached Military Equipment policy to allow SPD to continue using the vital equipment specified therein. Items deemed to be “Military Equipment” by AB 481 are used as a component of overall best practices for LEAs throughout the country. These tools have been utilized by SPD and other law enforcement agencies to enhance community and officer safety. Loss of these items would jeopardize the welfare of both our community and the peace officers within SPD. The Ordinance was initially presented to City Council on April 26, 2022 and returns now for a second reading.

BACKGROUND:

On September 30, 2021, Governor Newsom signed AB 481 – Military Equipment Funding, Acquisition, and Use into law. The Bill designates fifteen categories of police equipment items as Military Equipment. AB 481 requires SPD to obtain approval of the City Council, by an ordinance adopting a military equipment policy, prior to any of the following activities:

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 another law enforcement agency in the deployment or other use of military equipment within the city limits.
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 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, apply to receive, acquire, use, or collaborate in the use of, military equipment.
7. Acquiring military equipment through any means not identified above.

All new acquisitions from January 1, 2022 forward require approval by City Council. To continue using existing Military Equipment, SPD was required to initiate the approval process no later than May 1, 2022. The City Council must adopt an Ordinance within 180 days of the submission of the Military Equipment use policy which occurred on March 29, 2022. If not adopted, SPD must cease the usage of this equipment until it receives approval from the Council.

On March 23, 2022, SPD published information about AB 481 – Military Equipment Funding, Acquisition, and Use on the Department’s webpage, with a hyperlink to an identical Spanish language webpage. This website can be accessed at <https://salinaspd.com/assembly-bill-481/>. The webpage contains the AB 481 defined list of police equipment deemed Military Equipment by numbered category and identifies each category of equipment SPD possesses. The webpage contains several hyperlinks to additional information, including the full text of AB 481, the SPD Military Equipment policy, and the Military Equipment inventory currently in SPD’s possession. The webpage also contains a hyperlink to a webform where community members may ask questions, make comments, or voice concerns. Answers to those questions, and responses to the comments or concerns, are found by accessing another hyperlink. Finally, for those wishing to make a formal complaint, a hyperlink directs them to the complaint process webpage. SPD has and will continue to update this webpage as equipment inventory changes, and as usage and cost data is tracked. The webpage will remain available so long as Military Equipment is available for use.

This topic and the associated Ordinance were initially presented to City Council on April 26, 2022. Since the initial presentation to City Council, Salinas Police Department (SPD) staff has conducted education and outreach activities surrounding AB 481 and the equipment via social media, the

Department's webpage, and during special events and public meetings. SPD staff and the AB 481 equipment was available for public viewing and discussion during SPD's 150th Anniversary Event on June 4, 2022, and during the Salinas Valley Chamber of Commerce/Salinas United Business Association Mixer on August 11, 2022. SPD also presented an update to the Police Community Advisory Committee (PCAC), and hosted a Community Meeting, on July 27, 2022. Though we have received no questions via the Department's webpage, the most common question received when doing outreach and education has been related to usage and ongoing cost of the equipment. We have explained that while AB 481 does require close tracking of this data upon passage of the Ordinance, there has not been a requirement to do so prior. While SPD does have limited usage and ongoing cost data, we lack confidence in the production of this information given the absence of a structured system to ensure data was consistently and accurately captured. We look forward to future presentations of usage and cost data, as outlined below, upon passage of this Ordinance.

Once the Ordinance is adopted, SPD must take additional steps and seek renewal of the Ordinance annually thereafter to continue using Military Equipment. First, SPD must complete an Annual Military Equipment Report for each type of Military Equipment which will include a summary of how the equipment was used and the purpose of its use, complaints or concerns received regarding the equipment, the results of any internal audits including violations of the Policy and actions taken in response, the total annual cost of the equipment and the source of the funds, the quantity of each type of equipment, and if additional acquisitions are sought in the next year. Within 30 days of submitting and publicly releasing the Report, SPD will hold a community engagement meeting where the public may discuss and ask questions about the Annual Military Equipment Report.

Before adopting the Ordinance, the Council must determine several factors:

- 1) The Military Equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and community member safety.
- 2) The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
- 3) If purchasing additional equipment, it is reasonably cost effective compared to available alternatives that can achieve the same objectives of officer and community member safety.
- 4) Use of Military Equipment complied with the Policy that was in effect at the time of the use, or if prior uses did not comply with the Policy, corrective action has been taken to remedy non-conformance and ensure future compliance.

Once the Ordinance is adopted, City Council must review the Ordinance annually and vote whether to renew the Ordinance. The Council will determine, based on the Annual Military Equipment Report, whether the equipment has complied with these standards for approval. If a piece of equipment has not complied with these standards, the Council will either disapprove renewal of authorization for that type of Military Equipment or require modifications to the Policy that will resolve the non-compliance.

SPD contends the Policy and Military Equipment it possesses meets all requirements set forth in the Bill. Additionally, there is significant interest in ensuring that law enforcement continues to have access to equipment that will provide peace officers as many options as possible to safeguard lives, ensure safety, and protect civil liberties. The use of the tools identified below are vital to SPD's mission and will continue to be strictly regulated through internal processes and oversight.

The proposed Ordinance seeks to approve SPD's Military Equipment policy. Addendum A of the Policy outlines each item identified in Government Code section 7070, that is currently owned by the City. The addendum also includes the current use and cost of each item. These items, and their stated uses, have been in place prior to the implementation of AB 481. Future acquisitions of any item deemed to be "military equipment" will require City Council approval and subsequent updating of the Department's Military Equipment List and inclusion in the Annual Military Equipment Report.

The Policy safeguards the public's welfare, safety, civil rights, and civil liberties. It ensures that there are safeguards, including transparency, oversight, and accountability measures in place. Salinas Police Department's Special Weapons and Tactics (SWAT) Commander will be responsible for ensuring that SPD complies with the Policy and will conduct an annual audit of military equipment. Violations of the Policy will be corrected when discovered. Members of the public are provided direction in the webpage on how to register complaints for violations. All items which result in a use of force will be investigated, as is already required by existing SPD policy.

There are no reasonable alternatives to the items listed below. SPD has not discovered alternative items that can achieve the same objectives of officer and civilian safety. Each item's necessity is further described below:

- Unmanned remotely piloted powered aerial vehicle: Unmanned aerial systems (UAS) are necessary as they provide visibility to high-risk locations and large expansive areas. Without the use of a UAS, peace officers would have to physically enter high-risk locations which would increase the risk to the officers and members of the public. UAS are also helpful in large area searches such as during missing persons investigations. The UAS system is designed to enter small spaces, such as enclosed structures, as well as to provide overhead observations of wooded areas and other structures located in often crowded spaces. There are no known alternatives which could be used to safely access these locations.
- Unmanned remotely controlled ground vehicle: Unmanned ground robots are used for reconnaissance during critical incidents to assist in providing visibility in areas where it would be unsafe to send a peace officer. This system can also be used to communicate with distraught and potentially dangerous people without the dangers of a face-to-face confrontation. Not having access to this item would require the use of peace officers to engage in high-risk tasks. This system can also be used during disasters to view places inaccessible by people to locate injured community members. There is no known alternative to this system.
- Mine-Resistant Ambush Protected (MRAP) and Military ALL Terrain Vehicle (M-ATV) are used to provide ballistic protection to officers and citizens during rescue, critical incidents, and other hazardous situations. These vehicles allow officers closer access to high-risk situations while substantially reducing the physical risk to the officers and community members. These vehicles are built on commercial vehicle chassis and are primarily a reinforcement of civilian commercial vehicles. As such, there are no reasonable alternatives to providing the same level of ballistic protection.
- Command and control vehicles: The Mobile Command Vehicle (MCV) is an unarmored vehicle equivalent to a commercial recreational vehicle. It is equipped with specific communication and audio-visual devices to assist in command and control of a critical incident.

This vehicle allows for mobile incident command and use of the Incident Command Systems facilitating the best possible on scene decision-making by key leaders. It provides for mobility, sheltering, and logistical support, restroom facilities and power. There is no known alternative for the MCV which provides the same amount of mobility and support at one location in a quick deploying package. The Internet Crimes Against Children (ICAC) vehicle also falls into this category. It is equipped to run computer forensic examination equipment and contains an interview room.

- Firearms of .50 caliber or greater, excluding standard issue shotguns: 12-gauge shotguns designed to shoot breaching rounds are used to defeat locked, barricaded or fortified locations allowing officers to conduct rescues or high risk forceable entries. This includes but is not limited to rescuing hostages. These items allow peace officers to quickly enter a structure when time is of the essence. This would include but not be limited to an active shooter or kidnapping situation. In such situations time is of the essence and it would not be feasible to wait for other delayed access to the structure. There are alternatives which are used for low risk and/or non-fortified situations. This includes handheld battering rams. However, this alternative does not afford the same level of protection or speed that such equipment provides when necessary. As such there is no reasonable alternative to these items when they are used and required.
- Ammunition of .50 caliber or greater, excluding standard issue shotgun ammunition: 12-gauge breaching rounds are used to defeat locked, barricaded or fortified locations allowing officers to conduct rescues or high risk forceable entries. This includes but is not limited to rescuing hostages. These items allow peace officers to quickly enter a structure when time is of the essence. This would include but not limited to an active shooter or kidnapping situation. In such situations time is of the essence and it would not be feasible to wait for other delayed access to the structure. There are alternatives which are used for low risk and/or non-fortified situations. This includes handheld battering rams. However, this alternative does not afford the same level of protection or speed that such equipment provides when necessary. As such there is no reasonable alternative to these items when they are used and required.
- Specialized firearms and ammunition including assault weapons, excluding standard issue service weapons: Special Weapons and Tactics (SWAT) rifles, sniper rifles and sub-machine guns enable officers when in compliance with the SPD's Use of Force Policy, to address threats with greater accuracy and maneuverability than that of a handgun or standard issue patrol rifle, or those threats who are heavily armed, armored or both. Further, in both short and long-distance deployments, they allow officers precision shot placement minimizing the risk to officers and innocent citizens. There are no known alternatives to these weapons that will provide the same level of distance or precision.
- Any firearm accessory that is designed to launch explosive projectiles: the M203 40mm launcher was originally designed to launch explosive projectiles however SPD does not use it in such a manner and does not possess explosive projectiles. This accessory is attached below the barrel of a rifle and is utilized as a less-lethal 40mm projectile launcher described below. It has a separate trigger and aiming system so lethal and less-lethal force options are not confused. The consolidation of lethal and less-lethal force options allows the officer to be less encumbered and more maneuverable. It is primarily used to deploy some of the tear gas items listed below. There are no known alternatives to this accessory in the manner it is used by SPD.

- Light and Sound Diversion devices known as “Flashbangs”: Flashbangs are used as a distraction device in order to disorient or divert a suspect’s attention away from officers. This can allow officers to gain safer access to a high-risk situation, giving extra time to assess and analyze existing threats. This can prevent injury to officers and community members. These devices can often lead to a safer resolution and allow officers to take a suspect into custody without force. There is no known alternative to a flashbang when it is necessary.
- Chemical Irritants also known as “Tear gas”: Tear gas is a less lethal tool used in conjunction with de-escalation tactics when feasible. They are used to safely extract a suspect from a fixed location or safely detain a suspect who poses a risk of violence to officers. Tear gas allows peace officers to deploy a less lethal chemical irritant into a structure or specified location with an effect no other tools are capable of. The intent is to make the suspect’s environment so uncomfortable the he or she leaves the area or structure instead of sending officers into a potentially violent confrontation. These tools are less lethal and afford peace officers an added option to avoid lethal force encounters. They can also be used to address violent or riotous crowds when there is a risk of physical safety. When these items are reasonable and necessary for use, there is no other alternative.
- 40mm projectile launchers: The 40mm launcher affords the ability to use less lethal chemical agents and impact munitions in conjunction with de-escalation tactics when feasible. This allows officers to address a threat from a greater distance and cover, and provides an alternative option for deadly force when reasonable. This can potentially prevent a deadly force encounter. When necessary, there is no alternative to this less lethal weapon system.

This Ordinance was initially presented to City Council on April 26, 2022, and SPD has subsequently conducted outreach and education related to AB 481 as described in this Report. SPD is now bringing this item back to City Council for the second reading of the Ordinance.

POLICE COMMUNITY ADVISORY COMMITTEE:

The Chief Roberto Filice and Sergeant James Godwin initially presented this AB 481 – Military Equipment Funding, Acquisition, and Use to the Police Community Advisory Committee (PCAC) on March 30, 2022, and provided an update on July 27, 2022. During the initial and subsequent meetings, committee members asked use-related questions to which Sergeant Godwin responded that the Annual Military Equipment Report will provide both usage and cost data.

CEQA CONSIDERATION:

Not a Project. The City of Salinas has determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378).

STRATEGIC PLAN INITIATIVE:

Adopting the proposed Ordinance will support the City Council’s Strategic Plan Goal of Public Safety.

DEPARTMENTAL COORDINATION:

The Police Department and Legal Department have coordinated on the preparation of the Ordinance and legal compliance with Assembly Bill 481.

FISCAL AND SUSTAINABILITY IMPACT:

Approving the proposed Ordinance will have no direct fiscal impact on the City's General Fund, Measure E or Measure G funds. Oversight, including administrative data collection and reporting, will be completed by existing Salinas Police Department staff.

ATTACHMENTS:

Ordinance
Assembly Bill No. 481
Presentation on AB 481