

City of Piedmont
COUNCIL AGENDA REPORT

DATE: May 2, 2022

TO: Mayor and Council

FROM: Sara Lillevand, City Administrator

SUBJECT: Public Hearing, Introduction, and 1st Reading of Ordinance 764 N.S., Adopting Piedmont Police Department Policy 710 Pertaining to Military Equipment Use

RECOMMENDATION

Conduct a public hearing and approve the 1st Reading of Ordinance 764 N.S., adopting Piedmont Police Department Policy 710 pertaining to Military Equipment Use.

EXECUTIVE SUMMARY

The Piedmont Police Department is seeking an ordinance authorizing the use of equipment defined as “military equipment” as required under AB 481. The proposed ordinance would adopt Piedmont Police Department Policy 710. The police department will submit annual reports to the City Council regarding the use of the equipment, to include any complaints received, any internal audits or other information about violations of the military equipment use policy, and the cost of such use. Under AB 481, the City Council is required to review the ordinance annually and vote whether to renew the ordinance at a regular public meeting.

BACKGROUND

Assembly Bill 481 was enacted to increase transparency, accountability, and oversight surrounding the use and acquisition of “military equipment” by state and local law enforcement. The term “military equipment”, as used in AB 481, in fact does not necessarily indicate equipment that has been used by the military. Pursuant to AB 481, items deemed to be “military equipment” include, but are not limited to, unmanned aerial or ground vehicles, armored vehicles, command and control vehicles, pepper balls, less lethal shotguns, less lethal 40mm projectile launchers, long range acoustic devices, and flashbangs. The legislation requires law enforcement agencies to obtain approval from City Council before purchasing, raising funds for, or acquiring military equipment, by any means. Agencies are also required to obtain City Council approval before collaborating with another law enforcement agency in the deployment or use of military equipment within the law enforcement agencies jurisdiction, or before using any new or existing “military equipment” not previously approved by the governing body.

Under AB 481, governing body approval must take the form of an ordinance adopting a publicly released, written “military equipment” use policy, which must address a number of specific topics, including the type, quantity, capabilities, purposes, and authorized uses of each type of military equipment, the fiscal impact of their acquisition and use, the legal and procedural rules

that govern their use, the training required by any officer allowed to use them, the mechanisms in place to ensure policy compliance, and the procedures by which the public may register complaints. The governing body must consider a proposed “military equipment” use policy in open session and may only approve a “military equipment” use policy if it makes various specific findings regarding the necessity of the “military equipment” and the lack of reasonable alternatives.

AB 481 also requires any law enforcement agency that receives approval for the use of “military equipment” to submit annual reports to the governing body regarding the use of the equipment, any complaints received, any internal audits or other information about violations of the “military equipment” use policy, the cost of such use, and other similar information.

Once a policy is adopted, a law enforcement agency cannot procure military equipment that is not in the authorized policy, without first revising the policy, which is done by ordinance following a public hearing.

DISCUSSION

Law enforcement incidents can be unpredictable and complex. In order to de-escalate violent and tense situations, at times special equipment, tools or resources may be necessary to reduce the possibility of harm to community members and officers. Items identified as “military equipment” in AB 481 include, but are not limited to, unmanned aerial (Drones) or ground vehicles, armored vehicles, pepper balls, less lethal 40mm projectile launchers and flash bangs. These tools have been tested in the field and are used to help enhance public safety, officer safety and reduce the need for escalation of force. While the Piedmont Police Department is not currently equipped with the examples above, it may rely on these tools from other agencies to address an emergency.

It is worth pointing out that the mere presence or communicated use of these tools can help to de-escalate a situation prior to the need to utilize them and some items can be used for other purposes, such as drones for missing persons or interior searches of a building, or a Long Range Acoustic Device (LRAD) for making announcements during evacuations.

The Piedmont Police Department is committed to utilizing current and progressive equipment that helps to safeguard the Piedmont community and help reduce the risk of escalating volatile situations that might rise to the level of a lethal encounter.

Draft Policy Posted on the City’s Website

AB 481 requires the policy be available on the City’s website in advance of the public hearing on the policy. Accordingly, the draft policy was posted on April 1, 2022.

Equipment which the Department possesses and falls within the definition of “military equipment” is described as follows and is contained in the policy.

- Specialized firearms and ammunition including assault weapons: Patrol rifles enable officers when in compliance with the PPD’s Use of Force Policy, to address medium to long distance threats, 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.

- 40mm projectile launchers: The 40mm launcher affords the ability to use less lethal and impact munitions. This allows officers to address a threat from a greater distance and provides an alternative option for deadly force when reasonable. When necessary, there is no alternative to these less lethal weapon systems.

These are common tools utilized by law enforcement and are considered best practices. We have not discovered other reasonable alternatives that can achieve the same objectives of community member and officer safety as these tools can provide. An itemized list of the existing equipment is included in Attachment 2.

Policy 710 provides that the Chief of Police (or the Chief of Police's authorized designee) must seek approval by the governing body of a military equipment policy, conduct annual audits of the equipment to ensure compliance with the policy, annually report to City Council the use of this equipment, seek approval prior to purchasing tools deemed to be "military equipment", inform the public on how to file complaints, voice concerns or submit questions about the use of "military equipment" and ensure a timely response if received. The Department is also required to hold a community engagement meeting annually within 30 days of submitting the annual report.

Additions to the Policy

Staff proposes two minor changes to the policy as drafted, as follows:

- Clarification that Policy Section 321 Standards of Conduct is applicable and will be used to ensure compliance of Policy 710; and
- Specifying that the Chief of Police is the contact for a person to register a complaint, concern, or question regarding Policy 710.

The proposed ordinance would incorporate these two changes.

ANALYSIS

The authorization to have access to the "military equipment" requested allows the police department to carry out its mission and continue to protect the Piedmont community, during emergencies, rescues and exigent circumstances. Denial of access to these items would jeopardize the welfare and safety of the community.

FINANCIAL IMPACT

There are no direct costs associated with the approval of this ordinance. Existing, ongoing costs related to the equipment are \$350 for maintenance and \$20,000 for training. These costs have been incorporated within the Department's approved budget.

ATTACHMENTS

- (1) Ordinance 764 N.S.
- (2) Draft Piedmont Police Policy 710 Military Equipment

By: Jeremy Bowers, Chief of Police

ORDINANCE NO. 764 N.S.

AN ORDINANCE ADOPTING A MILITARY EQUIPMENT USE POLICY

The City Council of the City of Piedmont hereby ordains as follows:

SECTION 1. PURPOSE AND FINDINGS

- 1) The purpose of this Ordinance is to adopt a military equipment use policy pursuant to California Government Code sections 7070 through 7075.
- 2) On September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies.
- 3) Assembly Bill 481, codified at California Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval of the governing body, prior to taking certain actions related to acquisitions, use, collaboration with another agency in the use of, or funding of military equipment as defined in California Government Code section 7070.
- 4) Assembly Bill 481 allows the governing body of a city to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it makes specified determinations with respect to a military equipment use policy.
- 5) Assembly Bill 481, requires that the approval by the governing body be memorialized by an ordinance adopting a military equipment use policy, at a regular meeting held pursuant to open meeting laws.
- 6) A draft of Piedmont Police Department Policy 710 “Military Equipment” was published on the Piedmont Police Department internet website and provided to the City Council at least 30 days prior to public hearing in accordance with requirements of Government Code section 7071, and the process for submitting the policy for the City Council’s consideration was commenced prior to May 1, 2022.
- 7) The military equipment identified in the Policy 710 “Military Equipment” is necessary, because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.
- 8) Piedmont Police Department Policy 710 Military Equipment safeguards the public’s safety, welfare, and civil rights and liberties.
- 9) Piedmont Police Department Policy 710 Military Equipment meets the requirements of California Government Code section 7070, subdivision (d).
- 10) No prior military use policy has existed in the City of Piedmont that was applicable to the use of military equipment, and the adoption of such policy shall serve to secure future compliance.

SECTION 2. ADOPTION OF POLICY.

Piedmont Police Department Policy 710 “Military Equipment” is hereby approved and adopted.

SECTION 3. ENVIRONMENTAL REVIEW.

The City Council finds the approval of this ordinance is exempt under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are severable and if any provision, clause, sentence, word or part of it is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, the illegality, invalidity, unconstitutionality, or inapplicability will not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts of the Ordinance or their applicability to other persons or circumstances.

SECTION 5. PUBLICATION AND EFFECTIVE DATE

This ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after such second reading and approval by the City Council.

[END OF ORDINANCE]

Military Equipment

710.1 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).

710.1.1 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 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 a governing body or a state agency to require additional oversight.

Military Equipment

710.2 POLICY

It is the policy of the Piedmont Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment. Policy Section 321, Standards of Conduct is applicable and will be used to ensure compliance of this Policy #710. Any complaint, concern, or question regarding Policy #710 should be directed to the City of Piedmont Chief of Police, available at (510) 420-3010.

710.3 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) 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.
- (b) Conducting an inventory of all military equipment at least annually.
- (c) Collaborating with any allied agency that may use military equipment within the jurisdiction of Piedmont Police Department (Government Code § 7071).
- (d) 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.
- (e) 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).
- (f) 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.

710.4 MILITARY EQUIPMENT INVENTORY

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

Table 1:

Weapon Type	Manufacturer	Serial Number	Date Acquired	Purchase Cost	Annual Maintenance Expense	Annual Training Hours
M4 Rifle	Rock River Arms	AC2022459	9/12/2019	\$1,000.00	\$25.00	12

Military Equipment

M4 Rifle	Rock River Arms	AC2022481	9/10/2021	\$1,000.00	\$25.00	12
M4 Rifle	Rock River Arms	CM155434	9/2/2021	\$1,000.00	\$25.00	12
M4 Rifle	Rock River Arms	CM155453	9/9/2021	\$1,000.00	\$25.00	12
M4 Rifle	Rock River Arms	CM155527	9/12/2019	\$1,000.00	\$25.00	12
M4 Rifle	Colt	CR220128	3/2/2021	\$1,100.00	\$25.00	12
M4 Rifle	Colt	CR220144	6/23/2020	\$1,100.00	\$25.00	12
M4 Rifle	Colt	CR220151	4/29/2019	\$1,100.00	\$25.00	12
M4 Rifle	Colt	CR219472	9/12/2019	\$1,100.00	\$25.00	12
M4 Rifle	Colt	CR218577	9/12/2019	\$1,100.00	\$25.00	12
40mm	Penn Arms	GS4786	04/01/2021	\$870.35	\$25.00	4
40mm	Penn Arms	GS6315	04/01/2021	\$870.35	\$25.00	4

1. M4 Rifle

(a) Description, quantity, capabilities, and purchase cost

See Table 1.

(b) Purpose: Patrol rifles enable officers when in compliance with the PPD's Use of Force Policy, to address medium to long distance threats, or those threats who are heavily armed, armored or both. In both short and long-distance deployments, patrol rifles 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.

(c) Authorized use: Situations for use may include, but are not limited to:

- Situations where the member reasonably anticipates an armed encounter.
- When a member is faced with a situation that may require accurate and effective fire at long range.
- Situations where a member reasonably expects the need to meet or exceed a suspect's firepower.

Military Equipment

- When a member reasonably believes that there may be a need to fire on a barricaded person or a person with a hostage.
- When a member reasonably believes that a suspect may be wearing body armor.
- When authorized or requested by a supervisor.

(d) Training – Officers must successfully complete a CA POST certified 24-hour patrol rifle course as well as regular department firearms training and qualifications as required by law and policy.

(e) Lifespan – Approximately 15 years

(f) Fiscal impact – Annual maintenance expense is estimated at \$25.00 for each M4 Rifle. Annual maintenance includes a detailed review of the weapon, audit check and repair of worn parts.

(g) Legal and Procedural Rules - Use of M4 Rifle is subject to requirements of Piedmont Police Policy Section 300: Use of Force and Section 306: Firearms. It is the policy of the Department to utilize the M4 Rifles only for official law enforcement purposes, in accordance with all requirements under State and Federal law, including those regarding the use of force.

2. 40 mm

(a) Description, quantity, capabilities, and purchase cost

See Table 1.

(b) Purpose – The 40mm launcher affords the ability to use less lethal and impact munitions. This allows officers to address a threat from a greater distance and provides an alternative option for deadly force when reasonable. When necessary, there is no alternative to these less lethal weapon systems.

(c) Authorized use – Situations for use may include, but are not limited to:

- The suspect is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions.
- The suspect has made credible threats to harm him/herself or others.
- The suspect is engaged in riotous behavior or is throwing rocks, bottles or other dangerous projectiles at people and/or officers.
- There is probable cause to believe that the suspect has already committed a crime of violence and is refusing to comply with lawful orders.

(d) Training – Sworn members are required to attend an initial 4 hour training and additional annual training thereafter.

(e) Lifespan – Approximately 15 years

(f) Fiscal impact – Annual maintenance expense is estimated at \$25.00 for each 40mm. Annual maintenance includes a detailed review of the weapon, audit check and repair of worn parts. Ammunition costs can vary based on the training but are approximately \$5000.00 per year.

Military Equipment

(g) Legal and Procedural Rules – Use of 40 mm is subject to requirements of Piedmont Police Policy Section 300: Use of Force and Section 303 Control Devices and Techniques. It is the policy of the Department to utilize 40mm only for official law enforcement purposes, in accordance with all requirements under State and Federal law, including those regarding the use of force.

710.5 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 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.

710.6 COORDINATION WITH OTHER JURISDICTIONS

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

710.7 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).

Military Equipment

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.

710.8 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.