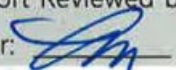


Agenda Report Reviewed by:  
City Manager: 

**CITY OF SEBASTOPOL  
CITY COUNCIL  
AGENDA ITEM**

**Meeting Date:** April 5, 2022  
**To:** Honorable Mayor and City Councilmembers  
**From:** Chief of Police Kevin S. Kilgore  
**Subject:** Second Reading and Adoption of Ordinance Number 1139, An Ordinance of the City of Sebastopol Adding Chapter 8.70 Governing Body Specific Equipment Approval and amending Title 8 of the City of Sebastopol Municipal Code.  
**Recommendation:** That the City Council Adopt the Ordinance  
**Funding** Currently Budgeted:  Yes  No  N/A  
Net General Fund Cost: \$ 0  
Amount: \$ 750\*  
(\* = already budgeted)

Account Code/Costs authorized in City Approved Budget AK verified by (Administrative Services Department)

**INTRODUCTION/PURPOSE:**

This item is for Council Adoption of Ordinance 1139, An Ordinance of the City of Sebastopol Adding Chapter 8.70 Governing Body Specific Equipment Approval and amending Title 8 of the City of Sebastopol Municipal Code.

**BACKGROUND:**

On January 1, 2022, Assembly Bill 481, as passed by the California State Legislature and signed by the Governor, went into law. The bill added and codified Chapter 12.8 (Commencing with Section 7070) to Division 7 of Title 1 of the Government Code, relating to specifically defined “military” equipment. The bill required actions be taken by law enforcement agencies, including the creation an ordinance to address such equipment.

On March 15, 2022, the City Council conducted a public hearing and introduced an Ordinance Adding Chapter 8.70 This item is for Council Adoption of Ordinance 1139, An Ordinance of the City of Sebastopol Adding Chapter 8.70 Governing Body Specific Equipment Approval and amending Title 8 of the City of Sebastopol Municipal Code.

**DISCUSSION:**

Tonight’s item is to present to the City Council the final Ordinance as provided in the March 15, 2022 City Council Meeting.

**GOALS:**

This action supports the following City Council Goals and General Plan Actions:

5.1: Expand and Encourage Community Involvement in the Government Process by Increasing the Public’s Understanding of local Government Operations and Increasing Interaction with Elected Officials

5.3.3 Encourage and increase public awareness of City Policies, decisions, programs and all public processes and meetings, by investigating effective methods of communication and obtaining feedback from the community.

Goal CSF 6, Policy CSF 6-1: Continue to maximize public participation in local government actions and maintain excellent levels of City government service.

**PUBLIC COMMENT:**

As of the writing of this staff report, the City has not received any public comment. However, staff anticipates receiving public comment from interested parties following the publication and distribution of this staff report. Such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of the agenda item.

**PUBLIC NOTICE:**

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to the scheduled meeting date.

**FISCAL IMPACT:**

As noted in the March 15, 2022 City Council Meeting, the specific equipment in question has been previously purchased and the ongoing costs of training and supplies are currently allocated for in the existing police department budget.

**RECOMMENDATION:**

Staff recommends the Sebastopol City Council Approve Adoption of Ordinance 8.70, An Ordinance of the City of Sebastopol to formally amend the Sebastopol Municipal Code, Title 8, to add Chapter 8.70 Governing Body Specific Equipment Approval Ordinance.

**Attachment(s):**

Text of Governing Body Specific Equipment Approval Ordinance 1139

Text of Assembly Bill 481

Sebastopol Police Department Policy 709, Governing Body Specific Equipment Approval

**ORDINANCE NUMBER 1139**

SECOND READING AND ADOPTION

**AN ORDINANCE OF THE CITY OF SEBASTOPOL ADDING CHAPTER 8.70 AND AMENDING TITLE 8 OF THE SEBASTOPOL MUNICIPAL CODE**

WHEREAS, On January 1, 2022, Assembly Bill 481, as passed by the California State Legislature and signed by the Governor, went into law. The bill added and codified Chapter 12.8 (Commencing with Section 7070) to Division 7 of Title 1 of the Government Code, relating to specifically defined “military” equipment; and

WHEREAS, Assembly Bill 481 (AB 481 or the Bill) codified Government Code Sections 7070 through 7075 and requires a law enforcement agency to obtain approval from the applicable governing body, via adoption of a “Governing Body Specific Equipment Use Approval Policy” by ordinance (the Ordinance) prior to the law enforcement agency funding, acquiring, or using “military” equipment as newly defined in AB 481; and

WHEREAS, the term “military equipment” and its definitions as described in AB 481 are to be considered interchangeable with the term “specific equipment” for the purposes of this document, the proposed city ordinance, and the Sebastopol Police Department Policy 709; and

WHEREAS, The California State Legislature found and declared, and the Sebastopol City Council do also find and declare the following: The public has a right to know about any funding, acquisition, or use of defined “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. Decisions regarding whether and how defined “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 upon meaningful public input; and

WHEREAS, AB 481 requires the creation of a specific equipment approved use policy by law enforcement agencies, as well as the publishing of the policy on the police department website and imposes a state-mandated local program and also requires law enforcement agencies to provide a means to gather public feedback to any complaints or concerns regarding the use of defined “military” equipment which shall be documented in an annual report. The report shall also contain how the equipment was used, the results of any internal audits regarding misuse, the total annual cost for the equipment, maintenance, and cost of training for the use of the equipment, as well as the quantity of any type of specific equipment in the agency’s possession; and

WHEREAS, AB 481 requires law enforcement agencies to obtain both the initial approval of the applicable governing body (in this instance the Sebastopol City Council) by adoption of a Governing Body Specific Equipment Approval 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 requires similar approval for the continued use of defined “military”

equipment acquired prior to January 1, 2022. The bill allows the governing body to approve the funding, acquisition, or use of defined “military” equipment within its jurisdiction only if it determines that the defined “military” equipment meets specified standards. The bill requires the governing body to annually review the ordinance and to either approve or disapprove a renewal of the authorization for a type, as defined, of “military” equipment or amend the Governing Body Specific Equipment Approval Policy if it determines, based on an annual Governing Body Specific Equipment Approval Policy report prepared by the law enforcement agency, as provided, that the defined “military” equipment does not comply with the above-described standards for approval; and

WHEREAS, The Sebastopol City Council also finds that based upon the definitions contained in the newly implemented California Government Code, Chapter 12.8, Section 7070, that the Sebastopol Police Department has had in its possession for many years, previously purchased “specific equipment” which has now been redefined per CA Government Code §7070 as “military equipment”, though said equipment was not previously acquired or purchased through any form of procurement program from the United States Government, or any branches of the armed services nor was it acquired utilizing any provisions of the Federal Surplus Property Acquisition Law of 1945. The “specific equipment” in question can in fact be purchased by citizens utilizing normal retail channels. This “specific equipment” is now included in AB 481 as requiring the adoption of a specific use and approval policy for continued use, which is addressed by the proposed ordinance. The “specific equipment” in question has been in use by the Sebastopol Police Department for more than a decade. Its availability and proper usage have been deemed as a best practice by law enforcement groups and experts nationwide and is classified as a “less-lethal” option to specifically deescalate situations and avoid the use of deadly force. This tool enhances the safety of our community members and our police officers; and

WHEREAS, several items of “Specific Equipment” defined as “Military Equipment” by AB 481, including less-lethal bean bag projectiles and their 12-gauge shotgun launchers, are used as a component of longstanding best practices for law enforcement agencies throughout the country. The less-lethal bean bag rounds in possession of the Sebastopol Police Department have been tested in the field and have been tested and studied in controlled settings. They are designed and intended to enhance both the safety of community members and our police officers while significantly reducing the risk of serious injury to those who are struck by them. The 12-gauge pump action shotgun launchers are standard shotguns which are readily available for purchase by ordinary citizens; and

WHEREAS, this specific less-lethal force option is the only means currently available in the current inventory of Sebastopol Police Department equipment to attempt to resolve encounters with potentially violent or armed individuals from a distance of 25-75 feet. This distance creates a buffer zone for safety to all involved, can be utilized to buy time and deescalate tense and dangerous situations, and loss of this form of specific equipment would jeopardize the welfare of community members and our police officers, and in many instances would limit our officer’s ability to resolve a situation without resulting to a higher level of force, or could cause officers to resort to the use of other equipment and tactics which may substantially increase the risk of significant injury to all; and

WHEREAS, The Sebastopol Police Department seeks City Council Adoption of a Governing Body Specific Equipment Approval Policy in order to allow SPD to continue to use existing and previously purchased vital

equipment to assist them in resolving dangerous, tense, rapidly evolving situations by use of a less-lethal means commonly referred to as “bean bag” rounds only when absolutely necessary and in concert with best practices, existing laws, and Sebastopol Police Department policies and training; and

WHEREAS, AB 481 states the governing body may only approve a “military” equipment use policy if the body determines each of the following:

- (1) The military 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 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; and

WHEREAS, The City Council of the City of Sebastopol does determine that the possession of and continued use of “special equipment” which has been defined in AB 481 and described in the proposed policy and ordinance as “military” equipment; specifically, the less-lethal projectile rounds known as “bean bag” rounds and their 12-gauge shotgun launchers, does meet with each of the aforementioned requirements listed in the previous paragraph and should be approved for continued use; and

WHEREAS, The Sebastopol Police Department has authored Sebastopol Police Department Policy 709, titled “Governing Body Specific Equipment Approval” which complies with all required provisions specified in AB 481 and should be adopted; and

WHEREAS, AB 481 requires a law enforcement agency to obtain specific approval from the applicable governing body via adoption of a “Governing Body Specific Equipment Use Approval Policy” by ordinance, the Sebastopol Municipal Code should be amended to reflect the addition of Chapter 8.70 which shall be titled “Governing Body Specific Equipment Approval Ordinance” which complies with the required provisions and mandates specified in AB 491 and Chapter 12.8 (Commencing with Section 7070) to Division 7 of Title 1 of the Government Code, relating to specifically defined “military” equipment also known as “specific equipment”; and

WHEREAS, this action is found to be in compliance with the requirements of California Government Code § 66016 and 66018; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEBASTOPOL DOES ORDAIN THE ADDING OF CHAPTER 8.70 AND AMENDMENT OF TITLE 8 AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Amending Title 8 of the Sebastopol Municipal Code to include Chapter 8.70.

SECTION 3: Adding of Chapter 8.70: Chapter 8.70 Governing Body Specific Equipment Approval, is hereby added to the Sebastopol Municipal Code to read as follows:

**Governing Body Specific Equipment Approval Ordinance**

Chapter 8.70 – **Governing Body Specific Equipment Approval Ordinance**

Sections:

8.70.010 Title

8.70.020 Purpose and Findings

8.70.030 Definitions

8.70.040 Governing Body Specific Equipment Approval Policy Requirement

8.70.050 Use in Exigent Circumstances

8.70.060 Reports on the Use of Controlled Equipment

8.70.070 Enforcement

8.70.080 Severability

8.70.010 Name of Ordinance

This Ordinance shall be known as the Governing Body Specific Equipment Approval Ordinance.

8.70.020 Purpose and Findings

On January 1, 2022, Assembly Bill 481, as passed by the California State Legislature and signed by the Governor, went into law. The bill added Chapter 12.8 (Commencing with Section 7070) to Division 7 of Title 1 of the Government Code, relating to specifically defined “military” equipment.

The bill requires the creation of a specific equipment approved use policy by law enforcement agencies, as well as the publishing of the policy on the police department website and imposes a state-mandated local program. It also requires law enforcement agencies to provide a means to gather public feedback to any complaints or concerns regarding the use of defined “military” equipment which shall be documented in an annual report. The report shall also contain how the equipment was used, the results of any internal audits regarding misuse, the total annual cost for the equipment, maintenance, and cost of training for the use of the equipment, as well as the quantity of any type of specific equipment in the agency’s possession.

The bill requires law enforcement agencies to obtain both the initial approval of the applicable governing body (in this instance the Sebastopol City Council) by adoption of the Governing Body Specific Equipment Approval 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 requires similar approval for the continued use of defined “military” equipment acquired

prior to January 1, 2022. The bill allows the governing body to approve the funding, acquisition, or use of defined “military” equipment within its jurisdiction only if it determines that the defined “military” equipment meets specified standards. The bill requires the governing body to annually review the ordinance and to either approve or disapprove a renewal of the authorization for a type, as defined, of “military” equipment or amend the Governing Body Specific Equipment Approval Policy if it determines, based on an annual Governing Body Specific Equipment Approval Policy report prepared by the law enforcement agency, as provided, that the defined “military” equipment does not comply with the above-described standards for approval.

The California State Legislature found and declared, and the Sebastopol City Council do also find and declare the following:

The public has a right to know about any funding, acquisition, or use of defined “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.

Decisions regarding whether and how defined “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 upon meaningful public input.

The Sebastopol City Council also finds that based upon the definitions contained in the newly implemented California Government Code, Chapter 12.8, Section 7070, that the Sebastopol Police Department has had in its possession for many years, previously purchased “specific equipment” which has now been redefined per CA Government Code §7070 as “military equipment”, though said equipment was not previously acquired or purchased through any form of procurement program from the United States Government, or any branches of the armed services nor was it acquired utilizing any provisions of the Federal Surplus Property Acquisition Law of 1945. This “specific equipment” is now included in AB 481 as requiring the adoption of a specific use and approval policy for continued use, which is addressed by this ordinance. The “specific equipment” in question has been in use by the Sebastopol Police Department for more than a decade. Its availability and proper usage have been deemed as a best practice by law enforcement groups and experts nationwide and is classified as a “less lethal” option to specifically deescalate situations and avoid the use of deadly force. This tool enhances the safety of our community members and our police officers.

#### 8.70.030 Definitions

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

“Military Equipment” includes all of the following (Per CA Gov. Code §7070):

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.

"City" means any department, agency, bureau, and/or subordinate division of the City of Sebastopol.

"Police Department" means any division, section, bureau, employee, volunteer and/or contractor of the Sebastopol Police Department.

"City Council" means the governing body that is the Sebastopol City Council.

"Governing Body Specific Equipment Approval Policy" means a publicly released, written document that includes, at a minimum, all of the following:

1. A description of each type of defined "Military" Equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the defined "Military" Equipment.



2. The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of defined "Military" Equipment.
3. The fiscal impact of each type of defined "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 defined "Military" Equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the Governing Body Specific Approval Policy.
6. The mechanisms to ensure compliance with the Governing Body Specific Equipment Approval 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 defined "Military" Equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

"Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person is occurring, has occurred, or is about to occur.

"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.

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

#### 8.70.040 Governing Body Specific Equipment Approval Policy Requirement

- A. The Sebastopol Police Department shall obtain approval of the City Council, by an ordinance adopting a Governing Body Specific Equipment Approval Policy at a regular meeting of the City Council 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:
  1. Requesting defined "Military" Equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
  2. Seeking funds for defined "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 defined “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 defined “Military” Equipment within the territorial jurisdiction of the City of Sebastopol.
  5. Using any new or existing defined “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, apply to receive, acquire, use, or collaborate in the use of, defined “Military” Equipment.
  7. Acquiring defined “Military” Equipment through any means not provided by this section.
- B. No later than May 1, 2022, if seeking to continue the use of any defined “Military” Equipment that was acquired prior to January 1, 2022, the Sebastopol Police Department shall commence a City Council approval process in accordance with this section. If the City Council does not approve the continuing use of defined “Military” Equipment, including by adoption pursuant to a Governing Body Specific Equipment Approval Policy submitted pursuant to this code, within 180 days of submission of the proposed Governing Body Specific Approval Policy to City Council, the Sebastopol Police Department shall cease its use of the defined “Military” Equipment until it receives the approval of City Council in accordance with this code.
- C. In seeking the approval of City Council, the Sebastopol Police Department shall submit a proposed Governing Body Specific Equipment Approval Policy to City Council and make those documents available on the Police Department’s internet website at least 30 days prior to any public hearing concerning the defined “Military” Equipment at issue.
- D. The governing body shall consider a proposed Governing Body Specific Equipment Approval 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.
- E. The governing body shall only approve a Governing Body Specific Equipment Approval Policy pursuant to this chapter if it determines all of the following:
1. The defined “Military” Equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
  2. The proposed Governing Body Specific Equipment Approval 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 defined “Military” Equipment use complied with any policies that were in effect at the time, or if prior uses did not comply with the accompanying Governing Body Specific Equipment Approval Policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

- F. In order to facilitate public participation, any proposed or final Governing Body Specific Equipment Approval Policy shall be made publicly available on the internet website of the Police Department for as long as the defined “Military” Equipment is available for use.
- G. The City Council shall review any ordinance that it has adopted pursuant to this Chapter approving the funding, acquisition, or use of defined “Military” Equipment at least annually and 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.

#### 8.70.050 Use in Exigent Circumstances

- A. Notwithstanding the provisions of this Chapter, the Police Department may acquire, borrow and/or use defined “Military” Equipment in Exigent Circumstances without following the requirements of this code.
- B. If the Police Department acquires, borrows, and/or uses defined “Military” Equipment in Exigent Circumstances, in accordance with this section, it must take all of the following actions:
  - 1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state or federal law.
  - 2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed amended Governing Body Specific Equipment Approval Policy to the City Council within 90 days following the borrowing, acquisition and/or use, and receive approval, as applicable, from the City Council.
  - 3. Include the defined “Military” Equipment in the Police Department’s next annual Governing Body Specific Equipment Approval Report.

#### 8.70.060 Reports on the Use of defined “Military” Equipment.

- A. The Police Department shall submit to City Council an annual Governing Body Specific Equipment Approval Report for each type of defined “Military” Equipment approved by the City Council within one year of approval, and annually thereafter for as long as the defined “Military” Equipment is available for use.
- B. The Police Department shall also make each annual Governing Body Specific Equipment Approval Report required by this section publicly available on its internet website for as long as the defined “Military” Equipment is available for use.

- C. The annual Governing Body Specific Equipment Approval Report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of defined “Military” Equipment:
1. A summary of how the defined “Military” Equipment was used and the purpose of its use.
  2. A summary of any complaints or concerns received concerning the defined “Military” Equipment.
  3. The results of any internal audits, any information about violations of the Governing Body Specific Equipment Approval Policy, and any actions taken in response.
  4. The total annual cost for each type of defined “Military” Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the defined “Military” Equipment in the calendar year following submission of the annual Governing Body Specific Equipment Approval Report.
  5. The quantity possessed for each type of defined “Military” Equipment.
  6. If the law enforcement agency intends to acquire additional defined “Military” Equipment in the next year, the quantity sought for each type of defined “Military” Equipment.
- D. Within 30 days of submitting and publicly releasing an annual Governing Body Specific Equipment Approval Report pursuant to this section, the Police 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 Governing Body Specific Equipment Approval report and the law enforcement agency's funding, acquisition, or use of defined “Military” Equipment.
- E. The City Council shall determine, based on the annual Governing Body Specific Equipment Approval Report submitted pursuant to this section, whether each type of defined “Military” Equipment identified in that report has complied with the standards for approval set forth in this code and the Governing Body Specific Equipment Approval Policy. If the City Council determines that a type of defined “Military” Equipment identified in that annual Governing Body Specific Equipment Approval Report has not complied with the standards for approval, the City Council shall either disapprove a renewal of the authorization for that type of defined “Military” Equipment or require modifications to the Governing Body Specific Equipment Approval Policy in a manner that will resolve the lack of compliance.

#### 8.70.070 Enforcement.

- A. Remedies for Violations of this Ordinance
1. This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter.

2. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction.
3. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation.
4. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if they are personally obligated to pay such fees.

8.70.080 Severability

- A. If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter.
- B. The City Council hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

APPROVED FOR WAIVING OF FIRST READING AND INTRODUCTION OF ORDINANCE at the Regular City Council Meeting of March 15, 2022.

APPROVED FOR WAIVING OF READING OF SECOND READING AND ADOPTION OF ORDINANCE at the Regular City Council Meeting of April 5, 2022.

**VOTE:**

Ayes:

Noes:

Absent:

Abstain:

APPROVED:

Mayor Patrick Slayter

ATTEST:

Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM:

Larry McLaughlin, City Attorney

## 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 personal 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

## **Policy 709 - Governing Body Specific Equipment Approval**

### **709.1 PURPOSE AND SCOPE**

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of California Government Code defined 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.

**California Government Code defined "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).
- The following projectile launch platforms and their associated munitions: 40mm projectile launchers, “bean bag”, rubber bullet, and specialty impact munition (SIM) weapons.

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

**NOTE:** For purposes of this policy, “**Governing Body Specific**” and “**Military**” are interchangeable terms sharing precisely the same definition.

### **709.2 POLICY**

It is the policy of the Sebastopol Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military/governing body specific equipment.

### **709.3 SPECIFIC EQUIPMENT COORDINATOR**

The Chief of Police should designate a member of this department to act as the specific equipment coordinator. The responsibilities of the specific 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, or is defined 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 equipment defined as military per the California Government Code or requiring additional oversight by council direction, at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of the Sebastopol 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 SPECIFIC EQUIPMENT INVENTORY**

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

**Less Lethal Shotgun:** Less Lethal Shotgun is used to deploy the less lethal 12-gauge drag stabilized beanbag round.

a. Description, quantity, capabilities, and purchase cost:

i. **REMINGTON 870 LESS LETHAL SHOTGUN:**

Cost: approximately \$500

Quantity: 6 (Previously purchased and in department inventory)

The Remington 870 Less Lethal Shotgun is used to deploy the less lethal 12-gauge Drag Stabilized Beanbag Round up to a distance of 75 feet. The range of the weapon system helps to maintain space between officers and a suspect reducing the immediacy of the threat which is a principle of de-escalation.

ii. **DEFENSE TECHNOLOGY PART #3027 DRAG STABILIZED 12 GA. BEANBAG ROUND:**

Cost: approximately \$6 per round

Quantity: approximately 95

**PRODUCT SPECIFICATIONS:**

Diameter: 12-Gauge

Length: 2.50 in / 6.3 cm

Projectile Count: 1

Velocity: 270 fps / 82 mps

Minimum Safe Range: 20 ft / 6.1 m

Maximum Effective Range: 75 ft / 22.9 m

**PROJECTILE SPECIFICATIONS:**

Material: Tear-shaped bag with tails filled with #9 shot

Length: 5.00 in / 12.7 cm

Weight: 1.43 oz / 40 g

Beanbag rounds are discharged from a dedicated 12-gauge shotgun that is distinguishable by blue furniture. This round provides accurate and effective performance when fired from the approved distance of not fewer than 20 feet. The maximum effective range of this munition is up to 75 feet from the target.

b. Purpose: To limit the escalation of conflict where employment of lethal force is prohibited or undesirable.

c. Authorized Use: Situations for use of the less lethal weapon systems may include, but are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
  - ii. Riot/crowd control and civil unrest incidents.
  - iii. Circumstances where a tactical advantage can be obtained.
  - iv. Potentially vicious animals.
  - v. Training exercises or approved demonstrations.
- d. Lifespan:  
 Remington 870 Less Lethal Shotgun- 25 years  
 Drag stabilized beanbag round- No listed expiration date (5-year warranty)
- e. Fiscal Impact: Annual training requires the replenishment of our existing munitions inventory due to expending the existing inventory during the training.  
 Approximately \$750 per year.
- f. Training: All officers are trained in the 12-gauge less lethal shotgun as a less lethal option by in-service training. Officers will receive annual training which should include practice firing of the munitions to maintain familiarity and accuracy.
- g. Legal and Procedural Rules: It is the policy of the Sebastopol Police Department to utilize the less-lethal shotgun only for official law enforcement purposes, in accordance with departmental policies and pursuant to State and Federal law, including those regarding the use of force.

**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 governing body specific equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed governing body specific 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/governing body specific equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military/governing body specific 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/governing body specific 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/governing body specific equipment within the jurisdiction of this department.

(e) Using any new or existing military/governing body specific 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/governing body specific equipment.

(g) Acquiring military/governing body specific equipment through any means not provided above.

**709.6 COORDINATION WITH OTHER JURISDICTIONS**

Governing body specific equipment or military equipment used by any member of this jurisdiction shall be approved for use and in accordance with this Department policy. Military/governing body specific used by other jurisdictions that are providing mutual aid to this jurisdiction shall comply with their respective military/governing body specific equipment use policies in rendering mutual aid.

**709.7 USE IN EXIGENT CIRCUMSTANCES**

In exigent circumstances and with the approval of the Chief of Police or designee, military/ governing body specific equipment may be deployed from outside entities to promote the safety and security of community members. If the Police Department acquires, borrows, or uses military/ governing body specific equipment in exigent circumstances, it will provide written notification of the acquisition or use to the City Council within 30 days following the commencement of such exigent circumstance, unless such information is confidential or privileged under local, state or federal law.

**709.8 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.

**709.9 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.