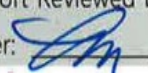


Agenda Report Reviewed by:  
City Manager: 

CITY OF SEBASTOPOL  
CITY COUNCIL  
AGENDA ITEM

**Meeting Date:** October 3, 2023  
**To:** Honorable Mayor and City Councilmembers  
**From:** Ronald Nelson – Police Chief  
**Subject:** Annual Report Regarding Government Body Specific Equipment  
**Recommendation:** Provide Authorization for the Continued Use of Our Existing Equipment  
**Funding:** Currently Budgeted:  Yes  No  Not Applicable

Account Code: 100-32-02-4330 \$750.00  
Costs authorized in City Approved Budget:  Yes (Finance Initialed AK)  No (Finance Exempt)

**INTRODUCTION/PURPOSE:**

To provide an annual report on any Governing Body Specific Equipment use as required with the passage of AB 481 and the adoption of Chapter 8.70 to Title 8 of the 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 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 passage of 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.

**DISCUSSION:**

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 defined in AB 481.

On April 5, 2022, the Sebastopol City Council approved Ordinance 1139, which amended the Sebastopol Municipal Code by adding Chapter 8.70; the Governing Body Specific Equipment Approval Ordinance.

Chapter 8.70.030 of the ordinance, titled “Definitions” lists and defines the various types of “specific equipment” now newly defined as “military” equipment. The Sebastopol Police Department has conducted a review of that list and has determined that the only item currently in their possession and which is authorized for field use is an item listed in number 14 in that section and described as follows: “The following projectile launch platforms and their associated munitions: 40mm projectile launchers, “bean bag,” rubber bullet, and specialty impact munition (SIM) weapons.” The Sebastopol Police Department has had in its possession and currently has available for use in the field, the item described as a “bean bag” munition and launch platform. The bean bags are launched by a standard 12-gauge pump action shotgun. The approval of the ordinance authorized the continued use of the 12-gauge shotgun launchers and “bean bag” less lethal munitions.

So called “bean bag” rounds are also known as flexible baton rounds and were introduced in the 1970’s as a less-lethal option for police. Their purpose is to be able to keep a safe distance away from subjects who are violent, combative, and resistant and who generally are refusing commands to cease whatever they are doing and to submit to arrest. They can also be used to gain compliance from individuals who may not be armed with a firearm, but who are holding edged weapons, blunt objects, or other objects with the threat of using them on police who are on scene, or on themselves in cases of a stand-off with suicidal or mentally disturbed individuals. They allow police to keep their distance and attempt to de-escalate situations without engaging subjects close up which risks injuries to both the subject and officers. They also can be used to disarm subjects by means of pain compliance by causing the person to drop whatever weapon they have. By being able to keep distance and not immediately approach a subject, it buys time and in many cases the use of these projectiles have successfully ended situations which otherwise may have escalated into a deadly force situation.

Bean bag rounds are designed to be utilized from distances of 20 feet to 75 feet. They are currently the only less-lethal tool the Sebastopol Police Department possesses which can be utilized to subdue subjects and de-escalate situations from a distance of 25 feet or greater. Should the authorization to continue to utilize this form of specialized equipment be denied, it will significantly jeopardize both the safety of the subject and the officers on scene as well as innocent bystanders. Not having access to bean bag rounds will have the undesirable consequence of inhibiting SPD’s ability to resolve encounters without resorting to the use of methods which require officers to go “hands on” with subjects, or which will require them to get very close to the subjects which endangers all involved and increases the odds of serious injury to both officers and the subject. Often times the closing of distance will escalate the emotions, anxiety, and fear of the subject who is in crisis causing them to take actions which endanger themselves, the officers on scene, and innocent bystanders. In a worst-case scenario, it could force a deadly force confrontation if the subject who perceives they are cornered begins to assault or attack officers with an object, outcomes which should be avoided at all costs.

The Sebastopol Police Department is committed to the safety of all persons and the preservation of life. The use of less-lethal tools combined with sound de-escalation tactics ensures that we are utilizing industry recognized

best practices in attempting to exhaust all means available to us to bring a peaceful resolution to incidents. This ensures the safety of all persons while only utilizing force when absolutely necessary. It is not a responsibility we take lightly. Whenever force must be utilized, we take every step possible to utilize the lowest level of force necessary to obtain a positive outcome to the situation with the least amount of impact or injury to citizens and our officers. Whenever feasible, we avoid the use of force altogether. To do anything less, erodes the public trust

we work hard at gaining trust during every interaction. We value that trust and the tremendous responsibility that goes along with it above all else. It is in conjunction with these philosophies that we recognize the value and necessity of having the ability to utilize bean bag projectiles as a means to attempt to safely resolve rapidly evolving, tense, uncertain and dangerous encounters while mitigating the risks and dangers through the use of this long-established valuable tool.

Because we recognize the value of having less-lethal options available to us at all times, every Sebastopol Police Department marked patrol vehicle has an unloaded 12-gauge shotgun with bean bag rounds in the carrying case, which is secured in a place separate from any other weapons for safety. Officers have nearly immediate access on any call which could rapidly necessitate the need for a less lethal option. The shotguns are painted blue to readily identify them as the less-lethal shotguns and they are a different type of shotgun which look and function completely different from the shotguns which are mounted in the front passenger compartment of the vehicles. The less lethal shotguns are secured in the rear storage area of the police SUV's. To deploy the shotgun, officers must load the blue shotguns in the field and visually and physically inspect the bean bag round to ensure it is not a live lethal shotshell prior to loading them into the blue shotguns. This is considered an industry best practice and ensures the highest level of safety so there is no mistaking the fact that one is deploying a shotgun that is not loaded with lethal shotgun rounds. The bean bag rounds look nothing like regular shotshells which are generally red in color. The bean bag rounds have a clear casing and the actual bean bag can be seen inside of the shell. There is no mistaking the difference.

All Sebastopol police officers have to undergo initial training on the less-lethal shotguns which is presented by a POST certified less-lethal weapons instructor. The training includes instruction on the appropriate use of the bean bag rounds, approved targeting areas to minimize the chance of injury to the subject, distance considerations, tactics and limitations of the bean bags, as well as medical considerations and first aid procedures when they are utilized on a subject. The officers are then required to manipulate and accurately fire the bean bag weapon as part of a practical training. All officers receive refresher training annually. Officers received updated training on less-lethal bean bag rounds in August and September of this year.

As for the rounds themselves, the projectile that exits the weapon have been commonly referred to as bean bag rounds due to the fact that they originally looked like a ravioli made out of cloth and resembled a bean bag but on a much smaller scale. They now look more like a tear shaped ball (oblong) with a tail. They are made of cloth and contain very small pellets which remain contained inside the cloth "sock" and have 4 tails to stabilize them while in flight. They are very accurate. They are approximately 2½ inches in length and travel at approximately 270 feet per second (fps). For comparison, most bullets travel at anywhere from 850 fps to 1500 fps and beyond. They are designed to not penetrate into the flesh and to be used on large muscle groups such as the buttocks and thighs and cause significant pain stimulus in order to affect the mobility of the person and encourage compliance, while significantly minimizing serious or life-threatening injuries. Though now defined as "military" equipment, these munitions are readily available and can even be purchased by citizens in various stores or even online. The bean bag rounds and 12-gauge shotguns in possession of the Sebastopol Police Department were not previously acquired or purchased through any form of procurement program from the United States Government, or any branches of the armed services nor were they acquired utilizing any provisions of the Federal Surplus Property Acquisition Law of 1945, but were purchased through normal supply channels.

Each bean bag round costs approximately \$6.00 but it varies among different suppliers. We currently have a supply of approximately 110 rounds. Ongoing and annual training generally exhausts the existing inventory and will require the purchase of approximately 125 rounds per year which includes this and the upcoming fiscal year. The purchase of the rounds and the training is included in the current police department budget. The ongoing cost per year is minimal and generally only requires the purchase of the additional rounds each year. The training is dovetailed into other existing state mandated trainings which are held regularly, so no additional payroll costs will be incurred. The estimated cost each year for the rounds is approximately \$750.00.

The use of the bean bag shotgun is guided internally by three existing policies. Sebastopol Police Department Policy number 300 (Use of Force) and SPD policy number 302 (Control Devices and Techniques), and policy number

Agenda Item Number: 6

705 (Governing Body Specific Equipment Approval) govern the use of these devices. Should an individual be shot with the less lethal round, it would automatically trigger our internal Use of Force review process, which is a multi-layered review process. Any misuse would be identified and a separate internal investigation would be conducted to determine if a disciplinary process was warranted.

Ordinance 1139, the Governing Body Specific Equipment Approval Ordinance requires several aspects of the use of specific equipment to be addressed annually in this report. As stated in section 8.70.060 of the ordinance, the information to be addressed follows:

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.

*The equipment in possession of the Sebastopol Police Department is:*

- (6) 12 gauge Remington 870 Shotgun launchers and approximately
- (125) - 12 gauge "Super Sock" bean bag rounds.

*These items have not been used to date in any field deployments since the passage of the ordinance. The only use of this equipment was during departmental trainings during the months of August and September of 2023. This tool is carried in each marked patrol unit and is available for officers to retrieve if needed in a field situation.*

2. A summary of any complaints or concerns received concerning the defined "military" equipment.

*There have been no complaints or concerns received or lodged 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.

*There have been no internal audits, reports or violations regarding the policy and no actions taken.*

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.

*The only costs incurred for the less-lethal shotguns and munitions are replacement of the munitions which were expended during training. The cost incurred to date is \$0 as we used existing inventory for the trainings. We have ordered replacement rounds which will cost approximately \$750 and should be shipped any day. The costs for training each police officer are absorbed in our regular scheduled monthly trainings. Officers attending are paid on a straight time basis. Each officer receives approximately 2.5 hours of training per year on the less-lethal shotgun. The estimated salary cost for the training is \$1360 for 11 officers.*

5. The quantity possessed for each type of defined "military" equipment.

- (6) Remington Model 870, 12-gauge shotgun launchers

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.

*We have ordered 100 replacement “bean bag” rounds to replace inventory depleted during annual training. This will be the only “military” equipment we will be purchasing during this fiscal year.*

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.

*We have scheduled a public meeting to be held at 5 PM, on October 23, 2023 at the Youth Annex at the Sebastopol Community Cultural Center located at 425 Morris Street, Sebastopol, CA 95472. The meeting is in the side room of the Annex, not the main hall. The meeting will be publicized on our website, our social media platforms, the community newsletter, and the information will be provided to the Sebastopol Times for publication if they wish.*

**ENVIRONMENTAL REVIEW:**

The proposed action is exempt  Yes  No from the requirements of the California Environmental Quality Act (CEQA)

**GOALS:**

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

Goal 1: Maintain the Long-Term Financial Stability and Sustainability of the City of Sebastopol and Operate City Government in a Fiscally Responsible Manner

Goal 5: Provide Open and Responsive Municipal Government Leadership  
Objective 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

**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 schedule meeting date.

**FISCAL IMPACT:**

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 authorize the continued use of the less-lethal launchers and “bean bag” rounds for the Sebastopol Police Department.

**Attachments:**

Text of Governing Body Specific Equipment Approval Ordinance

## **Chapter 8.70 GOVERNING BODY SPECIFIC EQUIPMENT APPROVAL ORDINANCE**

Sections: 8.70.010 Name of ordinance. 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 defined “military” equipment. 8.70.070 Enforcement. 8.70.080 Severability.

8.70.010 Name of ordinance.

This chapter shall be known as the “Governing Body Specific Equipment Approval Ordinance.” (Ord. 1139 § 3, 2022)

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. **Agenda Item Number: 6**

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 California Government Code Section 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 chapter. 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. (Ord. 1139 § 3, 2022)

#### 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:

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

“City Council” means the governing body that is the Sebastopol City Council.

“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.

“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. **Agenda Item Number: 6**

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. “Military equipment” includes all of the following (per California Government Code Section 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 subsection.

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 subsection.

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 subsection.

8. Firearms of 0.50 caliber or greater. However, standard issue shotguns are specifically excluded from this subsection.

9. Ammunition of 0.50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subsection.

10. Specialized firearms and ammunition of less than 0.50 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 0.50 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: 40 mm projectile launchers, “bean bag,” rubber bullet, and specialty impact munition (SIM) weapons. **Agenda Item Number: 6**

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

16. Notwithstanding subsections (1) through (15) of this definition, “military equipment” does not include general equipment not designated as prohibited or controlled by the Federal Defense Logistics Agency.

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

“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. (Ord. 1139 § 3, 2022)

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. **Agenda Item Number: 6**

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. (Ord. 1139 § 3, 2022)

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. (Ord. 1139 § 3, 2022)

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. (Ord. 1139 § 3, 2022)

#### 8.70.070 Enforcement.

##### A. Remedies for Violations of This Chapter.

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. (Ord. 1139 § 3, 2022)

#### 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. (Ord. 1139 § 3, 2022)

### **Sebastopol Police Department Policy 705**

#### **Governing Body Specific Equipment Approval**

##### 705.1 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). Agenda Item Number: 6

#### 705.1.1 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:

- (a) Unmanned, remotely piloted, powered aerial or ground vehicles
- (b) Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers
- (c) 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
- (d) Tracked armored vehicles that provide ballistic protection to their occupants
- (e) Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units
- (f) Weaponized aircraft, vessels, or vehicles of any kind
- (g) Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram
- (h) Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition
- (i) 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
- (j) Any firearm or firearm accessory that is designed to launch explosive projectiles
- (k) Noise-flash diversionary devices and explosive breaching tools
- (l) Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray
- (m) TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs)
- (n) The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag", rubber bullet, and specialty impact munition (SIM) weapons
- (o) 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. **Agenda Item Number: 6**

#### 705.2 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.

#### 705.3 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.

#### 705.4 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:

(a) Cost: approximately \$500

**Agenda Item Number: 6**

(b) 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:

(a) Cost: approximately \$6 per round

(b) Quantity: approximately 100

(c) PRODUCT SPECIFICATIONS:

A. Diameter: 12-Gauge

B. Length: 2.50 in / 6.3 cm

C. Projectile Count: 1

D. Velocity: 270 fps / 82 mps

E. Minimum Safe Range: 20 ft / 6.1 m

F. Maximum Effective Range: 75 ft / 22.9 m

(d) PROJECTILE SPECIFICATIONS:

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

B. Length: 5.00 in / 12.7 cm

C. Weight: 1.43 oz / 40 g

D. 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



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.

#### 705.5 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.

#### 705.6 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 Agenda Item Number: 6

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.

#### 705.7 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.

#### 705.8 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.

#### 705.9 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.