

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: RECORDING THE USE OF
MILITARY EQUIPMENT**

DATE: July 1, 2022

APPROVED

Memo# 2022-029

BACKGROUND

California [Assembly Bill 481 \(link\)](#) was approved by the Governor on September 30, 2021. This Bill created [Government Code chapter 12.8 \(link\)](#) regulating the funding, acquisition, and use of military equipment. Among other provisions, this chapter required the Department to obtain permission from the City Council to use or acquire military equipment. This permission was granted at the City Council meeting on June 21, 2022¹. Part of that authorization required the development of a Military Equipment Use Policy that included the following:

- A description of each type of military equipment, the quantity, its capabilities, expected lifespan, and product descriptions from the manufacturer.
- The purposes and authorized uses for which the Department proposes to use each type of military equipment.
- The fiscal impact of each type of military equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.
- The legal and procedural rules that govern each authorized use.
- The training, including any course required by POST, that must be completed before any Department member is allowed to use each specific type of military equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the military equipment use policy.
- The mechanisms to ensure compliance with the military equipment use policy, including which independent persons or entities have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy.
- 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 military equipment, and how the Department will ensure that each complaint, concern, or question receives a response in a timely manner.

¹ Details from this meeting may be found here:

<https://sanjose.legistar.com/MeetingDetail.aspx?ID=980797&GUID=15E52BAD-B60D-4CDC-8522-CF23FA24E5FC>

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[Government Code section 7070 \(link\)](#) defines the following items as “military equipment”:

- Remotely Piloted UAVs and Ground Vehicles (e.g., drones and the Bomb Unit robots)
- MRAPs or Armored Personnel Carriers
- HMMWVs and BearCats
- Tracked Armored Vehicles (the Department does not have any)
- Command and Control Vehicles (e.g., the Command Van, TEU Van, Bomb Unit Van, etc.)
- Weaponized Aircraft or Vehicles (the Department does not have any)
- Explosive Rams or Breaching Tools
- .50 cal or Greater Firearms (the Department does not have any)
- .50 cal or Greater Ammunition (the Department does not have any)
- Specialized Firearms or Assault Weapons (e.g., all rifles and Benelli shotguns)
- Explosive Projectile Launchers
- Flashbangs, Tear Gas, and Pepper Balls
- LRAD, Taser Shockwave, and Microwave Weapons
- 40mm Launchers, Stunbag Shotguns, and SIM Weapons
- Any Other Equipment Determined by the Governing Body

[Government Code section 7072 \(link\)](#) requires the Department to report back to City Council annually on the following:

- A summary of how the military equipment was used and the purpose of its use.
- A summary of any complaints or concerns received concerning the military equipment.
- The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
- The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
- The quantity possessed for each type of military equipment.
- If the Department intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

ANALYSIS

Several units throughout the Department use military equipment including Patrol, all of Special Operations, the Covert Response Unit, Burglary Prevention Unit, Internet Crimes Against Children, and the Police Academy. To facilitate the annual report to City Council on the use of military equipment, the Department has developed an online form called the **Military Equipment Reporting Log (MERL)**. This form will collect the following data:

- When it was used (date and time)
- Supervisor badge number
- Any associated event numbers
- What it was used for (e.g., training, police activity, protest/demonstration, community event)
- Type of equipment used
- Quantity used (for certain items)

Every Department member using any type of military equipment will be responsible for reporting that use to their supervisor. The notification will be either during or at the conclusion of the event during which the military equipment was used. The notification will either be to the Department member's assigned supervisor (if they are working together that day) or to the supervisor under which the Department member is assigned that day.

That supervisor, in turn, will be responsible for logging all military equipment used into the MERL. The MERL must be completed the same day as the use of the equipment or at the conclusion of the event.

For security reasons, the link to the MERL is not included in this memorandum but will be sent via email to every Department member at the rank of Sergeant and above. The link may then be bookmarked or added to the home screen of their Department-issued phones.

The Special Operations Division Captain will use the logged data for the annual report to City Council. Any questions regarding data collection should be referred to the Special Operations Division Captain.

In addition to the above, the Bureau of Administration will be conducting inventories on a regular basis to account for military equipment and ammunition. All Department members in the possession of military equipment or ammunition are required to participate in these inventories.

“Use”

The statute and resulting Government Code do not clarify the term “use.” For standardization, the Department is defining it as follows:

- For Remotely Piloted UAVs and Ground Vehicles, “use” means to deploy them in the field

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- For MRAPs, Armored Personnel Carriers, HMMWVs, BearCats, and Command and Control Vehicles, “use” means to drive it into the field for deployment at an event (i.e., not for fueling or maintenance)
- For Explosive Rams, Breaching Tools, Specialized Firearms, Assault Weapons, Explosive Projectile Launchers, Flashbangs, Tear Gas, Pepper Balls, 40mm Launchers, Stunbag Shotguns, and SIM Weapons, “use” means to both deploy and operate the item (e.g., firing a 40mm launcher or rifle, using an explosive breach to make entry to a residence, or employing a flashbang as distraction device.)
- For LRAD, Taser Shockwave, and Microwave Weapons, “use” means to both deploy and operate the item (e.g., to provide dispersal orders at a civil disturbance or to contact a barricaded suspect.)

ORDER

All Department members using any type of military equipment shall report the use of that equipment to their supervisor under the guidelines outlined above. Any supervisor whose subordinate uses military equipment shall log that use in the Military Equipment Reporting Log (MERL) under the guidelines outlined above. This order shall remain effect until rescinded or modified by Department memorandum, pursuant to Duty Manual section A 2304 TEMPORARY ORDERS.



Anthony Mata
Chief of Police

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