

ORDINANCE NO. Introduction (CM)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
WATSONVILLE ADDING A NEW CHAPTER 13 ENTITLED MILITARY
EQUIPMENT USE TO TITLE 4 (PUBLIC SAFETY) OF THE
WATSONVILLE MUNICIPAL CODE APPROVING A MILITARY
EQUIPMENT POLICY FOR POLICE SERVICES**

Table of Contents

SECTION 1. ENACTMENT.....	2
TITLE 4 PUBLIC SAFETY.....	3
CHAPTER 13 MILITARY EQUIPMENT USE.....	3
Sec. 4-13.01 Name of Ordinance.....	3
Sec. 4-13.02 Definitions.....	3
Sec. 4-13.03 Military Equipment Use Policy Requirement.....	7
Sec. 4-13.04 Use in Exigent Circumstances.....	9
Sec. 4-13.05 Reports on the use of Military Equipment.....	10
SECTION 2. RECITALS.....	12
SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....	12
SECTION 4. SEVERABILITY.....	12
SECTION 5. PUBLICATION.....	12
SECTION 6. EFFECTIVE DATE.....	13

o-0-o

WHEREAS, effective January 1, 2022, Assembly Bill 481 (AB 481) (Government Code sections 7071 *et. seq.*) sets forth a process by which law enforcement agencies are to obtain approval from their governing bodies of a military equipment use policy through the adoption of an ordinance; and

WHEREAS, pursuant to Government Code Section 7071(a)(1), such an ordinance must be timely adopted before a law enforcement agency may acquire or use new or existing military equipment and engage in other specified activities; and

WHEREAS, the Watsonville Police Department currently has military equipment (of which term is defined in Government Code section 7070(c)) in its inventory; and

WHEREAS, the Watsonville Police Department works closely with other local, county, state and federal law enforcement agencies within Santa Cruz County on police

related matters, including safeguarding the public's welfare and safety, working on regional task forces, conducting training exercises, and providing mutual aid and responding to emergencies; and

WHEREAS, in exigent circumstances, there is sometimes the need to deploy military equipment from or lend military equipment to outside entities to promote the safety and security of community members; and

WHEREAS, the continued collaboration with other law enforcement agencies in the deployment or other use of military equipment within the City is necessary to safeguard the public's welfare, safety, civil rights and civil liberties and there is no reasonable alternative that can achieve the same objective of officer and civilian safety;

WHEREAS, Watsonville Police Department - Policy 708 sets forth a military equipment use policy that is consistent with the Police Department's current practices, has been posted on the Department's website for at least thirty (30) days, complies with all the requirements of AB 481, will ensure ongoing regulation and compliance with the law going forward and will provide a means of community engagement and transparency regarding use of military equipment by the Department; and

WHEREAS, the City Council desires to approve a military use policy in compliance with AB 481.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. ENACTMENT.

Watsonville Police Department Policy 708 setting forth a military equipment use policy is hereby adopted.

Title 4 (Public Safety) of the Watsonville Municipal Code is hereby amended to add a new Chapter 13 entitled Military Equipment Use to read in words and figures as follows:

TITLE 4 PUBLIC SAFETY

“CHAPTER 13 MILITARY EQUIPMENT USE

Sec. 4-13.01 Name of Ordinance.

This Ordinance shall be known as the Military Equipment Use Ordinance.

Sec. 4-13.02 Definitions.

(a) “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 chapter.

(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 (ATV’s) and motorized dirt bikes are specifically excluded from this chapter.

(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 chapter.

(8) Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this chapter.

(9) Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this chapter.

(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.

(b) "City" shall mean any department, agency, bureau, and/or subordinate division of the City of Watsonville.

(c) "Police Department" shall mean any division, section, bureau, employee, volunteer and/or contractor of the Watsonville Police Department.

(d) "City Council" shall mean the governing body that is the Watsonville City Council.

(e) "Military Equipment Use Policy" shall mean a publicly released, written document that includes, at a minimum, all of the following:

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

(2) The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of Military Equipment.

(3) 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.

(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 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.

(6) The mechanisms to ensure compliance with the Military Equipment Use 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 Military Equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

(f) "Exigent Circumstances" shall mean 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.

(g) "State agency" shall mean 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.

(h) "Type" shall mean each item that shares the same manufacturer model number.

Sec. 4-13.03 Military Equipment Use Policy Requirement.

(a) The Watsonville Police Department shall obtain approval of the City Council, by a resolution adopting a Military Equipment Use Policy (MEUP) at a regular meeting of the City Council held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) prior to engaging in any of the following:

(1) Requesting Military Equipment made available pursuant to Section 2576a of Title 10 of the United States Code.

(2) Seeking funds for Military Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(3) Acquiring Military Equipment either permanently or temporarily, including by borrowing or leasing.

(4) Collaborating with another law enforcement agency in the deployment or other use of Military Equipment within the territorial jurisdiction of the City of Watsonville.

(5) Using any new or existing 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, Military Equipment.

(7) Acquiring 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 Military Equipment that was acquired prior to January 1, 2022, the Watsonville 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 Military Equipment, including by adoption pursuant to a Military Equipment Use Policy submitted pursuant to this code, within 180 days of submission of the proposed Military Equipment Use Policy to City Council, the Watsonville Police Department shall cease its use of the Military Equipment until it receives the approval of City Council in accordance with this code.

(c) In seeking the approval of City Council, the Watsonville Police Department shall submit a proposed Military Equipment Use Policy to the 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 Military Equipment at issue.

(d) The City Council shall only approve a Military Equipment Use Policy pursuant to this chapter if it determines all 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.

(e) In order to facilitate public participation, any proposed or final Military Equipment Use Policy shall be made publicly available on the internet website of the Police Department for as long as the Military Equipment is available for use.

(f) The City Council shall review this ordinance at least annually and vote on whether to renew it at a regular meeting held pursuant to the Ralph M. Brown Act (Chapter 9 commencing with Section 54950 of Part 1 of Division 2 of Title 5 of the California Government Code).

Sec. 4-13.04 Use in Exigent Circumstances.

(a) Notwithstanding the provisions of this Chapter, the Police Department may acquire, borrow and/or use Military Equipment in Exigent Circumstances without following the requirements of this code.

(b) If the Police Department acquires, borrows, and/or uses 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 Military Equipment Use 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 Military Equipment in the Police Department's next annual Military Equipment Report.

Sec. 4-13.05 Reports on the use of Military Equipment.

(a) The Police Department shall submit to City Council an annual Military Equipment Report for each type of Military Equipment approved by the City Council within one year of approval, and annually thereafter for as long as the Military Equipment is available for use.

(b) The Police Department shall also make each annual Military Equipment Report required by this section publicly available on its internet website for as long as the Military Equipment is available for use.

(c) The annual Military Equipment Report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of Military Equipment:

(1) A summary of how the Military Equipment was used and the purpose of its use.

(2) A summary of any complaints or concerns received concerning the Military Equipment.

(3) The results of any internal audits, any information about violations of the Military Equipment Use Policy and any actions taken in response.

(4) 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.

(5) The quantity possessed for each type of Military Equipment.

(6) If the law enforcement agency intends to acquire additional Military Equipment in the next year, the quantity sought for each type of Military Equipment.

(d) Within 30 days of submitting and publicly releasing an annual Military Equipment 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 Military Equipment report and the law enforcement agency's funding, acquisition, or use of Military Equipment.

(e) The City Council shall determine, based on the annual Military Equipment Report submitted pursuant to this section, whether each type of Military Equipment identified in that report has complied with the standards for approval set forth in this code and the Military Equipment Use Policy. If the City Council determines that a type of Military Equipment identified in that annual Military Equipment Report has not complied with the standards for approval, the City

Council shall either disapprove a renewal of the authorization for that type of Military Equipment or require modifications to the Military Equipment Use Policy in a manner that will resolve the lack of compliance.

SECTION 2. RECITALS.

The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (“CEQA”) pursuant to Section 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a “project,” as defined in Section 15378 of the CEQA Guidelines.

SECTION 4. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 5. PUBLICATION.

This ordinance shall be published in the Watsonville Register-Pajaronian and/or Santa Cruz Sentinel in compliance with the provisions of the Charter of the City of Watsonville.

SECTION 6. EFFECTIVE DATE.

This ordinance shall be in force and take effect thirty (30) days after its final adoption.
