



CITY COUNCIL AGENDA REPORT

Meeting Date: March 3, 2022
From: Lisa Macias, Police Chief
Subject: Adoption of a Military Equipment Use Policy

Recommendation:

City Council waive first reading and introduce (and then adopt on March 17) the attached uncodified ordinance adopting the Police Department's Military Equipment Use Policy in accordance with state law.

Background

On September 30, 2021, Assembly Bill 481 (AB 481), was signed in law, relating to the use of military equipment by law enforcement agencies. AB 481, codified at California Government Code sections 7070 through 7075, requires law enforcement agencies, prior to taking certain actions relating to the funding, acquiring or using military equipment, have the governing body of the local jurisdiction at a regular meeting held pursuant to open meeting laws, adopt, through an ordinance, a Military Equipment Use Policy.

California Government Code §7070(d) describes a Military Equipment Use Policy as 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.

California Government Code § 7070(c) defines Military Equipment as any of the following:

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.

Discussion

The Police Department has prepared and published the attached Military Equipment Use Policy, embodied in Police Department General Order 709. The Policy contains all the required elements of Government Code section 7070 (d) set forth above. California Government Code section 7071(b) requires that the Police Department post to its website the Military Equipment Use Policy that it plans to propose to City Council, at least 30 days prior to any public hearing concerning the policy, for any comments, questions or concerns from the public. The Police Department complied with this requirement by posting the policy being proposed this evening on our website on January 30, 2022. As of the time this agenda report is published, February 25, 2022, we have not received any comments,

questions or concerns from the public on the Policy. The Policy references two types of qualifying equipment.

Section One lists qualifying equipment that is owned and/or utilized by the Brisbane Police Department.

Section Two lists qualifying equipment that is not owned or regularly utilized by the Brisbane Police Department, but which is known to be owned and/or utilized by law enforcement units with which the Brisbane Police Department collaborates and/or participates for law enforcement purposes. The Brisbane Police Department participates in a regional Special Weapons and Tactics team, North Central Regional Response Team (NCR). NCR possesses and utilizes additional types of equipment that is not owned, purchased or maintained by the Brisbane Police Department but is included in the proposed Military Equipment Use Policy as it could be used in the City of Brisbane if NCR SWAT is deployed in extreme circumstances such as an active shooter incident, hostage situation and the execution of high-risk search and arrest warrants.

In order for the City Council to approve and adopt this Policy, the Council must make certain determinations as follows:

1. The military equipment identified in Brisbane Police General Order 709 is necessary because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.
2. Brisbane Police General Order 709 will safeguard the public's welfare, safety, civil rights, and civil liberties.
3. The military equipment identified in Brisbane Police Department General Order 709 is reasonably cost effective compared to available alternatives that can achieve the same objectives of officer and civilian safe.

In addition, pursuant to California Government Code 7070(d)(6), and in accordance with California Government Code 7072m, the Police Department is responsible for delivering to the City Council an Annual Military Equipment Report as a mechanism to ensure the Brisbane Police Department is in compliance with this Military Equipment Use Policy. The report will also assist the City Council in determining whether to approve, revise, or revoke components of the Military Equipment Use Policy for the subsequent year. The annual report will be made publicly available on the Police Department's website. The Annual Military Equipment Report will 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.

Moreover, pursuant to California Government Code §7070(d)(7), the proposed Military Equipment Use Policy also provides the avenues through which members of the public may register complaints, concerns or submit questions about the use of each specific type of Military Equipment in the policy. They can do so via email, physical mail or by phone to our designated Military Equipment Use officer, Commander Mario Garcia.

In addition, the Police Department will have on its website (under “Military equipment” policies and procedures concerning enforcement of the Ordinance and remedies for violations. For example, although there is no private right of action for 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 regarding the specific alleged violations of this Ordinance, if, following the submission of a violation, the City does not remedy a specific alleged violation within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. Moreover, if the City substantiates and then cures an alleged violation, the Police Department shall post a notice in a conspicuous manner on the Department’s website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If the City does not substantiate or cure an alleged violation and, in a subsequent court action the person or entity proves that the violation occurred as a result of arbitrary or capricious action by the City or an employee of the City acting in the employee’s official capacity, the Court may award to such person or entity reasonable attorney’s fees in an amount not to exceed \$15,000.

For the reasons set forth in this agenda report and in the Policy itself, Council may make these determinations and introduce ordinance X.XX (to be adopted on March 17) to approve and adopt the military equipment use policy as set forth in the Police Department’s General Order 709.

Fiscal Impact

There is no fiscal impact in adopting this ordinance and the military equipment use policy.

Lisa Macias

Lisa Macias, Police Chief

Clayton L. Holstine

Clay Holstine, City Manager

Attachments: Uncodified Ordinance Adopting a Military Equipment Use Policy
Brisbane Police Department General Order 709

ORDINANCE NO. X.XX

AN UNCODIFIED ORDINANCE OF THE CITY OF BRISBANE ADOPTING A MILITARY EQUIPMENT USE POLICY

The City Council of the City of Brisbane ordains as follows:

Section 1. Findings.

The City Council finds:

- A. On September 30, 2021, the Governor signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies.
- B. Assembly Bill 481, codified at California Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance adopting a “military equipment” use policy, at a regular meeting held pursuant to the open meeting laws, prior to taking certain actions relating to the funding, acquiring, or using military equipment. The term “military equipment” is defined in Government Code, section 7070.
- C. Assembly Bill 481 allows the governing body of the city to approve the funding, acquiring or using military equipment within its jurisdiction only if it makes certain specified determinations.
- D. The proposed military equipment use policy is found within the Brisbane Police Department General Order 709.
- E. Brisbane Police Department General Order 709 was published on the Brisbane Police Department’s internet website on February 2, 2022. The Brisbane Police Department General Order 709 was presented to the Brisbane City Council on March 3, 2022.
- F. The Brisbane Police Department General Order 709 meets the requirements of Government Code, Section 7070, subdivision (d).

Section 2. Determinations

Based on the findings above, in addition to information provided to the City Council at the public meeting, the City Council determines as follows:

1. The military equipment identified in Brisbane Police General Order 709 is necessary because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.
2. Brisbane Police General Order 709 will safeguard the public’s welfare, safety, civil rights, and civil liberties.
3. The military equipment identified in Brisbane Police Department General Order 709 is reasonably cost effective compared to available alternatives that can achieve the same objectives of officer and civilian safety.
4. Brisbane Police General Order 709 setting forth the City’s Military Equipment Use Policy is approved and adopted.

Section 3. Severability

- A. If any section, subsection, sentence, clause, phrase, or word of this Ordinance, 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 Ordinance.

- B. The City Council hereby declares that it would have passed this Ordinance 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 Ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 4. Effective Date.

This Ordinance shall be effective 30 days after its adoption.

Coleen Mackin, Mayor

The above ordinance was regularly introduced on March 3, 2022 and adopted on March 17, 2022 at a regular meeting of the City Council of the City of Brisbane by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

Approved as to form:



Thomas R. McMorrow, City Attorney

Military Equipment

709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the Department

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
 - Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).

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- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

709.2 POLICY

It is the policy of the Brisbane Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

709.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the department, or the equipment the department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of the Brisbane 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 MILITARY EQUIPMENT INVENTORY

Qualifying Equipment / Owned by the Brisbane Police Department:

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Equipment Name: Remington 870 Police Less Lethal Launchers and Kinetic Energy Munitions - CA Gov't Code §7070(c)(14)	
Quantity Owned/Sought: 1 owned	Lifespan: Approximately 15 years
Equipment Capabilities: The Less Lethal Remington 870 launcher is capable of firing 12 GA drag stabilized Impact Munitions, which are made a cotton material blend.	
Manufacturer Product Description: The Remington 870 is a single shot pump action shot gun that has the capability of deploying a 12 ga cotton blend impact projectile. The Remington 870 less lethal has been fitted with an orange stock to distinguish it to be a less lethal tool.	
Purpose/Authorized Uses: The Remington 870 Impact Munition are intended for use as a less lethal use of force option.	
Fiscal Impacts: The initial cost of this equipment was approximately \$500.00. The ongoing costs for munitions will vary and maintenance is conducted by departmental staff.	
Legal/Procedural Rules Governing Use: All applicable State, Federal and Local laws governing police use of force. Various Brisbane Police Department Policies on Use of Force and Crowd Control.	
Training Required: Officers must complete a department certified less lethal course as well as regular training and qualifications as required by law and policy.	
Other Notes: None.	

Qualifying Equipment known to be owned and/or utilized by law enforcement units with which the Brisbane Police Department collaborates and/or participates for law enforcement purposes

Equipment Name: Wheeled vehicles that have a breaching apparatus attached - CA Gov't Code §7070(c)(3)	
Quantity Owned/Sought: None (outside owned)	Lifespan: Unknown.
Equipment Capabilities: Capable of breaching doors, gates, and other points of entry.	
Manufacturer Product Description: Unavailable.	
Purpose/Authorized Uses: Breaching doors, gates, and other points of entry.	
Fiscal Impacts: None. Equipment owned, maintained, and operated by another agency.	
Legal/Procedural Rules Governing Use: Breaching vehicles can be deployed any time tactical operators determine that it is necessary to complete a lawful breaching. For a breaching to be lawful, it will generally need to be supported by a search or arrest warrant, or exigent circumstances.	
Training Required: The North County Regional SWAT Team provides internal training for staff members prior to allowing them to drive breaching vehicles.	
Other Notes: The Brisbane Police Department participates in the North County Regional SWAT Team (NCR SWAT). This equipment is owned and operated by NCR SWAT through the San Mateo Police Department. While the Brisbane Police Department does not own or operate this equipment, it could be used in Brisbane by NCR SWAT if they are deployed to an incident within city limits.	

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Equipment Name: Battering rams, slugs, and breaching apparatus that are explosive in nature - CA Gov't Code §7070(c)(7)	
Quantity Owned/Sought: None (outside owned)	Lifespan: Unknown.
Equipment Capabilities: Capable of breaching doors, gates, windows, and other points of entry.	
Manufacturer Product Description: Unavailable.	
Purpose/Authorized Uses: Breaching doors, gates, windows, and other points of entry.	
Fiscal Impacts: None. Equipment owned, maintained, and operated by another agency.	
Legal/Procedural Rules Governing Use: Breaching apparatus that are explosive in nature can be deployed any time tactical operators determine that it is necessary to complete a lawful breaching, and non-explosive breaching methods are not tactically practicable. For a breaching to be lawful, it will generally need to be supported by a search or arrest warrant, or exigent circumstances.	
Training Required: The North County Regional SWAT Team provides internal training for staff members prior to allowing them to use explosive breaching apparatus.	
Other Notes: The Brisbane Police Department participates in the North County Regional SWAT Team (NCR SWAT). This equipment is owned and operated by NCR SWAT through the San Mateo Police Department. While the Brisbane Police Department does not own or operate this equipment, it could be used in Brisbane by NCR SWAT if they are deployed to an incident within city limits.	

Equipment Name: Flashbang grenades, explosive breaching tools, tear gas and pepper balls - CA Gov't Code §7070(c)(12)	
Quantity Owned/Sought: None (outside owned)	Lifespan: Unknown.
Equipment Capabilities: Capable of breaching doors, gates, windows, and other points of entry, creating explosive distractions, and/or deploying tear gas or pepper chemical.	
Manufacturer Product Description: Unavailable.	
Purpose/Authorized Uses: breaching doors, gates, windows, and other points of entry, creating explosive distractions, and/or deploying tear gas or pepper chemicals.	
Fiscal Impacts: None. Equipment owned, maintained, and operated by another agency.	
Legal/Procedural Rules Governing Use: Breaching apparatus that are explosive in nature can be deployed any time tactical operators determine that it is necessary to complete a lawful breaching, and non-explosive breaching methods are not tactically practicable. For a breaching to be lawful, it will generally need to be supported by a search or arrest warrant, or exigent circumstances. Tear gas and pepper balls can only be deployed in accordance with all applicable State, Federal and Local laws governing police use of force, crowd control, etc.	
Training Required: The North County Regional SWAT Team provides internal training for staff members prior to allowing them to use any of these items.	
Other Notes: The Brisbane Police Department participates in the North County Regional SWAT Team (NCR SWAT). This equipment is owned and operated by NCR SWAT through the San Mateo Police Department. While the Brisbane Police Department does not own or operate this equipment, it could be used in Brisbane by NCR SWAT if they are deployed to an incident within city limits.	

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Equipment Name: Long Range Acoustic Device (LRAD) - CA Gov't Code §7070(c)(13)	
Quantity Owned/Sought: None (outside owned).	Lifespan: Unknown.
Equipment Capabilities: LRAD systems are a type of Acoustic Hailing Device (AHD) used to send messages over long distances. LRAD systems produce much higher sound levels (volume) than normal loudspeakers or megaphones. Over shorter distances, LRAD signals are loud enough to cause pain in the ears of people in their path.	
Manufacturer Product Description: LRAD systems are a type of Acoustic Hailing Device (AHD) used to send messages over long distances. LRAD systems produce much higher sound levels (volume) than normal loudspeakers or megaphones. Over shorter distances, LRAD signals are loud enough to cause pain in the ears of people in their path.	
Purpose/Authorized Uses: Can be used to disperse unlawful crowds and/or to disrupt the activities of person(s) who represent an immediate threat to others.	
Fiscal Impacts: None. Equipment owned, maintained, and operated by another agency.	
Legal/Procedural Rules Governing Use: LRADs can only be deployed in accordance with all applicable State, Federal and Local laws governing police use of force, crowd control, etc.	
Training Required: The North County Regional SWAT Team provides internal training for staff members prior to allowing them to use any of these items.	
Other Notes: The Brisbane Police Department participates in the North County Regional SWAT Team (NCR SWAT). This equipment is owned and operated by NCR SWAT through the San Mateo Police Department. While the Brisbane Police Department does not own or operate this equipment, it could be used in Brisbane by NCR SWAT if they are deployed to an incident within city limits.	

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 military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.

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- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

709.6 USE IN EXIGENT CIRCUMSTANCES

In exigent circumstances and with the approval of the Chief of Police or his/her designee, the Police Department may acquire, borrow and/or use Military Equipment that is not included in the Military Equipment Use Policy.

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:

- 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.
- 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.
- Include the Military Equipment in the Police Department's next annual Military Equipment Report.

709.7 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

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.