



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Consider Second Reading of Military Equipment Policy Ordinance; Ordinance 261-2022

MEETING DATE: 4/21/2022

SUBMITTED BY: Andrew White, Police Chief

PURPOSE OF REPORT: ☐ Information only ☐ Discussion ☒ Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to consider holding the second reading of a Military Equipment Policy governing the use of military equipment, as required by California Government Code Section 7070 et. seq, read it by title only and adopt the ordinance.

BACKGROUND/DISCUSSION:

On September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481 ("AB 481"), adding Chapter 12.8, "Funding, Acquisition and Use of Military Equipment", to Division 7 of Title 1 of the Government Code (sections 7070 – 7075), relating to the use of military equipment by California law enforcement. The law requires that agencies utilizing or seeking to acquire military equipment, as defined, must have a policy approved by the City Council by ordinance and review it annually thereafter.

The police department does not utilize former military equipment; however, the law's definition of "military equipment" is comprehensive and includes many items commonly used in law enforcement. The proposed policy identifies one item already owned by the City, a mobile command unit, and one item we intend to seek in the future, an unmanned aerial system (drone).

1. The mobile command unit, a converted ambulance, is used as a field command post for major incidents in the city. In recent years, these incidents have primarily been fires.
2. A drone would be utilized to enhance the Department's mission of protecting lives and property when other means and resources are not available or are less effective. Uses may include but are not limited to search and rescue, suspect apprehension, crime scene documentation, tactical operations, scene security, hazard monitoring, identification and mitigation, response to emergency calls, crisis communications and legally authorized surveillance.

The department utilizes mutual aid to obtain special weapons and tactics (SWAT) resources. Given the variety of agencies that could potentially respond, the proposed policy provides that those agencies are required to comply with their respective military equipment use policies. It is impractical to determine exactly what resources they may bring to a particular incident and restricting them in advance would unnecessarily jeopardize public safety.

The proposed policy was published to the Clearlake Police Department website and disseminated to City Council members on March 22, 2022.

OPTIONS:

1. Move to hold the second reading of Ordinance No. 261-2022, read it by title only, waive further reading and adopt ordinance
2. Other direction

FISCAL IMPACT:

☒ None ☐ \$ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☐ No If yes, amount of appropriation increase: \$

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

- ☐ Goal #1: Make Clearlake a Visibly Cleaner City
- ☒ Goal #2: Make Clearlake a Statistically Safer City
- ☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities
- ☐ Goal #4: Improve the Image of Clearlake
- ☐ Goal #5: Ensure Fiscal Sustainability of City
- ☐ Goal #6: Update Policies and Procedures to Current Government Standards
- ☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

1. Move to hold the second reading of Ordinance No. 261-2022, read it by title only, waive further reading and adopt ordinance.

☒ **Attachments:** 1) Ordinance No. 261-2022

ORDINANCE NO. 261-2022

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE CALIFORNIA ADOPTING A MILITARY EQUIPMENT USE POLICY

THE CITY COUNCIL OF THE CITY OF CLEARLAKE DOES HEREBY FIND AND RESOLVE AS FOLLOWS:

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481 ("AB 481"), adding Chapter 12.8, "Funding, Acquisition and Use of Military Equipment", to Division 7 of Title 1 of the Government Code (sections 7070 – 7075), relating to the use of military equipment by California law enforcement agencies;

WHEREAS, AB 481 seeks to provide transparency, oversight, and an opportunity for meaningful public input on decisions regarding whether and how military equipment is funded, acquired, or used;

WHEREAS, the Clearlake Police Department is in possession of certain items of equipment that qualify as "military equipment" under AB 481 and further intends to acquire other items of military equipment;

WHEREAS, AB 481 requires, inter alia, that a law enforcement agency possessing and using such qualifying equipment must prepare a publicly released, written, military equipment use policy document covering the inventory, description, quantity, purpose, capabilities, use, lifespan, acquisition, maintenance, authorized use, fiscal impacts, procedures, training, oversight, and complaint process, applicable to the Department's use of such equipment;

WHEREAS, the policy must be approved by the City Council by ordinance, and reviewed annually thereafter; and

WHEREAS, the military equipment inventoried and presented to the City Council is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;

WHEREAS, the proposed Military Equipment Use Policy ("Policy"), Exhibit A, will safeguard the public's health, welfare, safety, civil rights, and civil liberties;

WHEREAS, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety;

WHEREAS, prior military equipment use complied with the applicable equipment use policy (which included equipment now defined as military equipment) 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;

WHEREAS, the Police Department has submitted the proposed Policy to the City Council and thereafter has made those documents available on the Police Department's website for at least 30 days prior to the public hearing concerning the military equipment at issue;

WHEREAS, the Policy satisfies the requirements of Government Code Section 7070(d);

WHEREAS, the City Council of the City of Clearlake, having received the information required under AB 481 regarding the Clearlake Police Department's use of military equipment as defined in said law, deems it to be in the best interest of the City to and hereby does approve the Military Equipment Policy.

WHEREAS, all legal prerequisites prior to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CLEARLAKE HERBY ORDAINS AS FOLLOWS:

Section 1: Recitals. The City Council finds that all the recitals, facts, findings, and conclusions set forth above in the preamble of this Ordinance are true and correct.

Section 2: Approval of Military Equipment Policy.

Military Equipment Policy.

- (a) The Military Equipment Policy shall govern the use of military equipment by the Clearlake Police Department.
- (b) The Policy shall be made publicly available on the Police Department's website for as long as the military equipment is available for use or as otherwise ordained by the City Council.
- (c) The Police Department shall submit an annual military equipment report to the City Council containing the information required by Government Code Section 7072 and the City Council shall thereafter determine whether each type of military equipment identified therein complied with the standards for approval set forth in Government Code Section 7071(d).
- (d) The City Council shall on an annual basis and at a regular meeting thereof review this ordinance and vote on whether to renew it pursuant to Government Code Section 7071(e)(2).
- (e) The definitions set forth in Government Code section 7070 shall apply to this ordinance. Any provision of state law referred to herein shall mean and include any amended or successor provision thereof.

Section 3: Compliance with CEQA. Adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines because it is not a "project" and because it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment.

Section 4: Inconsistencies. Any provision of the Clearlake Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 5: Uncodified Ordinance. This Ordinance shall not be codified in the Clearlake Municipal Code unless and until the City Council so ordains.

Section 6: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 7: Effective Date. This Ordinance shall become effective thirty (30) days following from its adoption.

Section 8: Execution. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

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Passed and adopted this 5th day of May, 2022 by the following vote:

AYES:

NOES:

ABSENT OR NOT VOTING:

Mayor, City of Clearlake

ATTEST:

City Clerk, City of Clearlake

EXHIBIT A