



TOWN OF LOS GATOS
Staff Report

MEETING DATE: 04/05/2022

ITEM NO: 13

DATE: April 5, 2022
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Introduce an Ordinance Approving a Military Equipment Funding, Acquisition, and Use Policy Pursuant to Assembly Bill 481.

RECOMMENDATION:

Introduce an ordinance (Attachment 1) approving a military equipment funding, acquisition, and use policy (Attachment 2) pursuant to Assembly Bill 481 (Attachment 4).

BACKGROUND:

On September 30, 2021, Governor Newsom signed into law several major peace officer reform bills, including Assembly Bill 481 (AB 481). AB 481 was authored by Assemblymember David Chiu (D-San Francisco) to address the funding, acquisition, and use of items deemed to be "military equipment."

This bill requires law enforcement agencies, including the Los Gatos-Monte Sereno Police Department, "to obtain approval of the applicable governing body, by adoption of a military equipment use 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."

Furthermore, AB 481 requires similar approval for the continued use of "military equipment" acquired by the Los Gatos-Monte Sereno Police Department prior to January 1, 2022, and allows the governing body to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it determines that the military equipment meets specified standards.

PREPARED BY: Derek Moyer
Interim Operations Captain

Reviewed by: Town Manager, Assistant Town Manager, Police Chief, and Town Attorney

DISCUSSION:

AB 481 requires the governing body that oversees a law enforcement agency to approve an ordinance adopting a Military Equipment Use Policy at a regular meeting of the governing body held in accordance with the Brown Act (Attachment 4). The Assembly Bill has designated certain types of law enforcement equipment as "military equipment." Out of the fifteen categories of "military equipment" listed under AB 481, Los Gatos-Monte Sereno Police Department has items in four of the categories. These items include: a robot, an unmanned aerial vehicle (UAV), rifles and ammunition, noise flash diversionary devices, tear gas and munitions, and 40mm less lethal weapon and munitions (Attachment 3).

This Ordinance would add Article III to Chapter 21 of the Town Code governing the use of military equipment by the Police Department. In addition, the Ordinance outlines the Policy for military equipment funding, acquisition, and use pursuant to Assembly Bill 481. The Ordinance must be adopted before Los Gatos-Monte Sereno Police Department may request, seek funds, acquire, collaborate to deploy, use, or solicit a proposal for any type of military equipment. AB 481 outlines the requirements of the Police Department so that ongoing access to the items mentioned can continue and for the development of a future acquisition process and mandated transparency requirements. Los Gatos-Monte Sereno Police contracts with Lexipol, a public safety policy and training organization, for policy development and implementation. The proposed LGMSPD Policy 704-Military Equipment is based on a Lexipol policy and outlines purpose, scope, definitions, and categories deemed as military equipment (Attachment 2).

The Town's Ordinance must include certain standards of approval, including:

- A. The "military equipment" identified in Los Gatos-Monte Sereno Police Department Policy 704-Military Equipment is necessary because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.
- B. Los Gatos-Monte Sereno Police Department Policy 704 will safeguard the public's welfare, safety, civil rights, and civil liberties.
- C. The "military equipment" identified in Los Gatos-Monte Sereno Police Department Policy 704 is reasonably cost effective compared to available alternatives that can achieve the same objectives of officer and civilian safe.

In addition to posting the "military equipment" use policy on the law enforcement agency's website, each agency must submit an annual "Military Equipment" Report to the governing body detailing the equipment used in the preceding year. This report must include a summary of how the equipment was used, a summary of complaints received, the result of any internal audit and actions taken in response, the total annual cost and the quantity possessed of each type of "military equipment," and any additional equipment the agency intends to acquire in the next year.

DISCUSSION (continued):

Each year the governing body must review the annual report and determine whether each type of military equipment identified in that report has complied with the standards for approval set forth above and vote on whether to renew it, in accordance with Government Code Section 7071 (e)(2).

Los Gatos-Monte Sereno Police Department held a community outreach meeting to discuss AB 481 via zoom on March 29, 2022. Five members of the public and members of the press attended, asked questions, and provided comments. Comments continue to be welcome on the proposed Ordinance. The proposed Ordinance, LGMSPD Policy 704, and the detailed list of existing military equipment are posted on the Police Department website.

CONCLUSION:

It is recommended that the Town Council introduce the Ordinance to approve and adopt the Military Equipment Use Policy including the Los Gatos Police Department's Policy 704.

ALTERNATIVES:

If this ordinance is not approved, Los Gatos-Monte Sereno Police Department will cease the use of equipment designated by AB 481 as military equipment on April 30, 2022. Los Gatos-Monte Sereno Police Department will be required to redesign policies, procedures, and operations for critical incident response. This would include the Department's ability to provide and receive mutual aid, address an immediate threat, or have a more expansive de-escalation option. Public safety may be negatively impacted with diminished access to the resources currently in the Police Department's inventory. For these reasons, staff is not recommending this alternative.

FISCAL IMPACT:

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

Attachments:

1. Ordinance
2. LGMSPD Lexipol Policy 704 (Exhibit A to the Ordinance in Attachment 1)
3. AB 481 Defined list of Military Equipment in LGMSPD Possession (Inventory).
4. Assembly Bill 481