

STAFF REPORT

DATE: May 10, 2022
TO: City Council
FROM: Mike Webb, City Manager
Kelly Stachowicz, Assistant City Manager
SUBJECT: Police Accountability Commission and AB 481 (Military Ordinance)

Recommendation

1. Review the Police Accountability Commission's recommendation regarding the Military Ordinance.
2. Direct staff to include past usage information in the annual review process to begin next year.
3. Approve second reading to adopt the ordinance as presented.

Fiscal Impact

The Commission's recommendation does not have a direct fiscal impact, other than the staff time it would take to compile and analyze the requested information.

Council Goal(s)

Ensure a safe, healthy, equitable community

Commission Input

On May 2, the Police Accountability Commission discussed the City's proposed ordinance to comply with AB 481 regarding the use of military equipment. This report is a direct result of the discussion at that meeting.

Background and Analysis

At the April 19 City Council meeting, the City Council introduced an ordinance intended to comply with AB 481. This ordinance guides the City's purchase of new equipment designated as "military equipment" as well as the continued use of military equipment previously in the City's possession. The staff report that further explains the proposed ordinance can be found [here](#).

At the May 2 Police Accountability Commission meeting, the Commission discussed the Ordinance. They acknowledged that the Council has approved for the Commission to have an annual review/recommendation role, and appreciate that responsibility.

However, they expressed concern that there was not enough time for them or for the public to review the ordinance. They also had questions about some of the specifics of

the ordinance, in particular focusing on the past use of the equipment. Several commissioners felt that understanding the past usage of the equipment would assist them and subsequently the City Council in understanding whether the amounts or numbers of equipment in the city's current inventory was the right amount.

The Commission ultimately made the following motion:

Commissioner Morgan Poindexter moved, with a second by Commissioner Abram Jones, to recommend to the City Council that they request usage data for each item and have the Police Chief respond with information prior to the approval of the ordinance. The motion passed unanimously.

The Commission also recommended that the Council wait until the PAC could receive answers and weigh in before passing the ordinance.

Council Options

The Council has the following options:

1. **Adopt the ordinance with a second reading on May 10.** In this case, Council would be acknowledging and agreeing with future use of equipment as listed in the ordinance. Passing the ordinance allows the City to use the approved equipment as listed. Should the City want to add new pieces of equipment to the inventory, a public process would need to be followed, as is outlined in the legislation and the ordinance. Whether a piece of equipment has been used in the past does not necessarily have bearing on whether it might need to be used in the future. And given that these are resources the City already owns, staff does not recommend disposing of existing equipment.

If the Council wanted to exercise this option while still considering the PAC's recommendation, the Council could request that usage information be brought forward during next year's review/renewal of the ordinance as part of the information under review. Council could choose at that point (or any point in the future) to limit the number or types of equipment the City is allowed to use.

2. **Direct staff to gather the requested information and bring it back to the Council (and PAC, if Council directs) prior to adopting the ordinance.**

If Council chooses this option, then staff would gather data and information on past usage data. The Council (and the PAC, if directed) would review the data and make recommendations as to whether to adjust the number or type of equipment owned by the Police Department.

This option would push final approval of the ordinance to a later date while staff researched information and put together an analysis. This is legal, but it does pose challenges for our mutual aid partnerships while we have the Ordinance in flux.

3. Opt not to implement the ordinance, which means the City would need to halt any use of military equipment by the Police Department.

The Council could decide not to pass the ordinance, which means that the City would no longer be allowed to use any of the equipment listed in AB481. Staff does not recommend this option for the myriad reasons outlined in the staff report and presentation to the City Council on April 19.

Attachment

1. Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS ADOPTING A MILITARY EQUIPMENT USE POLICY AND APPROVING THE USE, ACQUISITION, AND SEEKING OF FUNDING FOR MILITARY EQUIPMENT

WHEREAS, California Government Code § 7071 (a)(1) requires a law enforcement agency 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; and

WHEREAS, No later than May 1, 2022, a law enforcement agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2022, shall commence a governing body approval process in accordance with the Government Code; and

WHEREAS, If the governing body does not approve the continued use of military equipment, including adoption of a Military Equipment Use Policy the law enforcement agency shall cease its use of the military equipment until it receives the approval of the governing body; and

WHEREAS, California Government Code § 7072 (a) requires the governing body to annually review the ordinance and to either disapprove a renewal of the authorization for a type, as defined, of military equipment or amend the Military Equipment Use Policy if it determines, based on an annual military equipment report prepared by the law enforcement agency, as provided, that the military equipment does not comply with described standards for approval; and

WHEREAS, The Davis Police Department uses military equipment, as now defined by State law; and

WHEREAS, The Davis Police Department desires to continue using military equipment and/or collaborate with other law enforcement agencies in using military equipment, as now defined by State law.

NOW, THEREFORE, the City Council of the City of Davis does hereby ordain as follows:

SECTION 1. Findings.

On April 19, 2022, the City Council considered the adoption of this Ordinance at a public meeting, and on the basis of the record thereof finds the following facts to be true:

- A. 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 open meeting laws, prior to taking certain actions

relating to the funding, acquisition, or use of military equipment. The term “military equipment” is defined in California Government Code section 7070(c).

- B. Assembly Bill 481 allows the governing body of a city to approve the funding, acquisition, and/or use of military equipment within its jurisdiction only if it makes specified findings.
- C. The proposed Davis Police Department military equipment use policy is titled Policy & Procedure 3.22-A “Military Equipment” and is within the Davis Police Department Policy Manual.
- D. Davis Police Department Policy & Procedure 3.22-A “Military Equipment”, along with a list of current “military equipment,” was provided to the Davis City Council and was published on the Davis Police Department’s internet website in accordance with State law.
- E. Davis Police Department Policy & Procedure 3.22-A “Military Equipment” meets the requirements of California Government Code section 7070(d).

SECTION 2. Determinations.

Based on the findings above, in addition to information provided to the City Council at the public meeting on April 19, 2022, the City Council determines as follows:

- A. The “military equipment” (as defined by California Government Code section 7070(c)) identified in Davis Police Department Policy & Procedure 3.22-A “Military Equipment” section II., I. is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;
- B. The Policy & Procedure 3.22-A “Military Equipment” will safeguard the public’s welfare, safety, civil rights, and civil liberties;
- C. The current “military equipment” identified in section II., I. of Policy & Procedure 3.22-A “Military Equipment” and the purchasing of any future “military equipment” on the list of approved “military equipment” (as defined by California Government Code section 7070(c)) is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety;
- D. Prior “military equipment” use complied with the use policy that was in effect at the time;
- E. Davis Police Department Policy & Procedure 3.22-A “Military Equipment” is approved and adopted and the City Council authorizes the use, acquisition, and seeking of funds for all “military equipment” listed in section II., I. and as defined by California Government Code section 7070(c) and Policy & Procedure 3.22-A “Military Equipment”.

F. Future acquisition of “military equipment” and/or modifications to the Davis Police Department Policy & Procedure 3.22-A “Military Equipment” will require further City Council authorization.

SECTION 3. Certification.

The City Clerk shall certify to the adoption of this Ordinance and shall cause the same or a summary thereof to be published as required by law.

SECTION 4. Severability.

If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. Effective Date.

This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

INTRODUCED on the 19th day of April, 2022, and **PASSED AND ADOPTED** by the City Council of the City of Davis on this ____ day of _____, 2022, by the following vote:

AYES:

NOES:

Gloria Partida, Mayor of the City of Davis

ATTEST:

Zoe S. Mirabile, CMC,
City Clerk of the City of Davis