



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 22-809

Meeting Date: 7/19/2022

TITLE:

AN ORDINANCE TO ADOPT AN EQUIPMENT USE POLICY GOVERNING THE USE OF SPECIFIED EQUIPMENT PURSUANT TO CALIFORNIA ASSEMBLY BILL (AB) 481.

DEPARTMENT: POLICE DEPARTMENT

PRESENTED BY: RONALD LAWRENCE, CHIEF OF POLICE

CONTACT INFORMATION: JASON CHAMNESS 714-754-5354

RECOMMENDATION:

Staff recommends the City Council to:

1. Hold a public hearing and introduce and give first reading to an Ordinance approving an amended AB 481 Equipment Use Policy.
2. Authorize the City Manager, or her designee, to work with the City Attorney's Office to execute any and all documents necessary to acquire and finance/purchase a new armored rescue vehicle for the Police Department approved in the FY 2022-23 Budget.

BACKGROUND:

Assembly Bill 481 (AB 481), codified at Government Code sections 7070 through 7075 requires a law enforcement agency to obtain approval from the applicable governing body via ordinance, adopting a "military equipment" use policy, prior to the agency funding, acquiring, or using equipment identified under AB 481.

AB 481 became law as of January 1, 2022. Per AB 481, law enforcement agencies are now required to first obtain approval for the policy content from their respective governing body. After enacting the ordinance adopting the policy, law enforcement agencies are further required to submit an annual report to the governing body for as long as the equipment is available for use. Agencies must also hold at least one community engagement meeting within 30 days of submitting and publicly releasing the annual report. Finally, agencies are required to attach an AB 481 equipment inventory to the policy. Agencies seeking to continue using AB 481 equipment acquired prior to January 1, 2022, had until May 1, 2022 to commence the governing body approval process described by the statute.

Staff commenced this process in March 2022 and the AB 481 Equipment Use Policy was submitted to the City Council and posted on the Costa Mesa Police Department's (CMPD) website for public review on April 21, 2022. City Council conducted a first reading, with a public hearing, of an Ordinance adopting the AB 481 Equipment Use Policy on June 7, 2022. Subsequent to this first reading and public hearing, the CMPD determined that there was a need to amend the policy with

respect to certain equipment.

CMPD submitted the amended AB 481 Equipment Use Policy to City Council and posted it on the CMPD website for public review on June 15, 2022. The CMPD requests that City Council introduce and give first reading to the attached Ordinance approving the amended AB 481 Equipment Use Policy - Policy 706, in order to allow CMPD to continue to use the vital equipment specified therein.

ANALYSIS:

Items deemed to be AB 481 equipment are used as a component of overall best practices for law enforcement agencies throughout the country. These tools have been tested in the field and are used by law enforcement agencies to enhance both citizen safety and officer safety. Loss of these items would jeopardize the welfare of citizens and peace officers within the CMPD.

The term “military equipment,” as used in AB 481, in fact does not necessarily indicate equipment that has been used by, or obtained from, the military. Pursuant to AB 481, items deemed to be “military equipment” include, but are not limited to, unmanned aerial or ground vehicles, armored vehicles, command and control vehicles, specialized firearms and ammunition to include assault weapons, less lethal 40mm projectile launchers, long range acoustic devices, flashbangs, “tear gas,” and pepper balls.

CMPD is committed to using the most up to date tools and equipment to safeguard the citizens of Costa Mesa. Many of the items deemed to be AB 481 equipment are in fact employed by CMPD, and law enforcement agencies across the country, in order to specifically reduce risk to community members. These items provide peace officers with the ability to safely resolve volatile situations which otherwise might rise to the level of a lethal force encounter. To that end, the items at issue in this report, and accompanying AB 481 Equipment Use Policy, also provide CMPD’s peace officers with vital tools that facilitate compliance with its stringent use of force policy.

Other items deemed to be AB 481 equipment include foundational equipment such as rifles. These rifles allow peace officers to address lethal threats from a greater distance and with greater precision.

There is significant interest in ensuring that law enforcement continues to have access to equipment that will provide peace officers as many options as possible to safeguard lives, ensure safety, and protect civil liberties. The use of the tools identified below are vital to CMPD’s mission and will continue to be strictly regulated through internal processes and oversight.

The proposed ordinance seeks to approve the CMPD’s Policy 706 which constitutes CMPD’s AB 481 Equipment Use Policy. Policy 706 outlines each item responsive to Government Code section 7070. Policy 706 also includes a list of equipment deemed “military” under AB 481, including information regarding the description, cost, quantity, capabilities, purpose, authorized use, lifespan, fiscal impact, training, and legal and procedural rules for each item. A majority of these particular items, and their stated uses, have been in place prior to the implementation of AB 481. Future acquisitions of any item deemed to be “AB 481 Equipment” not contained in this policy will require a further public meeting, policy update, and council approval.

Each item’s necessity is further described below:

Unmanned remotely piloted powered aerial vehicle: Unmanned aerial systems (UAS) are necessary

as they provide visibility to high-risk locations. Without the use of a UAS, peace officers would have to physically deploy to high-risk locations which would increase the risk to the officers and members of the public. The UAS system is designed to enter small spaces, such as enclosed structures, as well as to provide overhead observations of wooded areas and other structures located in often times crowded spaces. There are no known alternatives which could be used to safely access these locations.

Unmanned remotely controlled ground vehicle: Unmanned ground robots are used for reconnaissance during critical incidents to assist in providing visibility in areas where it would be unsafe to send a peace officer. This system can also be used to defuse or move potentially hazardous items. Not having access to this item would require the use of peace officers to engage in high-risk tasks. There is no known alternative to this system.

Armored Rescue Vehicles (ARV): Armored Rescue Vehicles are used to provide ballistic protection to officers and citizens during rescue, critical incidents, and other hazardous situations. These vehicles allow officers closer access to high-risk situations while substantially reducing the physical risk to the officers and citizens. These vehicles are built on commercial vehicle chassis and are primarily a reinforcement of civilian commercial vehicles. As such, there are no reasonable alternatives to providing the same level of ballistic protection.

Command and control vehicles: The mobile command vehicle (MCV) is an unarmored vehicle equivalent to a commercial recreational vehicle. It is equipped with specific communication and audio-visual devices to assist in command and control of a critical incident. This vehicle allows for mobile incident command and use of the Incident Command Systems facilitating the best possible on scene decision-making by key leaders. It provides for mobility, sheltering, and logistical support. There is no known alternative for the MCV which provides the same amount of mobility and support at one location in a quick deploying package.

Breaching shotgun and slugs: Breaching shotguns are used to defeat locked, barricaded, or fortified locations allowing officers to conduct rescues or high risk forcible entries. This includes but is not limited to, rescuing hostages. These items allow peace officers to quickly enter a structure when time is of the essence. This may include but is not limited to, an active shooter or kidnapping situation. In such situations, time is of the essence and it would not be feasible to delay access to the structure. There are alternatives which are used for low risk and/or non-fortified situations. This includes handheld battering rams. However, this alternative does not afford the same level of protection or speed that such equipment provides when necessary. As such, there is no reasonable alternative to these items when they are used and required.

Specialized firearms and ammunition including assault weapons: Patrol rifles, and Special Weapons and Tactics (SWAT) rifles enable officers, when in compliance with the CMPD's Use of Force Policy, to address medium to long distance threats, or those threats who are heavily armed, armored or both. Further, in both short and long-distance deployments, they allow officers' precision shot placement minimizing the risk to officers and innocent citizens. There are no known alternatives to these weapons that will provide the same level of distance or precision.

Noise Flash Diversionary Device (NFDD): NFDDs are used as a distraction device in order to disorient or divert the suspect's attention away from officers. This can allow officers to gain safer access to a high-risk situation, giving extra time to assess and analyze existing threats. This can

prevent injury to officers and citizens. These devices can often lead to a safer resolution and allow officers to take a citizen into custody without force. There is no known alternative to a flashbang when it is necessary.

Tear gas and pepper ball: Tear gas and pepper ball are less lethal methods used to address violent or riotous crowds when there is a risk of physical safety. They are also used to safely extract a suspect from a fixed location or safely detain a suspect who poses a risk of violence to officers. Tear gas allows peace officers to deploy a less lethal chemical agent into a structure where other weapons would not be capable of doing so. These weapons are less lethal and afford peace officers an added option to avoid lethal force encounters. When these items are reasonable and necessary for use, there is no other alternative.

Long Range Acoustic Device (LRAD): The LRAD is used in situations necessary to address the public. It can also be used as a safe deterrent against hostile crowds or individuals. This device is only used when standard sound amplification equipment is not sufficient to provide adequate range or capability needed. There is no reasonable alternative that would suffice in situations where the LRAD is necessary.

40mm projectile launchers and munitions: The 40mm launcher and munitions affords the ability to use less lethal impact and chemical munitions. This allows officers to address a threat from a greater distance and provides an alternative option for deadly force when reasonable. The beanbag shotgun also allows officers to confront a potentially armed or dangerous suspect at a longer distance. This can potentially prevent a deadly force encounter. When necessary, there is no alternative to these less lethal weapon systems.

POLICE SWAT VEHICLE ACQUISITION AND LEASE AGREEMENT

The FY 2022-23 Adopted Budget includes an estimated debt service payment for the acquisition of one Police SWAT Vehicle. Staff is requesting City Council approval to enter into a purchase agreement of one (1) BearCat swat vehicle with Lenco Armored Vehicles, and authorize the City Manager, or her designee, to enter into any and all documents necessary to finance the purchase of the police vehicle to enhance and modernize the public safety and emergency response.

The annual debt service payment for the lease of the BearCat vehicle is included in the FY 2022-23 Non-Departmental budget. Interest rates fluctuate on a daily basis and final lease financing rates and costs will be determined prior to the close of escrow. Staff recommends the lease purchase of the police vehicle plus required equipment and fixtures totaling an estimated \$400,000 through a five-year lease agreement. Based on the current estimated interest rate of 2.00 percent, the annual debt payment is estimated at \$84,000. Please note the interest rate may be subject to change based on market conditions at the time of close of escrow.

City Council authorization is requested to authorize the City Manager, or her designee, to work with the City Attorney to enter into a Master Lease Agreement to finance the purchase of the new apparatus in terms favorable to the City. The new BearCat is expected to be delivered to the City in mid-2023 given the minimum 12-month time period that is required to construct a vehicle of this type.

ALTERNATIVES:

There are no reasonable alternatives to approval of the ordinance. CMPD has not discovered alternative items that can achieve the same objectives of civilian and officer safety. Failure to adopt the ordinance and policy will preclude CMPD's use of all the identified equipment.

FISCAL REVIEW:

This item does not have a financial impact.

LEGAL REVIEW:

The City Attorney's Office prepared the ordinance and has reviewed this report and approved it as to form.

CITY COUNCIL GOALS AND PRIORITIES:

This item supports the following City Council Goal:

- Strengthen the public's safety and improve the quality of life.

CONCLUSION:

Staff recommends the City Council:

1. Hold the required public hearing and introduce and give first reading to an Ordinance approving an amended AB 481 Equipment Use Policy.
2. Authorize the City Manager, or her designee, to work with the City Attorney's Office to execute any and all documents necessary to acquire and finance/purchase a new BearCat vehicle for the Police Department approved in the FY 2022-23 Budget.