ORDINANCE NO. 2022-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, ADOPTING AN AB 481 EQUIPMENT USE POLICY OF THE CITY OF COSTA MESA, CALIFORNIA GOVERNING THE USE OF MILITARY EQUIPMENT

THE CITY COUNCIL OF THE CITY OF COSTA MESA 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 equipment identified by the state as "military equipment" (hereinafter referred to as "AB 481 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 AB 481 equipment is funded, acquired, or used;

WHEREAS, the Costa Mesa 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 that fall under this definition;

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 (hereinafter referred to as the "AB 481 Equipment Use Policy") covering the, 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 AB 481 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 AB 481 Equipment Use Policy ("Policy") 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 AB 481 equipment use complied with the applicable equipment use policy (which included equipment now defined as military equipment) that was in effect at the time;

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 AB 481 equipment at issue;

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

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

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

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA 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 AB 481 Equipment Use Policy.

AB 481 Equipment Use Policy.

(a) The AB 481 Equipment Use Policy shall govern the use of AB 481 equipment by the Costa Mesa Police Department.

(b) The Policy shall be made publicly available on the Police Department's website for as long as the AB 481 equipment is available for use or as otherwise ordained by the City Council.

(c) The Police Department shall submit an annual AB 481 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 AB 481 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 Costa Mesa 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 Costa Mesa 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 its adoption.

Section 8: Certification. The City Clerk shall certify the adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

APPROVED AND ADOPTED on this 2nd day of August, 2022.

John Stephens, Mayor

ATTEST:

Brenda Green, City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, Brenda Green, CITY CLERK of the City of Costa Mesa California, do hereby certify that the foregoing ordinance was regularly introduced at a regular meeting of the City Council held on the 19th day of July, 2022, and adopted by the City Council of the City of Costa Mesa, California, at a regular meeting thereof held on the 2nd day of August, 2022, by the following vote of the City Council:

AYES: COUNCIL MEMBERS: CHAVEZ, GAMEROS, HARLAN, HARPER, REYNOLDS, MARR, AND STEPHENS.

NOES: COUNCIL MEMBERS: NONE.

ABSENT: COUNCIL MEMBERS: NONE.

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 3rd day of August, 2022.

Brenda Green, City Clerk