

ORIGINAL

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO. 1703

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NOVATO ADOPTING A POLICY FOR THE USE OF MILITARY EQUIPMENT BY THE NOVATO POLICE DEPARTMENT

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies; and

WHEREAS, Assembly Bill No. 481 (“AB 481”), codified as Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval from their governing body before requesting, funding, acquiring, using, or collaborating in the use of military equipment, as defined in Government Code section 7070; and

WHEREAS, any elected body that oversees a law enforcement agency with military equipment must adopt a military equipment use policy by ordinance at a regular meeting held pursuant to open meeting laws; and

WHEREAS, the elected body must make specific findings before approving a military equipment use policy; and

WHEREAS, the Novato Police Department’s proposed Military Equipment Use Policy (the “Policy”) is attached hereto as *Exhibit “A”* and incorporated herein by this reference; and

WHEREAS, the Policy was published on the Novato Police Department’s internet website on April 18, 2023 before the Policy was considered at a public hearing before the City Council on May 9, 2023; and

WHEREAS, the Policy meets the requirements of California Government Code section 7070, subdivision (d).

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF NOVATO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I: DETERMINATIONS

The City Council finds the recitals above are true and correct and incorporates them herein. Based on the recitals and the information provided to the City Council at the public hearing on the Policy, the City Council finds as follows:

1. The military equipment identified in the Policy is necessary because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.
2. The Policy will safeguard the public’s welfare, safety, civil rights, and civil liberties.

3. The military equipment identified in the Policy is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
4. All prior military equipment use complied with the City's policies that were in effect at the time.

SECTION II: ADOPTION OF POLICY

The Policy is hereby adopted.

SECTION III: IMPLEMENTATION

The City Council authorizes the Chief of Police to designate a Military Equipment Coordinator to implement the Policy.

SECTION IV. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Novato hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION V. PUBLICATION AND EFFECTIVE DATE

This ordinance shall be published in accordance with applicable provisions of law, by either:

publishing the entire ordinance once in a newspaper of general circulation, published in the City of Novato, within fifteen (15) days after its passage and adoption, or

publishing the title or appropriate summary in a newspaper of general circulation, published in the City of Novato, at least five (5) days prior to adoption, and a second time within fifteen (15) days after its passage and adoption with the names of those City Councilmembers voting for and against the ordinance; and

This Ordinance shall become effective thirty (30) days from and after the date of its passage.

SECTION VI. CEQA FINDINGS

This ordinance is exempt from the California Environmental Quality Act ("CEQA") under 14 Cal. Code Regs. Section 15061(b)(3) because it can be seen with certainty that there is no possibility that its adoption will have a significant adverse effect on the environment.

* * * * *

THE FOREGOING ORDINANCE was first read at a regular meeting of the Novato City Council on the 9th day of May, 2023, and was passed and adopted at a regular meeting of the Novato City Council on the 23rd day of May, 2023 by the following vote, to wit:

AYES: Councilmembers Eklund, Farac, O'Connor, Wernick
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers Milberg

Susan Wernick

Mayor of the City of Novato

Attest:

Jane McDowell

City Clerk of the City of Novato

Approved as to Form:

Gary B. Bell

City Attorney of the City of Novato

Military Equipment

710.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

710.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the Department.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

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710.2 POLICY

It is the policy of the Novato Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

710.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Novato Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 1. Publicizing the details of the meeting.
 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

710.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

[Insert attachment here]

710.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

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- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- (g) Acquiring military equipment through any means not provided above.

710.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any member in this jurisdiction unless the military equipment is approved for use in accordance with this policy. The Department shall make good faith efforts to ensure other jurisdictions providing services in the jurisdiction of the Department, including provision of mutual aid to this jurisdiction, shall comply with their respective military equipment use policies.

710.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

710.8 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.

