

FILE NUMBER: 2025-105

DATE: Tuesday, April 15, 2025

SUBJECT: San Diego Harbor Police Department Military Equipment Use Policy No. 712

DESCRIPTION: Ordinance Adopting San Diego Harbor Police Department Military Equipment Use Policy, No. 712, as Required by California Government Code Section 7071

EXECUTIVE SUMMARY:

California Government Code sections 7070 through 7075, by way of an amendment via Assembly Bill 481, requires law enforcement agencies, such as San Diego Harbor Police Department (Harbor Police), to annually obtain approval of the applicable governing body (Board of Port Commissioners), by adoption of a military equipment use policy prior to taking certain actions relating to the funding, acquisition, or use of military equipment, which are certain types of equipment specifically defined by the bill. Harbor Police is a unique law enforcement agency with several high value points of interest that justify the need for certain pieces of such equipment. The proposed Ordinance would readopt and reapprove San Diego Harbor Police Department Policy 712, Military Equipment, which establishes guidelines for the approval, acquisition, use and reporting requirements of military equipment that is crucial for Harbor Police to maintain public safety, all in accordance with Government Code section 7071.

RECOMMENDATION:

Adopt an Ordinance adopting San Diego Harbor Police Department Military Equipment Use Policy, No. 712, as required by California Government Code section 7071.

FISCAL IMPACT:

There is no fiscal impact caused by approval of this action.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

Harbor Police is a unique law enforcement agency due to its jurisdiction that spans over the water and land of the District's five member cities (San Diego, National City, Chula Vista, Imperial Beach, and Coronado) surrounding San Diego Bay and does not include

any residential areas. The jurisdiction also includes highly visible points of interest, such as the San Diego International Airport, North Island Naval Base, Naval Base San Diego, the San Diego Convention Center, and international ports of entry at the cruise ship and marine cargo terminals. Additionally, the Harbor Police supports US Coast Guard and Navy missions on water in and around San Diego Bay. Harbor Police's unique mission and jurisdiction warrants the inventory and use of some types of military equipment when responding to unpredictable and critical instances that demand the need of such equipment. In these instances, authorized use of military equipment is based on the analysis of factors including the totality of the circumstances, public safety, officer safety, civil rights, and information available at the time of use.

Passed in 2021, California Assembly Bill (AB) 481 amended portions of the Government Code, which now requires law enforcement agencies, such as Harbor Police, to obtain approval of the applicable governing body (Board of Port Commissioners), by adoption of a military use policy prior to taking certain actions relating to the funding, acquisition, or use of military equipment, which are certain types of equipment specifically defined by the bill.

Government Code section 7070 designates the following categories of items as military equipment:

- Unmanned, remotely piloted, powered aerial or ground vehicles;
- Mine-resistant ambush-protected vehicles or armored personnel carriers;
- High mobility multipurpose wheeled vehicles, 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 and utilize a tracked system instead of wheels for forward motion;
- 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;
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue handguns;
- Any firearm or firearm accessory that is designated to launch explosive projectiles;
- "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray;
- Taser Shockwave, microwave weapons, water cannons, and long-range acoustic devices;
- Projectile launch platforms and their associated munitions including 40mm projectile launchers, "bean bags," rubber bullets, and specialty impact munition weapons; and
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

In April 2022, the Board approved the District's first military equipment use policy in accordance with AB 481. This agenda recommends the Board conduct its annual review of the military equipment use policy. The annual evaluation allows the Board to determine

whether or not each piece of military equipment within the inventory is justified, given strong consideration to the public's welfare, safety, civil rights, and civil liberties. Attachment A is the Military Equipment Use Policy. Attachment B is the AB 481 Military Equipment List. Attachment C is the Annual AB 481 Usage Report: 2024.

The policy, and other attachments in this agenda item, describe the military equipment Harbor Police currently possess and intends to obtain, explains the allowable uses and need for such equipment, discusses the costs of such equipment, and processes to monitor the use of such equipment and any complaints related to such equipment. This information demonstrates that such equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety, that the policy will safeguard the public's welfare, safety, civil rights, and civil liberties, and the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety. Further, the equipment Harbor Police currently possesses has been used in accordance with the proposed policy.

Staff recommends the Board, based on its review, re-adopt the Military Equipment Use Policy. If approved, in accordance with AB 481 and the Government Code, Harbor Police will hold a community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment. This meeting will be scheduled after re-approval of the policy by the Board.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved this agenda, proposed policy, and ordinance, as presented, as for form and legality.

Environmental Review:

The proposed Board action, including without limitation adopting an ordinance for San Diego Harbor Police Department Military Equipment Use Policy, No. 712, as required by Government Code section 7071, does not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because there is not a potential to result in a direct or indirect physical change in the environment. Therefore, the proposed Board action is not subject to CEQA and no further action under CEQA is required.

The proposed Board action complies with Section 21 and 35 of the Port Act, which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or an exclusion finding is not required.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Magda Fernandez
Chief of Harbor Police

Attachment(s):

Attachment A: Military Equipment Policy 712

Attachment B: Port of San Diego Harbor Police AB 481 Military Equipment List

Attachment C: Port of San Diego Harbor Police Annual AB 481 Usage Report: 2024