

FW: Public Comments on agenda item 4.1 of City Council meeting on May 9, 2023

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Public Comments - item 4.1, military equipment annual report, San Jose City Council meeting on May 9, 2023.pdf;

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Subject: Public Comments on agenda item 4.1 of City Council meeting on May 9, 2023

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Dear Mayor and Councilmembers,

On behalf of the Santa Clara Valley Chapter of the ACLU of Northern California, I submit the attached letter, in pdf format, as public comments on agenda item 4.1, "Military Equipment Annual Report," of the San José City Council meeting to be held on May 9, 2023.

Thank you.

Sincerely,

Victor Sin
Santa Clara Valley Volunteer Chapter of the ACLU of Northern California

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Northern
California
Santa Clara Valley
Chapter

May 8, 2023

200 E. Santa Clara Street,
San José CA 95113

Re: Agenda item 4.1, “Military Equipment Annual Report,” of the San José City Council meeting on May 9, 2023

Dear Mayor and Councilmembers of the City of San José,

On behalf of the Santa Clara Valley Chapter of the ACLU of Northern California, I submit public comments on agenda item 4.1, “Military Equipment Annual Report,” of the City Council meeting to be held on May 9, 2023. We respectfully request that you reject the current Report until it is in full compliance with the requirements of Assembly Bill 481 as detailed below.

The Military Equipment Annual Report (“Annual Report”) does not fully comply with Assembly Bill 481, codified as Government Code Sections 7070 to 7075, in several ways. First, Attachment B of the Annual Report tabulates the information per *category* of equipment while the law mandates this listing be per *type* of equipment. California Government Code section 7072(a) requires that the “annual military equipment report shall, at a minimum, include the following information for the immediately preceding calendar year for each type of military equipment”. Section 7070(f)¹ defines “type” as “each item that shares the same manufacturer model number.” The groupings in Attachment B must be revised to comply with AB 481.

Furthermore, section 7072(a)(1) requires a “summary of how the military equipment was used and the purpose of its use.” The Annual Report states, “From July 1, 2022, through December 31, 2022, 82 entries were made into the Military Equipment Log. 66 or 81% of the entries indicated the uses were for police activity. 15 or 18% of the entries indicated the use was for training and 1 or 1% indicated the use was for a community event.” “Police activity” is overly broad and does not adequately disclose how the weapons were used. Furthermore, these descriptors do not describe the purpose of the use (e.g. hostage situation, search and rescue, crowd control, etc.) This information must be revised and reported by *type* of equipment as discussed above.

¹ All statutory references are to the California Government Code unless otherwise stated.

Section 7072(a)(4) also requires the reporting of the “total annual cost for each type of military equipment [. . .] and from what source funds will be provided for the military equipment . . .” The Annual Report again fails to follow the statutory definition of “type” of equipment and its cost reporting column is unclear whether personnel cost and training cost are included. For example, the Annual Report generally states: “The San Jose Police Department funds military equipment through its allocated operating budget and through grant programs at the state and federal level.” The report should tabulate the source of funding and the name of each grant program, if applicable, for each *type* of equipment.

We urge the City Council to not approve the Military Equipment Annual Report until it is revised and in full compliance with Assembly Bill 481 as outlined above.

In addition to the annual report, Assembly Bill 481 prescribes responsibilities for City Council to review and approve use policies for military equipment.² We encourage the City Council to take this opportunity not only to determine whether each type of military equipment has complied with the standards for reporting approval but to also review and update the Military Equipment Use Policy (“Use Policy”). The current Use Policy describes authorized military equipment use but not prohibitions. Phrases including “exigent circumstances” or “when deemed necessary”³ are used several times throughout Use Policy but are not further defined. We encourage the City Council to exercise their full authority under AB 481 to ensure compliance by law enforcement in the reporting and use of military weapons and equipment.

Thank you for your time and kind consideration.

Sincerely,

Victor Sin
Santa Clara Valley Volunteer Chapter of the ACLU of Northern California

² See Cal. Government Code § 7071(e)(1) (“The governing body shall review any ordinance that it has adopted pursuant to this section approving the funding, acquisition, or use of military equipment at least annually and, subject to paragraph (2), vote on whether to renew the ordinance at a regular meeting . . .”)

³ See, e.g., Attachment A of the Annual Report ON Long Range Acoustic Device (LRAD) stating “The high-pitched tone may be used for crowd control when deemed necessary by a Command Officer.” No further description of what conditions or factors determine necessity or protecting the public during First Amendment activities.