



COUNCIL AGENDA: 5/9/2023

ITEM: 4.1

FILE NO: 23-666

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: May 9, 2023

SUBJECT: Military Equipment Annual Report

Recommendation

As recommended by the Public Safety, Finance and Strategic Support Committee on April 20, 2023, accept the Annual Report on Military Equipment.

CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Police)

[Public Safety, Finance and Strategic Support Committee referral 4/20/2023 - Item (d)3]



Memorandum

**TO: PUBLIC SAFTEY, FINANCE AND
STRATEGIC SUPPORT COMMITTEE**

FROM: Anthony Mata

**SUBJECT: MILITARY EQUIPMENT ANNUAL
REPORT**

DATE: April 6, 2023

Approved

Date

4/11/2023

RECOMMENDATION

- (a) Accept the Annual Report on Military Equipment.
- (b) Cross-reference the Annual Report on Military Equipment to the May 9, 2023 City Council Meeting.

SUMMARY AND OUTCOME

Approval of this recommendation complies with the requirements of California law and the San José Municipal Code governing the funding, acquisition, use, and reporting of military equipment.

BACKGROUND

On September 30, 2021, the Governor approved Assembly Bill (AB) 481, thereby creating Chapter 12.8 in Title 1, Division 7 of the California Government Code regarding the funding, acquisition, and use of military equipment by law enforcement agencies. Chapter 12.8 requires that law enforcement agencies develop a military equipment use policy and obtain approval of the policy by their applicable governing body. It also requires that the law enforcement agency submit an annual military equipment report to its governing body, containing information about the quantity, use, and cost of military equipment maintained by the agency, as well as any complaints received by the agency about the use of such equipment.

At the June 21, 2022 City Council meeting, the Police Department brought forward and the City Council approved the San José Police Department's Military Equipment Guidelines. These guidelines set out policies and procedures for the funding, approval, acquisition, reporting, and use of military equipment and thus satisfy the requirement for a military equipment use policy per the Government Code. These guidelines can be found on the [Military Equipment Program](#) page of the San Jose Police Department's website, as required by law, and are also included with this

memorandum as Attachment A.¹ The Military Equipment Program website also contains other useful information to help the public understand this issue, including a detailed inventory of military equipment maintained by the Department.

During the City Council discussion of the Military Equipment Guidelines, questions arose as to whether additional restrictions on the use of military equipment were necessary, in addition to those included in the Guidelines. Staff responded by noting that in addition to the Military Equipment Guidelines, the San José Police Department Duty Manual establishes rules for the use of force in general as well as for the use of certain types of equipment. As part of the motion approving the Guidelines, the Council directed staff to return with more information regarding relevant Duty Manual provisions, in particular with reference to Long Range Acoustical Devices (LRADs). An LRAD is a high-power loudspeaker whose primary purpose is to provide notifications, instructions, or information. Some LRADs have the capability of being used as a sonic weapon, producing a non-lethal, non-kinetic tone or sound designed to irritate or incapacitate subjects.

In response to this direction, the Department drafted a new Duty Manual section, Section L 2703, which establishes rules for the use of LRADs. The Department informed the City Council of the creation of this Duty Manual section in an [informational memorandum](#) issued August 29, 2022.² In addition to section L 2703, it's important to note that other Duty Manual sections establish rules relevant to the use of Military Equipment, including the following:

- Section L 2305.1 through L 2305.3, which pertain to use of chemical agents or projectile impact weapons at first amendment activities or unlawful civil disturbances.
- Sections L 2600 through L 2647, which establish the Department's rules related to Use of Force.
- Section L 2609, Use of Chemical Agents
- Sections L 2629 and L 2630, Projectile Impact Weapons
- Section L 2640, Deployment of Carbines
- Section L 2701, Mine Resistant Ambush Protected (MRAP) Armored Vehicle
- Section L 2702, Unmanned Aircraft System (UAS)

The [Duty Manual](#) is available to the public on the Police Department's website.³

Also at the June 21, 2022 City Council meeting, the City Council amended Chapter 2.04 of Title 2 of the San Jose Municipal Code to add § 2.04.4030 to comply with Chapter 12.8 of the Government Code. San Jose Municipal Code § 2.04.4030 Subsection E requires the Police Department to submit an Annual Military Equipment Report to the City Council, containing the

¹ The Military Equipment Program page can be found at the following address:

<https://www.sjpd.org/records/documents-policies/military-equipment-program>

² The August 29, 2022 informational memorandum can be found at the following address:

<https://www.sanjoseca.gov/home/showpublisheddocument/89099/637976173747270000>

³ The San José Police Department Duty Manual is available on the Police Department website at the following address: <https://www.sjpd.org/home/showpublisheddocument/314/638161981357100000>

information required in the Government Code. This memorandum constitutes the Annual Military Equipment Report as required by the San José Municipal Code and the Government Code. Given that the Government Code requires that this report be accepted by the City's governing body, staff is recommending cross-reference of this report to the San José City Council.

ANALYSIS

This report provides summary information on the quantity, cost and use of military equipment over the past year. It also contains information on future anticipated acquisition of military equipment, complaints received by the Department related to the use of military equipment, and the source of funds used for military equipment.

Military Equipment Summary Matrix

Much of this information is compiled into the Military Equipment Summary Matrix included as Attachment B. California Government Code § 7070(c) breaks military equipment down into fourteen categories. Attachment B provides the following information for each of those fourteen categories:

- **Description:** Description of the kind of equipment included in each category.
- **Examples:** Specific examples of equipment items included under each category. Note that these examples are not an exhaustive list of all military equipment maintained by the Department. For a comprehensive list, please see the [Military Equipment Program](#) page of the Police Department website.
- **Quantity:** The quantity of equipment maintained by the Department in each category.
- **Cost:** The annual cost to operate and maintain the equipment in each category. The total annual cost of each type of military equipment in the Department's inventory is dependent on several factors, including but not limited to its frequency of use, cost and availability of parts or supply, maintenance costs, storage costs, upgrade costs, and training costs. The total estimated annual cost of possessing military equipment is **\$464,166.59** and is funded by the Police Department's operating budget.
- **Deployments:** The number of times equipment in each category was deployed. Additional information on how deployment is tracked is provided in the next section below.

In addition to the matrix described above, the body of this report includes additional contextual information regarding military equipment maintained by the Department.

Tracking of Deployment Data

As noted above, Attachment B provides information on the number of times military equipment in each category was deployed. This section provides background on how that data was collected, and provides additional detail regarding the deployment of Unmanned Aerial Vehicles (UAVs).

The Department began tracking military equipment use on July 1, 2022. The Department created a quick response (QR) code to access the Military Equipment Reporting Log to comply with reporting. A supervisor is directed to access the log to report the use of military equipment after a particular event. To prevent duplication, only one supervisor shall access the log per event. The log contains sixty-two potential entries for any given event, covering all the possible deployments of the Department's approved inventory of military equipment.

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.

A separate log was created to track UAV flights for police activity. UAV flights are tracked separately to capture more information about the flight and to comply with additional Police Department Policy and Federal Aviation Administration requirements. An authorized user, generally the pilot of the UAV, is directed to access the log via the QR code to record the event.

From July 1, 2022, through December 31, 2022, the Department logged 176 UAV flights. 170 of those flights were for police activity. The remaining six were training flights. UAVs fall under Category 1 (out of the fourteen categories of military equipment established in the Government Code.) As such, deployments of the UAVs are included within the total of Category 1 deployments shown in Attachment B.

Acquisition of Military Equipment

Attachment B provides information on the estimated annual cost to operate and maintain equipment in each category. This section provides an overview of the military equipment acquired over the past year and the cost of that acquisition.

On July 21, 2022, the MERGE Unit purchased 240, 40mm munitions. These munitions are considered Category 14 military equipment. The total price of the equipment was **\$6,511.31**

In December 2023, the Traffic Enforcement Unit purchased 9 short-barreled rifles. This is considered Category 10 military equipment. The total price of the equipment was **\$ 9,987.47**

During the months of July through November 2022, the Department's range purchased the following items with a total cost of approximately **\$500,329.92**:

- 10,000 rounds of the less lethal shotgun stun bag round at a cost of **\$58,000** (Category 14)
- 72 Oleoresin Capsicum (OC) flameless grenades at a cost of **\$3,735.12** (Category 12)
- 2976 rounds of the less lethal 40mm foam baton round at a cost of **\$74,400** (Category 14)
- 838k rounds of practice rifle ammunition at a cost of **\$364,194.80** (Category 10)

It should be noted there was a backlog in the resupply of ammunition due to the recent Covid-19 pandemic, resulting in increased shipment and cost.

The Bomb Squad / Unmanned Ariel System (UAS) Unit purchased a Brinc Lemur S UAV, bringing the total inventory to two. The purchase price was **\$8,999** with an ongoing estimated cost of **\$100**. This is Category 1 military equipment.

Acquisition totals are approximately **\$525,827.70**

Anticipated Acquisition of Military Equipment

When the Department brought forward the Military Equipment Guidelines to the City Council in June 2022, the Department indicated its intention to acquire two new pieces of equipment that meet the Government Code definition of military equipment. They include a Medevac vehicle for our Tactical Medical Officer program, classified as Category 3 military equipment, and a tracked armored vehicle, classified as Category 4 military equipment. With the Council's approval of the item in June 2022, these two items are now listed as inventory items that may potentially be acquired in the future.

These items have not yet been acquired, and funding for their acquisition is not yet in place. The total anticipated purchase price is approximately \$1,000,000, with ongoing annual costs of approximately \$13,000. The Department is evaluating funding options for this equipment on an ongoing basis, including evaluating opportunities for grant funding as they arise.

Source of Funds for Military Equipment

The San Jose Police Department funds military equipment through its allocated operating budget and through grant programs at the state and federal level. Any new funding request made to the Budget Office will be considered as part of the budget process, in the context of the City's overall fiscal condition and other departmental program priorities.

Complaints

Between July 1, 2022, and December 31, 2022, the San Jose Police Department received three complaints regarding the use or deployment of military equipment. Two complaints involved the deployment of a less-than-lethal stun bag shotgun. One was for its use against an individual and the other complaint involved displaying the weapon. The third complaint involved the deployment of a noise flash device, commonly known as a "flashbang." The complainant indicated the use of the noise flash device was a waste of taxpayer money and its use was the result of poor training.

The Department treats all complaints seriously and as such the Department's Internal Affairs Unit conducts investigations into alleged misconduct by Department members and is the entity tasked with investigating these complaints. The complaint involving the display of the stun bag shotgun was closed as unfounded after thorough review by the Internal Affairs Unit, meanwhile the other

two complaints remain open and under investigation. The Department itself did not initiate any investigations regarding violations of the military equipment use policy.

Law Enforcement Support Office Program Update

The Department currently participates in the Public Safety Procurement Program, also known as the Law Enforcement Support Office Program (LESO), which allows the United States Department of Defense to transfer excess property to other federal, state, and local law enforcement agencies to support law enforcement activities. Through the Program, the Police Department has previously been able to procure much-needed equipment, which would not otherwise have been possible due to budgetary constraints.

On December 12, 2022, the San Jose Police Department was authorized by City Council to continue participating in the LESO Program. The Department has not acquired any equipment through this program from July 1, 2022, through December 31, 2022.

EVALUATION AND FOLLOW-UP

The Department will continue to collect required information regarding military equipment maintained by the Department and will report on this information to the Public Safety, Finance and Strategic Support Committee and the City Council on an annual basis.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

This memorandum and the attached documents will be posted on the PSFSS Committee Agenda website for the April 20, 2022, PSFSS Committee meeting.

Additionally, as required by California Government Code § 7072, the Department will hold a well-publicized and conveniently located community meeting within 30 days of submitting and publicly releasing the annual military equipment report. This meeting will be an opportunity for the general public to discuss and ask questions regarding the annual military equipment report and the Department's funding, acquisition, or use of military equipment.

April 6, 2023

Subject: Military Equipment Annual Report

Page 7

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project under File No. PP17-008, General Procedure and Policy making resulting in no changes to the physical environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

ANTHONY MATA

Chief of Police

For questions, please contact Captain Brian Matchett at brian.matchett@sanjoseca.gov.

ATTACHMENTS

Attachment A: San José Police Department Military Equipment Guidelines

Attachment B: Military Equipment Summary Matrix