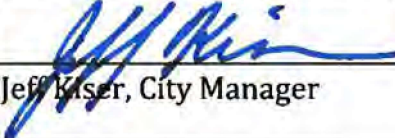


# AGENDA ITEM

**June 6, 2023, City Council Meeting**

**Approved for Submittal By:**

  
Jeff Kiser, City Manager

**To Be Presented By:**

  
Jon Poletski, Police Chief and Collin Bogener, City Attorney

To: Honorable Mayor and Members of the Anderson City Council  
Through: Jeff Kiser, City Manager  
From: Jon Poletski, Police Chief and Collin Bogener, City Attorney  
Date: June 6, 2023

## **SUBJECT**

Annual review of military equipment use ordinance pursuant to AB 481

## **RECOMMENDATION**

The Police Chief and City Attorney recommend that the City Council:

1. **Receive a Staff Report**
2. **Hold Community Engagement Meeting**
3. **Perform annual review of military equipment use ordinance and policy**

## **FISCAL IMPACT**

Fiscal impact is unknown at this time.

## **DISCUSSION and BACKGROUND**

In May of 2022, the Council approved a military equipment policy consistent with AB 481. AB 481 requires each law enforcement agency's governing body to adopt a written military use policy by ordinance in addition to other requirements by the bill. The following are required:

- Publish the draft military equipment use policy to the Police Department's website 30 days ahead of a public hearing to approve the policy.
- Obtain approval by the applicable governing body (Mayor and City Council), by adoption of a military equipment use policy prior to taking certain actions relating to the funding, acquisition, or use of military equipment, as defined. (See definitions below)
- Publish an annual report by the law enforcement agency to include each type of military equipment approved by the governing body.
- Annual review of the military equipment use ordinance by the governing body, and option to either disapprove a renewal of a type of military equipment or amend the military equipment use policy if it determines that the military equipment does not comply with standards for approval.
- Hold at least one well-publicized and conveniently located community engagement meeting within 30 days of submitting and publicly releasing the annual military equipment report.

This agenda item is to meet the annual obligation for the Council to review the ordinance and policy. The ordinance and the policy are attached to this staff report and have remained unchanged since last year. The annual report is being prepared by APD and the public meeting will be scheduled.

Per AB 481, the annual report must include the following items:

- (1) A summary of how the military equipment was used and the purpose of its use.
- (2) A summary of any complaints or concerns received concerning the military equipment.
- (3) The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
- (4) The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
- (5) The quantity possessed for each type of military equipment.
- (6) If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

In compliance with the annual requirements, APD provides the following report, which is also discussed in the updated policy:

- 1) The military equipment continues to be used for the same purpose as originally indicated in the initial report.
- 2) No complaints or concerns have been received regarding the military equipment.
- 3) APD conducted an internal audit and determined that no violations of the military equipment had occurred.
- 4) The total costs for the military equipment remains the same as in the original policy.
- 5) The quantity of military equipment remains the same as in the original policy.
- 6) APD does not intend to acquire additional military equipment in the next year.

It is also intended that the community engagement meeting, pursuant to Government Code section 7072(b), occur at this same time. Members of the community should be asked to provide feedback, if any, regarding the military use policy and annual report.

<b>ATTACHMENT</b>
-------------------

1. Military Equipment Ordinance
2. Military Use Policy

**ORDINANCE NO. 847**

**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANDERSON ADOPTING A POLICY TO PROVIDE GUIDELINES FOR THE APPROVAL, ACQUISITION AND REPORTING REQUIREMENTS FOR MILITARY EQUIPMENT**

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

**WHEREAS**, Assembly Bill 481, codified at Government Code sections 7070 through 7075, inclusive, and as applied to cities, requires local law enforcement agencies to obtain approval of a military equipment use policy prior to taking any action which supports the acquisition and use of military equipment; and

**WHEREAS**, Government Code section 7071 requires approval of a military equipment use policy by ordinance at a regular meeting of the City Council; and

**WHEREAS**, it further provides that the military equipment use policy must be made publicly available on the law enforcement agency's internet website for no less than thirty (30) calendar days prior to adoption of the same by ordinance; and

**WHEREAS**, subdivision (e) of Government Code section 7071 further requires that the City Council review any such ordinance at least annually after having considered the report required by Government Code section 7072; and

**WHEREAS**, the proposed military equipment use policy for the Anderson Police Department Policy 706, is attached and incorporated herein; and

**WHEREAS**, Anderson Police Department Policy 706 was published on the Anderson Police Department's internet website on April 19, 2022, and was provided to the City Council on the same day;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ANDERSON DOES ORDAIN AS FOLLOWS:**

**Section 1. Determinations and Orders.**

1. Anderson Police Department Policy 706 meets the requirements of subdivision (d) of Government Code section 7070 because substantial evidence in the record establishes that:

- A. Policy 706 is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; and
  - B. Policy 706 will safeguard the public's welfare, safety, civil rights and civil liberties; and
  - C. The equipment set forth in Policy 706 is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
2. Anderson Police Department Policy 706 is approved and adopted.
  3. The Chief of Police shall, no later than forty-five (45) days before the one (1) year anniversary of the adoption of this ordinance, produce the annual military equipment report required by Government Code section 7072, publish the same on the Anderson Police Department internet website, and provide the notice and public engagement required by subdivision (b) of Government Code 7072.
  4. The Chief of Police shall, after undertaking all actions set forth in Section 3, herein, agendaize consideration of the annual military equipment report for a regular meeting of the City Council no later than the one (1) year anniversary of the adoption of this ordinance.
  5. The Chief of Police shall, no later than eleven (11) months after the adoption of this ordinance cause consideration of an ordinance to renew this ordinance for an additional term of one (1) year to be agendaized for first reading.

**Section 2. 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 person or circumstance. The City Council of the City of Anderson 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 3.** The City of Anderson finds that this Ordinance is not a "project" according to the definition set forth in the California Environmental Quality Act ("CEQA"), and, pursuant to CEQA Guidelines sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect

physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment), the adoption of this ordinance is therefore not subject to the provisions requiring environmental review.


**I HEREBY CERTIFY** that the foregoing ordinance was introduced and read by the City Council of the City of Anderson at a regular meeting on the 3<sup>rd</sup> day of May, 2022, and was duly read and adopted at a regular meeting on the 17<sup>th</sup> day of May, 2022, by the following vote:

**AYES:** Councilmember Baugh, Neutze, Hunt, Gallagher and Mayor Browning.  
**NOES:** None.  
**ABSENT:** None.  
**ABSTAIN:** None.



**BARON BROWNING, Mayor**

**ATTEST:**



**CHRISTY WHITE, City Clerk**

## **706.1 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).

### **706.1.1 DEFINITIONS**

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

**Governing body** – The elected or appointed body that oversees the Anderson Police 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.

## **706.2 POLICY**

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

## **706.3 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:

- Acting as liaison to the governing body for matters related to the requirements of this policy.
- Identifying department equipment that qualifies as military equipment in the current possession of the Anderson Police Department, or the equipment the Anderson Police Department intends to acquire that requires approval by the governing body.
- Conducting an inventory of all military equipment at least annually.
- Collaborating with any allied agency that may use military equipment within the jurisdiction of Anderson Police Department (Government Code § 7071).
- Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
  - Publicizing the details of the meeting.
  - Preparing for public questions regarding the Anderson Police Department's funding, acquisition, and use of equipment.
- Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the Anderson Police Department's website (Government Code § 7072).
- 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.

## **706.4 MILITARY EQUIPMENT INVENTORY**

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

### **706.4.1 Unmanned Aerial Vehicle**

Quantity: 3

Capabilities: Sustained flight controlled by a remote pilot on the ground.

Expected Lifespan: 3 to 5 years

Product Description: Commercially available platforms for aerial productivity combining a configurability to work as a solution for a variety of industrial applications with flight safety and



data security features.

Purpose and Authorized Use: To assist police personnel in enhancing public safety while protecting the rights and privacy of the general public

Training Required: Federal Aviation Administration (FAA) Part 107 License and Department provided monthly training.

Initial Cost: \$ 8,000

Annual Cost: \$ 2,000

#### 706.4.2 Armored Vehicle (partial owner)

Quantity: 1

Capabilities: Mobile armored vehicle to support high-risk deployments

Expected Lifespan: 15 years.

Product Description: Ballistic Engineered Armored Rescue (BEAR) Vehicle, steel armor construction.

Purpose and Authorized Use: To assist police personnel in enhancing public safety while transporting first responder personnel and/or community members to/from high-risk situations. Provide a mobile platform for safe personnel deployments.

Training Required: Class B driver's license.

Initial Cost: \$40,000 (Partial Owner/SCSO)

Annual Cost: 0

#### 706.4.3 Rifles

Quantity: 19

Capabilities: Fires a lethal projectile.

Expected Lifespan: 20+ years.

Product Description: Patrol rifle of .223 or 5.56 caliber.

Purpose and Authorized Use: May be deployed in any circumstance where personnel can articulate a reasonable expectation that the rifle may be needed

Training Required: 16-hour POST approved course with qualification and annual training with requalification

Initial Cost: \$20,000

Annual Cost: \$1,500

#### 706.4.4 Tear Gas Munitions

Quantity: 8

Kinetic energy projectiles and chemical agents for crowd control purposes shall only be deployed

by officers who have received POST training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including an officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control (Penal Code § 13652).

Expected Lifespan: 5 years

Product Description: Chemical agent that is dispersed from a canister

Purpose and Authorized Use: Policy 428

Training Required: Training by POST certified chemical agent instructors.

Initial Cost: \$2,500

Annual Cost:

#### 706.4.5 Kinetic Energy Weapons

Quantity: 9

Capabilities: Kinetic energy projectiles and chemical agents for crowd control purposes shall only be deployed by officers who have received POST training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including an officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control (Penal Code § 13652).

Expected Lifespan: 10 years.

Product Description: Powder activated kinetic energy projectiles that are deployed from a less lethal shotgun.

Purpose and Authorized Use: Policy 428

Training Required: Training on safe use and deployment and device functionality.

Initial Cost: \$3,000

Annual Cost: \$200.00

#### 706.4.5 Tasers

Quantity: 25

Capabilities: The CED has limitations and restrictions requiring consideration before its use. The CED should only be used when its operator can safely approach the subject within the operational range of the device. Although the CED is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

Expected Lifespan: 7 years

Product Description: CED is a handheld weapon that uses cartridges that have wires attached to barbs that deliver conducted energy to a subject to control their resistance during an imminent threat.

**Purpose and Authorized Use:** The Conducted Energy Device is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. The appropriate use of such a device should result in fewer serious injuries to officers and suspects.

**Training Required:** Yearly

**Initial Cost:** \$16,000/

**Annual Cost:** \$16,000

## **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 Anderson Police 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):

- Requesting military equipment made available pursuant to 10 USC § 2576a.
- 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.
- Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- 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.
- Acquiring military equipment through any means not provided above.

## **706.5 COORDINATION WITH OTHER JURISDICTIONS**

Military equipment used by any member of this Department shall be approved for use and in accordance with this Department policy. Military equipment used by other jurisdictions that are providing mutual aid to this Department, or otherwise engaged in law enforcement operations in our jurisdiction, shall comply with their respective military equipment use policies in rendering mutual aid.

## **706.6 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 Anderson Police Departments' 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.

#### Complaints and Concerns

Staff reviewed department records and determined there were no complaints or concerns on the use of the equipment in 2022.

#### Internal Audit

The Department conducted an internal audit and determined that there were no violations of the military equipment use policy.

#### Intention to Purchase Additional Equipment 2023

The Department currently does not plan to purchase any new equipment that would fall under this policy in 2023.

### **706.7 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.