

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING SECTION 2.04.4030 TO CHAPTER 2.04 OF TITLE 2 OF THE SAN JOSE MUNICIPAL CODE TITLED “MILITARY EQUIPMENT USE POLICY” TO COMPLY WITH CALIFORNIA ASSEMBLY BILL 481 GOVERNING THE FUNDING, ACQUISITION, AND USE OF MILITARY EQUIPMENT BY LAW ENFORCEMENT AGENCIES

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill (“AB”) 481 (creating Government Code Section 7070, et seq.), relating to the funding, acquisition, and use of military equipment by California law enforcement agencies; and

WHEREAS, AB 481 seeks to provide transparency, oversight, and an opportunity for meaningful public input on decisions regarding whether and how military equipment is funded, acquired, or used; and

WHEREAS, the San José Police Department (“Police Department”) is in possession of certain items of equipment that qualify as “military equipment” under AB 481; and

WHEREAS, AB 481 requires that a law enforcement agency possessing and using such qualifying equipment must prepare a publicly released, written, military equipment use policy document covering the inventory, description, purpose, use, acquisition, maintenance, fiscal impacts, procedures, training, oversight, and complaint process, applicable to the Police Department’s use of such equipment; and

WHEREAS, the policy and supporting information must be approved by the governing body by ordinance, and reviewed annually; and

WHEREAS, the Council of the City of San José ("City"), having received the information required under AB 481 regarding the Police Department's use of military equipment as defined in said law, deems it to be in the best interest of the City to approve the Military Equipment Use Policy as set forth herein; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

A new section 2.04.4030 is added to Chapter 2.04 of Title 2 of the San José Municipal Code, to be numbered, entitled and to read as follows:

2.04.4030 Military Equipment Use Policy

A. The City Council has made the following determinations:

1. The military equipment inventoried and presented to the City Council is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;
 2. The proposed military equipment use policy ("Policy") will safeguard the public's welfare, safety, civil rights, and civil liberties;
 3. The equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety (if any); and
 4. Prior military equipment use complied with the applicable equipment use policy (which included equipment now defined as military equipment) that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.
- B. The Police Department has submitted a proposed Policy to the City Council and has made those documents available on the Police Department's website for at least 30 days prior to the public hearing concerning the military equipment at issue.
- C. The Policy was considered by the City Council as an agenda item in an open session of a regular meeting, noticed in accordance with the Ralph M. Brown Act, at which public comment was permitted.
- D. The Policy shall be made publicly available on the Police Department's website for as long as the military equipment is available for use.

- E. The Police Department shall submit an annual military equipment report to the City Council, containing the information required in Government Code Section 7072, and the City Council shall determine whether each type of military equipment identified in that report has complied with the standards for approval set forth in subsection (A) above.

- F. The City Council shall review this ordinance, and vote on whether to renew it, on an annual basis at a regular meeting, in accordance with Government Code Section 7071(e)(2).

- G. The City Council approves the proposed Policy, and finds that it satisfies the requirements of Government Code Section 7070(d).

PASSED FOR PUBLICATION of title this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk