

[Administrative Code - Funding, Acquisition, and Use of Certain Police Department Equipment]

Ordinance amending the Administrative Code to require Board of Supervisors approval of a policy governing for the funding, acquisition, and use of certain law enforcement equipment consistent with the criteria set forth in state law, and approving the Police Department's Use of Equipment Policy.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Background and Findings.

(a) On September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481 ("AB 481), requiring law enforcement agencies to obtain approval from their applicable governing body for the funding, acquisition, and use of certain law enforcement equipment.

(b) AB 481 requires the Police Department to obtain Board of Supervisors approval for use of certain existing equipment acquired prior to January 1, 2022. The list of covered law enforcement equipment includes:

(1) Unmanned, remotely piloted, powered aerial or ground vehicles.

(2) Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this category.

(3) High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a

1 breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and
2 motorized dirt bikes are specifically excluded from this category.

3 (4) Tracked armored vehicles that provide ballistic protection to their occupants
4 and utilize a tracked system instead of wheels for forward motion.

5 (5) Command and control vehicles that are either built or modified to facilitate
6 the operational control and direction of public safety units.

7 (6) Weaponized aircraft, vessels, or vehicles of any kind.

8 (7) Battering rams, slugs, and breaching apparatuses that are explosive in
9 nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram
10 designed to be operated by one person, are specifically excluded from this category.

11 (8) Firearms of .50 caliber or greater. However, standard issue shotguns are
12 specifically excluded from this category.

13 (9) Ammunition of .50 caliber or greater. However, standard issue shotgun
14 ammunition is specifically excluded from this category.

15 (10) Specialized firearms and ammunition of less than .50 caliber, including
16 assault weapons as defined in Sections 30510 and 30515 of the California Penal Code, with
17 the exception of standard issue service weapons and ammunition of less than .50 caliber that
18 are issued to officers, agents, or employees of a law enforcement agency or a state agency.

19 (11) Any firearm or firearm accessory that is designed to launch explosive
20 projectiles.

21 (12) "Flashbang" grenades and explosive breaching tools, "tear gas," and
22 "pepper balls," excluding standard, service-issued handheld pepper spray.

23 (13) Taser Shockwave, microwave weapons, water cannons, and the Long
24 Range Acoustic Device (LRAD).

1 (14) The following projectile launch platforms and their associated munitions:
2 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM)
3 weapons.

4 (15) Any other equipment as determined by a local governing body or a state
5 agency to require additional oversight.

6 Notwithstanding the law enforcement equipment listed in subsections (b)(1)
7 through (15), law enforcement equipment or "covered equipment" under AB 481 does not
8 include general equipment not designated as prohibited or controlled by the federal Defense
9 Logistics Agency.

10 (c) AB 481 requires the Police Department to submit to the Board of Supervisors a draft
11 Law Enforcement Use of Equipment Policy for the covered equipment as described in
12 subsection (b). At a minimum, the Law Enforcement Use of Equipment Policy shall address:

13 (1) A description of each type of covered equipment, the quantity sought, its
14 capabilities, expected lifespan, and product descriptions from the manufacturer of the
15 equipment.

16 (2) The purposes and authorized uses for which the Police Department
17 proposes to use each type of covered equipment.

18 (3) The fiscal impact of each type of covered equipment, including the initial
19 costs of obtaining the equipment and estimated annual costs of maintaining the covered
20 equipment.

21 (4) The legal and procedural rules that govern each authorized use.

22 (5) The training, including any course required by the Commission on Peace
23 Officer Standards and Training, to ensure the full protection of the public's welfare, safety, civil
24 rights, and civil liberties and full adherence to the Law Enforcement Use of Equipment Policy
25 prior to the use or deployment of covered equipment.

1 (6) The mechanisms to ensure compliance with the Law Enforcement Use of
2 Equipment Policy, including which independent persons or entities have oversight authority,
3 and, if applicable, what legally enforceable sanctions are put in place for violations of the
4 policy.

5 (7) The Police Department's procedures by which members of the public may
6 lodge complaints or concerns or submit questions about the use of each specific type of
7 covered equipment, and how the Police Department will ensure that each complaint, concern,
8 or question receives a response in a timely manner.

9 (d) Under AB 481, the Police Department must seek the Board of Supervisors'
10 approval prior to engaging in any of the following:

11 (1) Requesting covered equipment made available pursuant to Section 2576a of
12 Title 10 of the United States Code.

13 (2) Seeking funds for covered equipment, including, but not limited to, applying
14 for a grant, and soliciting or accepting private, local, state, or federal funds, in-kind donations,
15 or other donations or transfers.

16 (3) Acquiring covered equipment either permanently or temporarily, including by
17 borrowing or leasing.

18 (4) Collaborating with another law enforcement agency in the deployment or
19 other use of covered equipment within the territorial jurisdiction of San Francisco.

20 (5) Using any new or existing covered equipment for a purpose, in a manner, or
21 by a person not previously approved by the Board of Supervisors.

22 (6) Soliciting or responding to a proposal for, or entering into an agreement with,
23 any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in
24 the use of, covered equipment.
25

1 (7) Acquiring covered equipment through any means not provided by this
2 paragraph.

3 (e) Under AB 481, the Board of Supervisors may approve a policy governing the
4 funding, acquisition, and use of covered equipment only if it determines ~~that the equipment~~
5 ~~meets~~ all of the following:

6 (1) The equipment is necessary because there are no reasonable alternatives
7 that can achieve the same objectives of officer and civilian safety.

8 (2) The proposed Law Enforcement Use of Equipment Policy will safeguard the
9 public's welfare, safety, civil rights, and civil liberties.

10 (3) If purchasing the covered equipment, the equipment is reasonably cost
11 effective compared to available alternatives that can achieve the same objective of officer and
12 civilian safety.

13 (4) Existing covered equipment complies with the Law Enforcement Use of
14 Equipment Policy, or if previous use did not comply with said policy, corrective action has
15 been taken to remedy nonconforming uses and ensure future compliance.

16 (f) Under AB 481, the Police Department must submit an annual report for the covered
17 equipment within one year of receiving Board of Supervisors approval of the Law Enforcement
18 Use of Equipment Policy, and annually thereafter for as long as the covered equipment is
19 available for use. The annual Law Enforcement Equipment Report ("covered equipment
20 report") shall be publicly posted and, at a minimum, include the following information for the
21 immediately preceding calendar year for each type of covered equipment:

22 (1) A summary of how the covered equipment was used and the purpose of its
23 use.

24 (2) A summary of any complaints or concerns received concerning the covered
25 equipment.

1 (3) The results of any internal audits, any information about violations of the
2 covered equipment use policy, and any actions taken in response.

3 (4) The total annual cost for each type of covered equipment, including
4 acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other
5 ongoing costs, and from what source funds will be provided for the covered equipment in the
6 calendar year following submission of the annual covered equipment report.

7 (5) The quantity possessed for each type of covered equipment.

8 (6) If the Police Department intends to acquire additional covered equipment in
9 the next year, the quantity sought for each type of covered equipment.

10 (g) Under AB 481, within 30 days of submitting to the Board of Supervisors and publicly
11 releasing the annual covered equipment report, the Police Department shall hold at least one
12 public meeting regarding the covered equipment report and use therein.

13 (h) AB 481 requires the Board of Supervisors to review any ordinance approving the
14 funding, acquisition, or use of covered equipment, annually, and determine whether to renew
15 the ordinance consistent with applicable law. If the Board of Supervisors determines that a
16 type of covered equipment identified in that annual Law Enforcement Equipment Report has
17 not complied with state law, the Board of Supervisors shall either disapprove a renewal of the
18 authorization for that type of equipment or require modifications to the Law Enforcement Use
19 of Equipment Policy to comply with state law.

20
21 Section 2. The Administrative Code is hereby amended by adding Chapter 96HG,
22 consisting of Section 96HG.1, to read as follows:

23 **CHAPTER 96HG: POLICE DEPARTMENT EQUIPMENT POLICY**

24 **SEC. 96HG.1 FUNDING, ACQUISITION, AND USE OF CERTAIN POLICE EQUIPMENT.**

1 (a) Pursuant to California Government Code Section§ 7070 et. seq, the Police Department is
2 required to obtain Board of Supervisors' approval of a Use of Equipment Policy prior to seeking
3 funding for, acquisition of, and use of certain law enforcement equipment.

4 (b) The Police Department shall submit a draft Use of Equipment Policy to the Board of
5 Supervisors for approval. Thereafter, the Police Department shall review the approved Law
6 Enforcement Use of Equipment Policy and submit a report regarding the covered equipment within one
7 year of receiving Board of Supervisors approval, and annually thereafter for as long as the covered
8 equipment is available for use. The Police Department shall hold a public hearing on the Use of
9 Equipment Policy and annual report prior to submitting the annual report to the Board of Supervisors
10 for its review and approval. The Use of Equipment Policy and annual report shall be publicly
11 available and posted on the Police Department's website for at least thirty days prior to said hearing.

12 (c) The Board of Supervisors may only approve the Use of Equipment Policy governing the
13 funding, acquisition, and use of certain law enforcement equipment consistent with the criteria set forth
14 in state law, referenced in subsection (a).

15 ~~(d) A copy of the Police Department's Use of Equipment Policy is on file with the Clerk~~
16 ~~of the Board of Supervisors in File No. _____, the file for the ordinance establishing~~
17 ~~this Chapter 96G.~~

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19 Section 3. Approval of Use of Equipment Policy.

20 (a) The Police Department's Use of Equipment Policy is on file with the Clerk of the
21 Board of Supervisors in Board File No. 220641. That policy includes an inventory of the
22 Police Department's equipment subject to AB 481, the uses of such equipment, the fiscal
23 impact of such equipment, the legal and procedural rules governing its use, the training that
24 must be completed before the equipment may be used, the mechanisms to ensure
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1 compliance with the policy, and the procedures by which members of the public may register
2 complaints or concerns about the equipment.

3 (b) The Board of Supervisors hereby determines that the equipment identified in the
4 Use of Equipment Policy is necessary because there is no reasonable alternative; the policy
5 will safeguard the public's welfare, safety, civil rights, and civil liberties; the equipment is
6 reasonably cost effective; and prior use of the equipment complied with any policy that was
7 previously in place.

8 (c) The Board of Supervisors hereby approves the Use of Equipment Policy, with the
9 following modification: Section 1.A.5 ("Unmanned, remotely piloted, powered ground vehicle
10 (ground): Authorized Use") is amended to replace the words "outweighs any other force option
11 available to SFPD" with "officers cannot subdue the threat after using alternative force options
12 or de-escalation tactics or conclude that they will not be able to subdue the threat after
13 evaluating alternative force options and de-escalation tactics. Only the Chief, Assistant Chief
14 of Operations, or Deputy Chief of Special Operations may authorize the use of robots as a
15 deadly force option."

16
17 Section 34. Effective Date. This ordinance shall become effective 30 days after
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
20 of Supervisors overrides the Mayor's veto of the ordinance.

21
22 Section 45. Undertaking for the General Welfare. In enacting and implementing this
23 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
24 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
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is liable in money damages to any person who claims that such breach proximately caused injury.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: _____/s/_____
ALICIA CABRERA
Deputy City Attorney

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