

ITEM 4.5

CITY MANAGER'S REPORT JUNE 13, 2022 CITY COUNCIL REGULAR MEETING

ITEM: SECOND READING AND ADOPTION OF ORDINANCE 22-436 BY THE CITY COUNCIL OF THE CITY OF LATHROP ADOPTING A POLICY FOR THE USE OF MILITARY EQUIPMENT BY THE LATHROP POLICE DEPARTMENT

RECOMMENDATION: Waive Full Reading And Adopt Ordinance 22-436 Amending Title 9 "Public Peace and Welfare" of the Lathrop Municipal Code by Adding New Chapter 9.20 Titled "Use of Military Equipment" to Establish a Policy for the Proper Use, Funding and Acquisition of Military Style Equipment as Set Forth by Assembly Bill 481 (Chieu)

RECOMMENDED ACTION:

The City Council to conduct second reading and adopt Ordinance 22-436 entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LATHROP AMENDING TITLE 9 "PUBLIC PEACE AND WELFARE" OF THE LATHROP MUNICIPAL CODE BY ADDING NEW CHAPTER 9.20 TITLED "MILITARY EQUIPMENT USE POLICY" TO ESTABLISH A POLICY FOR THE PROPER USE, FUNDING AND ACQUISITION OF MILITARY STYLE EQUIPMENT AS SET FORTH BY ASSEMBLY BILL 481

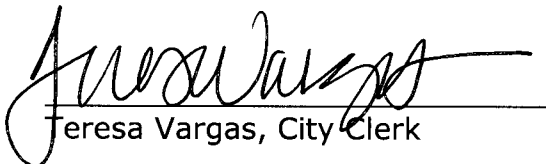
SUMMARY:

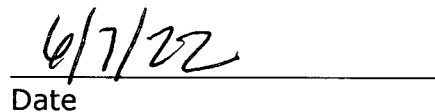
On May 16, 2022, the City Council approved the introduction and first reading of the subject Ordinance by the following vote:

AYES: Akinjo, Diallo, Lazard, and, Torres-O'Callaghan
NOES: None
ABSTAIN: None
ABSENT: Dhaliwal

The Ordinance will take effect 30 days after adoption.

SUBMITTED BY:


Teresa Vargas, City Clerk


Date

ORDINANCE NO. 22-436

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LATHROP AMENDING TITLE 9 "PUBLIC PEACE AND WELFARE" OF THE LATHROP MUNICIPAL CODE BY ADDING NEW CHAPTER 9.20 TITLED "MILITARY EQUIPMENT USE POLICY" TO ESTABLISH A POLICY FOR THE PROPER USE, FUNDING AND ACQUISITION OF MILITARY STYLE EQUIPMENT AS SET FORTH BY ASSEMBLY BILL 481

WHEREAS, on September 30, 2021, Governor Newsom signed into law seven (7) major peace officer reform bills, including Assembly Bill (AB) 481 (Sections 7070, 7071, and 7072 to the California Government), which was authored by Assembly Member David Chieu to address the funding, acquisition and use of items lawmakers deem to be considered military equipment; 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, AB 481 requires each law enforcement agency's governing body to adopt a written military equipment use policy by ordinance in a public forum by April 30, 2022, to continue using this previously acquired military equipment, effective May 1, 2022; and

WHEREAS, the Government code states the May 1, 2022, as the deadline for any existing law enforcement agency to begin the governing body approval process if the agency acquired equipment before January 1, 2022; and

WHEREAS, the City of Lathrop is currently transitioning into its own Police Department, with a commission start date of July 1, 2022, and is currently under the jurisdiction of the San Joaquin County Sheriff's office, therefore, the City has time to establish the military policy outside of the required deadlines; and

WHEREAS, the City of Lathrop's new Police Department intends to possess 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 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 Department's use of such equipment;

WHEREAS, the new Lathrop Police Department has created a draft military equipment use policy, in compliance with AB 481; and

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

WHEREAS, the City Council of the City of Lathrop having received the information required under AB 481 regarding the new Lathrop Police Department's proposed 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 and list as set forth herein.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lathrop does hereby ordain as follows:

Section 1.

Title 9 of the Lathrop Municipal Code, titled "Public Peace and Welfare" is hereby amended by adding new Chapter 9.20 titled "Military Equipment Use Policy" to read in its entirety as follows"

CHAPTER 9.20 MILITARY EQUIPMENT USE POLICY

9.20.010 Definitions

- A. "Military Equipment" includes all of the following (Per Gov. Code §7070):
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 subdivision.
 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 breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.
 4. Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
 5. Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
 6. Weaponized aircraft, vessels, or vehicles of any kind.
 7. Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.
 8. Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.

9. Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.
 10. Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.
 11. Any firearm or firearm accessory that is designed to launch explosive projectiles.
 12. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.
 13. Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).
 14. The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.
 15. Any other equipment as determined by a governing body or a state agency to require additional oversight.
 16. Notwithstanding paragraphs (1) through (15), "military equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.
- B. "Police Department" means any division, section, bureau, employee, volunteer and /or contractor of the new Lathrop Police Department, established July 1, 2022
- C. "Military Equipment Use Policy" means a publicly released, written document governing the use of military equipment by a law enforcement agency or a state agency that addresses, at a minimum, all of the following:
1. A description of each type of military equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the military equipment.
 2. The purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of military equipment.
 3. The fiscal impact of each type of military equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.

4. The legal and procedural rules that govern each authorized use.
5. The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer, agent, or employee of the law enforcement agency or the state agency is allowed to use each specific type of military equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the military equipment use policy.
6. The mechanisms to ensure compliance with the military equipment use policy, including which independent persons or entities have oversight authority, and, if applicable, what legally enforceable sanctions are put in place for violations of the policy.
7. For a law enforcement agency, the procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of military equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

D. "Type" means each item that shares the same manufacturer model number.

9.20.020. Military Equipment Use Policy Approval Requirement

- A. The Lathrop Police Department shall obtain approval of the City Council, by an ordinance adopting a Military Equipment Use Policy at a regular meeting of the City Council, prior to engaging in any of the following:
 1. Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
 2. 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.
 3. Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
 4. Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the City of Lathrop.
 5. Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the City Council body pursuant to this chapter.

6. 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.
 7. Acquiring military equipment through any means not provided by this section.
- B. In seeking the approval of the City Council, the Lathrop Police Department shall submit a proposed military equipment use policy to the City Council and make those documents available on the City's law enforcement agency's internet website at least 30 days prior to any public hearing concerning the military equipment at issue.
- C. The City Council shall only approve a military equipment use policy pursuant to this chapter if it determines all of the following:
1. The military equipment 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 will safeguard the public's welfare, safety, civil rights, and civil liberties.
 3. If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
 4. Prior military equipment use complied with the military equipment use policy 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.
- D. In order to facilitate public participation, any proposed or final military equipment use policy shall be made publicly available on the internet website of the relevant law enforcement agency for as long as the military equipment is available for use.

9.20.030. Annual Report Requirements

- A. The Lathrop Police Department shall submit to the City Council an annual military equipment report for each type of military equipment approved by the governing body within one year of approval, and annually thereafter for as long as the military equipment is available for use.
- B. The Lathrop Police Department shall also make each annual military equipment report required by this section publicly available on its internet website for as long as the military equipment is available for use.

- C. 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:
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 Lathrop Police Department intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment
- D. Within 30 days of submitting and publicly releasing an annual military equipment report pursuant to this section, the Lathrop Police Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment.

9.20.040. Annual Review and Renewal Process of Ordinance Approving the Military Equipment Use Policy

- A. Following submittal of the annual military equipment report required by Section 9.20.030, the City Council shall consider a proposed military equipment use policy as an agenda item for an open session of a regular meeting and provide for public comment.
- B. The governing body shall determine, based on the annual military equipment report submitted, whether each type of military equipment identified in that report has complied with the standards for approval set forth in Section 9.20.20. If the City Council determines that a type of military equipment identified in that annual military equipment report has not complied with the standards required for approval, the City Council shall either disapprove a renewal of the authorization for that type of military equipment or require modifications to the military equipment use policy in a manner that will resolve the lack of compliance.

Section 2.

This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. Severability.

If any section, subsequent subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section 4. Effective Date.

This Ordinance shall take legal effect 30 days from and after the date of its passage.

Section 5. Publication.

Within fifteen days of the adoption of this Ordinance, the City Clerk shall cause a copy of this Ordinance, to be published in full accordance with Section 36933 of the Government Code

THIS ORDINANCE was introduced at a meeting of the City Council of the City of Lathrop on the 16th day of May 2022, and was **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Lathrop on the _____ day of _____, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

APPROVED AS TO FORM:

Teresa Vargas, City Clerk

Salvador Navarrete, City Attorney

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