

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EUREKA ADDING
CHAPTER 104, SECTION 104.01 THROUGH 104.08
MILITARY EQUIPMENT USE TO TITLE IX GENERAL REGULATIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA AS FOLLOWS:

SECTION 1.

Title IX, Chapter 104, Section 104.01 through 104.08 is hereby added to read as follows:

§ 104.01 PURPOSE.

The purpose of this chapter is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment per California Government Code §§ 7070-7072.

§ 104.02 DEFINITIONS.

DEFINITIONS. For purposes of this chapter, the following words, terms and phrases have these definitions:

- A. **MILITARY EQUIPMENT.** "Military Equipment" includes all of the following (Per CA 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 state agency.
 11. Any firearm or firearm accessory that is designated 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 Rang Acoustic Device (LRAD).
 14. The following projectiles 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. **CITY.** "CITY" means any department, agency, bureau, and/or subordinate division of the City of Eureka.
- C. **POLICE DEPARTMENT.** "Police Department" means any division, section, bureau, employee, volunteer and/or contractor of the Eureka Police Department.
- D. **CITY COUNCIL.** "City Council" means the governing body that is the Eureka City Council.
- E. **MILITARY EQUIPMENT USE POLICY.** "Military Equipment Use Policy" means a publicly released, written document that includes, 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 Commissions 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 concern 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.
- F. **EXIGENT CIRCUMSTANCES.** "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger, or imminent threat of death or serious physical injury to any person is occurring, has occurred, or is about to occur.
- G. **STATE AGENCY.** "State agency" means the law enforcement division of every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.
- H. **TYPE.** "Type" means each item that shares the same manufacturer model number.

§ 104.03 MILITARY USE POLICY REQUIREMENT.

- A. The Eureka Police Department shall obtain approval of the City Council, by an ordinance adopting a Military Equipment Use Policy (MEUP) at a regular meeting of the City Council held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable, 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 Eureka.
 5. Using any new or existing Military Equipment for a purpose, in a manner, or by a person not previously approved by the governing 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 to continue to use of any Military Equipment that was acquired prior to January 1, 2022, the Eureka Police Department shall commence a City Council approval process in accordance with this section. If the City Council does not approve the continuing use of Military Equipment, including by adoption pursuant to a Military Equipment Use Policy submitted pursuant to this code, within 180 days of submission of the proposed Military Equipment Use Policy to City Council, the Eureka Police Department shall cease its use of the Military Equipment until it receives the approval of City Council in accordance with this code.
- C. In seeking the approval of City Council, the Eureka Police Department shall submit a proposed Military Equipment Use Policy to City Council and make those documents available on the Police Department's internet website at least 30 days prior to any public hearing concerning the Military Equipment at issue.
- D. The governing body 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 in accordance with the Bagley-Keen Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.
- E. The governing body 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 compiled 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.
- F. 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 Police Department for as long as the Military Equipment is available for use.
- G. The City Council shall review any ordinance that it has adopted pursuant to this Chapter approving the funding, acquisition, or use of Military Equipment at least annually and vote on whether to renew the ordinance at a regular meeting held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.

§ 104.04. USE IN EXIGENT CIRCUMSTANCES.

- A. Notwithstanding the provisions of this Chapter, the Police Department may acquire, borrow and/or use Military Equipment in Exigent Circumstances without following the requirements of this code.
- B. If the Police Department acquires, borrows, and/or uses Military Equipment in Exigent Circumstances, in accordance with this section, it must take all of the following actions:
1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state, or federal law.
 2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed amended Military Equipment Use Policy to the City Council within 90 days following the borrowing, acquisition and/or use, and receive approval, as applicable, from the City Council.

3. Include the Military Equipment in the Police Department's next annual Military Equipment Report.

§ 104.05. REPORTS ON THE USE OF MILITARY EQUIPMENT .

- A. The Police Department shall submit to City Council and annual Military Equipment Report for each type of Military Equipment approved by the City Council within one year of approval, and annually thereafter for as long as the Military Equipment is available for use.
- B. The Police Department shall also make each annual Military Equipment Report required by the 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 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 in 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, upgrades, 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 quantities that 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 Police Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public made discuss and ask questions regarding the annual Military Equipment report and the law enforcement agency's funding, acquisition, or use of Military Equipment.
- E. The City Council shall determine, based on the annual Military Equipment Report submitted pursuant to the section, whether each type of Military Equipment identified in that report has compiled with the standards for approval

set forth in this code and the Military Equipment Use Policy. If the City Council determines that a type of Military Equipment identified in the annual Military Equipment report has not complied with the standards for approval, the City Council shall either disapprove a renewal of the authorization for that type of Military Equipment Use Policy in a manner that will resolve the lack of compliance.

§ 104.06. ENFORCEMENT.

A. Remedies for Violations of this Ordinance.

1. This Chapter does not provide a private right of action upon any person or entity to seek injunction relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter.
2. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction.
3. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation.
4. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if they are personally obligated to pay such fees.

§ 104.07. WHISTLEBLOWER PROTECTIONS.

All provisions of Eureka's Protection of Whistleblowers Workplace Policy, and including any updates or replacements thereto, shall apply.

§ 104.08. SEVERABILITY.

- A. If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter.
- B. The City Council hereby declares that it would have passed this Chapter in each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Eureka in the County of Humboldt, State of California, on the ____ day of _____, 2023 by the following vote:

AYES: COUNCILMEMBERS
NOES: COUNCILMEMBERS
ABSENT: COUNCILMEMBERS

Leslie Castellano Pro Tem

THE ABOVE ORDINANCE WAS PRESENTED TO THE MAYOR on the ____ day of _____, 2021, and hereby approved.

Kim Bergel, Mayor

Approved as to Administration:

Approved as to form:

Miles Slattery, City Manager

Robert N. Black, Assistant City Attorney

THE ABOVE ORDINANCE WAS ATTESTED BY THE CITY CLERK OF THE CITY OF EUREKA on the ____ day of _____, 2023.

Pamela J. Powell, City Clerk