

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
ADOPTING A MILITARY EQUIPMENT USE
POLICY, OTHERWISE REFERRED TO HEREIN
AS A SPECIALIZED POLICE EQUIPMENT USE
POLICY, PURSUANT TO ASSEMBLY BILL 481
AND GOVERNMENT CODE SECTIONS 7070, ET
SEQ.**

WHEREAS, on September 30, 2021, Governor Newsom signed Assembly Bill 481 ("AB 481") into law which requires law enforcement agencies to adopt a military equipment use policy ("Policy") prior to taking certain actions relating to the funding, acquisition, or use of military equipment as defined by the law; and

WHEREAS, AB 481 requires adoption of the Policy by City Council before the law enforcement agency can take action to request military equipment as defined by the statute; seek funds (such as grants or in-kind donations) for acquiring military equipment; actually acquire military equipment, either permanently or temporarily by owning, borrowing, or leasing; collaborate with other law enforcement agencies to deploy or use military equipment in the agency's territorial jurisdiction; use new or existing military equipment in a manner not previously subject to AB 481's scope; solicit or respond to a proposal for, or enter into an agreement with, any person or entity to seek funds for, apply for, acquire, use, or collaborate in using military equipment; or to acquire military equipment through any other means not specifically detailed in the statute; and

WHEREAS, in accordance with AB 481, the proposed Policy was made available on the website of the Merced Police Department ("Police Department") at least 30 days prior to the public hearing by City Council to adopt the Policy; and

WHEREAS, once adopted, the Policy will be made publicly available on the Police Department's website for as long as the covered military equipment is available for use; and

WHEREAS, in accordance with AB 481, the Policy is being agendized as an open session item at a regular meeting of the City Council, and public comment on the item will be allowed in accordance with the Brown Act; and

WHEREAS, this Ordinance shall be reviewed by the City Council at least annually, and based on an annual military equipment report that will be submitted to the City Council pursuant to AB 481, the City Council shall determine whether each type of military equipment identified in the report has complied with the standards for continued approval.

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Chapter 9.80, “Military Equipment Use” is hereby added to the Merced Municipal Code to read as follows:

**“CHAPTER 9.80
MILITARY EQUIPMENT USE**

9.80.010 Name of Ordinance.

This Ordinance shall be known as the Military Equipment Use Ordinance.

9.80.020 Definitions.

A. ‘Military Equipment’ includes all of the following (Per Cal. 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. 'City' means any department, agency, bureau, and/or subordinate division of the City of Merced.

C. 'Police Department' means any division, section, bureau, employee, volunteer and/or contractor of the Merced Police Department.

D. 'City Council' means the governing body that is the Merced City Council.

E. '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 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.

F. 'Exigent Circumstances' means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person is occurring, has occurred, or is about to occur.

G. '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' means each item that shares the same manufacturer model number.

9.80.030 Military Equipment Use Policy Requirement.

A. The Merced 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 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, 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 Merced.

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. No later than May 1, 2022, if seeking to continue the use of any Military Equipment that was acquired prior to January 1, 2022, the Merced 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 Merced 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 Merced 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-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.

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 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.

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.

9.80.040 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.

9.80.050 Reports on the Use of Military Equipment.

A. The Police Department shall submit to City Council an 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 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 law enforcement agency 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 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.

E. The City Council shall determine, based on the annual Military Equipment Report submitted pursuant to this section, whether each type of Military Equipment identified in that report has complied 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 that 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 or require modifications to the Military Equipment Use Policy in a manner that will resolve the lack of compliance.

9.80.060 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 injunctive 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.

9.80.070 Whistleblower Protections.

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

9.80.080 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 and 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.”

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

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The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2024, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2024, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**

ABSTAIN: **Council Members:**

ABSENT: **Council Members:**

APPROVED:
MATTHEW SERRATTO, MAYOR

Mayor

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

Craig Cornwell 6/19/2024
City Attorney **Date**