

**ORDINANCE NO. 547**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES ADOPTING HERCULES POLICE DEPARTMENT POLICY 709; MILITARY EQUIPMENT FUNDING, ACQUISITION, AND USE**

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

**WHEREAS**, AB 481 requires law enforcement agencies to obtain approval of the governing body, by way of an ordinance adopting a military equipment use policy, prior to taking certain actions relating to the funding, acquisition, or use of “military equipment” as defined in Government Code section 7070; and

**WHEREAS**, AB 481 further requires that such a policy include certain components, including but not limited to those listed in Government Code section 7070(d); and

**WHEREAS**, the Hercules Police Department has reviewed Lexipol LLC’s Policy 709: Military Equipment (the “Policy”) and has found it to be in compliance with the requirements of AB 481; and

**WHEREAS**, the City Council has determined that the Policy complies with the requirements of AB 481 and that with respect to the Policy: (1) the identified equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; (2) the Policy will serve to safeguard the public’s welfare, safety, civil rights, and civil liberties; (3) in future instances in which equipment is to be purchased, the equipment will be reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety; and (4) any required corrective action has been taken to remedy use of military equipment inconsistent with the Policy and future compliance is ensured; and

**WHEREAS**, approval of the Policy authorizes funding, acquisition, and use of military equipment only as allowed by the Policy and requires annual reporting and approval in accordance with the Policy; and,

**WHEREAS**, adoption of this Ordinance is not a project as defined by the California Environmental Quality Act (“CEQA”) because it is an organizational or administrative activity that will not result in direct or indirect physical changes to the environment pursuant to CEQA Guidelines 15378(b)(5); and,

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERCULES DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. RECITALS.** The City Council hereby incorporates the above recitals into this Ordinance by this reference.

**SECTION 2. AMENDMENT.** Hercules Police Department Policy 709; Military Equipment Funding, Acquisition, and Use Approved.

The City Council hereby approves City of Hercules Police Department Policy 709: Military Equipment, a copy of which is attached hereto and by this reference incorporated herein. A copy of approved Policy 709 has been added to the City's website for continuous access by the Council, staff and the public.

**SECTION 3. CEQA DETERMINATION**

The City Council finds that adoption of this Ordinance is not a project as defined by the California Environmental Quality Act ("CEQA") because it is an organizational or administrative activity that will not result in direct or indirect physical changes to the environment pursuant to CEQA Guidelines 15378(b)(5).

**SECTION 4. SEVERABILITY.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decisions shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be deleted.

**SECTION 5. EFFECTIVE DATE AND PUBLICATION.** The City Clerk shall certify to the adoption of this Ordinance and shall publish or post the Ordinance as required by law. This Ordinance shall be effective thirty (30) days from date of final adoption.

**SECTION 6. NO CODIFICATION**

This ordinance shall not be codified in the Hercules Municipal Code

**THE FOREGOING ORDINANCE** was passed and adopted at a regular meeting of the Hercules City Council on the 23<sup>rd</sup> day of May 2023, by the following vote:


**AYES:** T. Grimsley, C. Kelley, D. Bailey Vice Mayor D. Romero and Mayor Walker-Griffin

**NOES:** NONE

**ABSENT:** NONE

**ABSTAIN:** NONE

**DocuSigned by:**



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Alex Walker-Griffin, Mayor

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ATTES



Eibleis Melendez, City Clerk

# Military Equipment

## 709.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

### 709.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

**Governing body** – The elected or appointed body that oversees the Department.

**Military equipment** – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

# Hercules Police Department

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## *Military Equipment*

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### **709.2 POLICY**

It is the policy of the Hercules Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment.

### **709.3 MILITARY EQUIPMENT COORDINATOR**

The Chief of Police should designate a member of this department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Hercules Police Department (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
  - 1. Publicizing the details of the meeting.
  - 2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

### **709.4 MILITARY EQUIPMENT INVENTORY**

The following constitutes a list of qualifying equipment for the Department:

[Insert attachment here]

### **709.5 APPROVAL**

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

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- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.
- (b) 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.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) 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.
- (g) Acquiring military equipment through any means not provided above.

#### **709.6 COORDINATION WITH OTHER JURISDICTIONS**

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

#### **709.7 ANNUAL REPORT**

Upon approval of a military equipment policy, the Chief of Police or the authorized designee should submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief of Police or the authorized designee should also make each annual military equipment report publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in department inventory.

#### **709.8 COMMUNITY ENGAGEMENT**

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department should discuss the report and respond to public questions regarding the funding, acquisition, or use of military equipment.



**HERCULES POLICE DEPARTMENT  
ANNUAL MILITARY EQUIPMENT REPORT  
2022**

## INTRODUCTION

On September 30, 2021, the Governor of the State of California approved Assembly Bill 481 (codified as Chapter 12.8 of the California Government Code) requiring law enforcement agencies such as the Hercules Police Department to have a military use policy approved by the City Council prior to requesting, seeking funding, acquiring, or using military equipment. Assembly Bill 481 allows the governing body to approve the policy within its jurisdiction only if it determines that the military equipment meets specified standards.

On June 14, 2022, the City of Hercules City Council Approved Ordinance 537 approving Hercules Police Department Policy #709: Military Equipment Funding, Acquisition, and Use. As required by Assembly Bill 481 and the Ordinance, annually the Hercules Police Department must prepare a report on the use of each type of military equipment approved in the Policy over the last year. Subsequently, the City Council must then review the Ordinance, Policy, and Annual Report, and determine whether the Department's use of military equipment in the past year complied with the Policy, and whether to continue the Ordinance and Policy, take action (by ordinance) to modify the Policy or repeal the Ordinance.

As set forth in the Policy, the Hercules Police Department retains and employs limited military equipment to safeguard its community. Hercules officers, certified instructional staff, and specialized units receive training throughout the year on the use of military equipment approved under the Policy.

This Annual Report outlines the Hercules Police Department's military equipment inventory and usage, community complaints over use of military equipment, and internal audits from January 1, 2022, through December 31, 2022. The Department will submit its Military Equipment Annual Report to the City Council after December 31st of every year in compliance with AB 481.

# HPD MILITARY EQUIPMENT

## 1. Unmanned Aerial Vehicles

### a. Description, quantity, capabilities and purchase cost:

The unmanned Aerial Vehicle (UAV) is a battery powered remote operated device with a flight time of approximately 30 – 45 minutes per battery, depending on weather and flight conditions. The UAV has been proven to be useful to public safety agencies in firefighting, search and rescue, pre-operational surveillance, and other tactical situations where aerial views enhance the safety and efficiency of law enforcement and fire personnel.

Mavic 2 Enterprise Advanced UAV, purchase cost was \$6,499  
quantity: 2

### b. Purpose:

To be deployed when its view would assist officers or incident commanders with the following situations, which include but are not limited to:

- i. Major Collisions Investigation
- ii. Search for missing persons
- iii. Natural disaster management
- iv. Crime scene photography
- v. Critical incident, tactical or other public safety life preservation missions
- vi. In response to specific requests from fire authorities for fire response

### c. Authorized use

Only assigned operators who have completed the required training, certification, and licensing shall be permitted to use Hercules Police Department's UAVs approved missions.

**d. Expected lifespan**

The expected lifespan of the Mavic 2 UAV is 5 years

**e. Fiscal impact**

Annual maintenance costs of approximately \$0 - \$500

f. All department UAV operators are licensed by the Federal Aviation Administration for UAV operation. Once all operators are completely certified, they will train monthly in the use of UAV's.

**2. Command and Control vehicles**

**a. Description, quantity, capabilities and purchase cost:**

2008 Ford Econoline 350 transport van, Cost \$0 (inner-City transfer from Parks and Recreation), quantity: 1

This is a full-size van modified to transport Special Response Team members and equipment to critical incidents and high-risk entry operations. The van is equipped with emergency lights and sirens. It is painted white with Hercules Police Department (PD) logos on it.

**b. Purpose**

To be used in response to critical incidents and pre-planned operations to transport personnel and equipment.

**c. Authorized use**

The use of the van is limited to trained Hercules Police Department SRT members and department range training equipment transportation.

**d. Expected Lifespan**

10 years

**e. Fiscal Impact**

Annual maintenance cost of approximately \$1,000.

### 3. Specialized firearms and ammunition

#### a. Description, quantity, capabilities and purchase cost

Shoulder fired rifle bored firearms capable of firing 5.56mm ammunition from standard- capacity magazines; shoulder fired smooth bored firearms capable of firing beanbag rounds, smoke canisters and CS gas canisters.

- i. Colt M4 Carbine semi-automatic rifle for patrol use, cost: \$920.00, quantity: 33
- ii. Smith and Wesson Model 226 37mm canister launcher for deployment of projectile smoke or CS gas, cost \$600.00, quantity: 1
- iii. Remington 870 kinetic energy shotgun for patrol use, cost: \$900.00, quantity: 5
- iv. Defense Technologies 12-gauge powder barricade penetrator OC rounds for barricaded subject critical incidents, cost \$5.94, quantity: 10
- v. Defense technology 37mm CS gas rounds used for riot control and disbursement, cost \$39.50, quantity: 0
- vi. Winchester Ranger 5.56mm 77 grain ammunition for patrol rifles, cost \$878.00/1000 rounds, quantity: 7000  
Winchester 5.56mm 55 grain ammunition for patrol rifles, Cost \$359/1000 rounds, quantity: 12,000
- vii. Defense Technology drag stabilized kinetic energy rounds for patrol, cost \$5.35, quantity: 50

#### b. Purpose

To be used as precision weapons to address known threats from greater distance and behind cover, providing safer response to critical incidents involving heavily armed and protected suspect(s), to defuse volatile incidents with less than lethal force, to bring critical incidents to a close with the least amount of danger to the public, the involved subject(s) and the responding personnel.

**c. Authorized use**

Only personnel who have attended and passed training and certification courses approved by the Peace Officer Standards and Training (POST) Commission are authorized to possess or deploy patrol rifles, kinetic energy shotguns, or 37mm launcher.

**d. Expected Lifespan**

- i. Colt M4-Carbine Rifle: 15 years
- ii. S&W Mod 226 37mm launcher: 15 years
- iii. Remington 870 kinetic energy shotgun: 15 years
- iv. Defense technology OC rounds: no expiration date
- v. Winchester 5.56mm rounds: no expiration date
- vi. Kinetic energy rounds: no expiration date

**e. Fiscal impact**

Annual maintenance is approximately \$50 for each rifle. Ammunition costs vary by availability. Approximately \$2,500 annually.

**4. Noise Flash Diversionary Devices**

**a. Description, quantity, capabilities and purchase cost**

A Noise Flash Diversionary Device (NFDD) is a device that creates a bright flash and a loud explosive sound to divert the attention of subjects in the area and temporarily disorient them to additional sounds and movement. NFDD are used to temporarily incapacitate dangerous subjects by overwhelming their senses of vision and hearing. The momentary distraction allows officers to seize the opportunity to take control of high-risk situations.

- i. Defense Technologies 12-gram low roll non-reloadable, cost \$52.00, quantity: 24

**b. Purpose**

To produce atmospheric overpressure and brilliant white light and as a result can cause short-term (6-8 seconds) physiological/psychological sensory deprivation to give officers a tactical advantage.

**c. Authorized use**

Diversionary devices shall only be used:

- i. By SRT members who have been trained in their proper handling and use
- ii. In hostage or barricaded subject situations
- iii. In high-risk warrant services where there may be extreme hazards to officers
- iv. During other high-risk situations where their use would enhance officer safety
- v. During training exercises.

**d. Expected lifespan**

5 years

**e. Fiscal impact**

There are no maintenance costs associated with the storage of this device.

**5. Munitions containing Tear Gas or OC**

**a. Description, quantity, capabilities and purchase cost**

Chemical agent munitions, which are commonly referred to as "tear gas," are used by the Hercules Police Department as a non-lethal tool to disperse rioting suspects and/or barricaded suspects. CS (2-Chlorobenzylidenemalonoi trile) and OC (Oleoresin Capsicum) are commonly used by law enforcement agencies across the United States.

CS is an irritating agent and lachrymator (irritates the eyes and causes tears to flow). CS has been medically tested in the UK and US, specifically by the U.S. Army. There are no known allergic reactions to CS. OC was de-regulated in California in 1996, is endorsed by the FBI, and is available to civilians to legally possess (2.5oz or less). OC is an inflammatory agent which causes involuntary closure of eyes (open 2-5 minutes) and respiratory inflammation (subsides in approximately 2 minutes).

- i. Defense Technologies 12-gauge powder barricade penetrator OC for barricaded subject critical incidents, cost \$5.94, quantity: 10
- ii. Officers assigned to the County-Wide Mutual Aid Mobile Field Force are issued Defense Technology CS gas by the Contra Costa Office of the Sheriff as part of their tactical duty gear when deployed by the MAMFF. They do not carry the CS gas as a part of their regular Patrol equipment in Hercules, however they do possess it in the event they need to respond to emergency deployment(s) elsewhere in the County. Cost \$0, quantity: 2 each.

**b. Purpose**

To limit the escalation of conflict where employment of lethal force is prohibited or undesirable. Situations for use of the less lethal weapon systems may include, but are not limited to:

- i. Self-destructive, dangerous and/or combative individuals.
- ii. Riot/crowd control and civil unrest incidents.
- iii. Circumstances where a tactical advantage can be obtained.
- iv. Potentially vicious animals.
- v. Training exercises or approved demonstrations.

**c. Authorized use**

Only Officers who have received POST certification in the use of chemical agents are authorized to use chemical agents.

**d. Expected Lifespan**

Defense Technology OC rounds: No expiration date

**e. Fiscal Impact**

There are no maintenance costs associated with the storage of these devices

**Equipment Purchase and Training Use**

**2022 Purchases**

<b>Military Equipment</b>	<b>Quantity</b>	<b>Cost</b>	<b>Date of Purchase</b>
Winchester 5.56 77 or BTHP	1000	\$987.00	10/12/2022
Winchester 5.56 55 or FMJ	6000	\$2718.00	10/12/2022
Colt M4 Carbine semi-automatic rifle	5	\$4,650	6/13/2022

**2022 Training/ Military Equipment Utilized**

<b>Training</b>	<b>Military Equipment</b>	<b>Quantity</b>	<b>Date of Use</b>
Department Quarterly Training	Colt M4 5.56 Ammo	6800	4/5/2022, 7/12/2022, 10/11/2022
Active Shooter Instructor Training	Colt M4 5.56 Ammo	1000	10/11/2022
Less Lethal New Officer Orientation Training	12-Guage Bean Bag Amo	2	7/14/2022
Less Lethal New Officer Orientation Training	12-Guage Bean Bag Amo	2	11/11/2022

### **Community Concerns and Complaints**

In some instances, the possession and use of military equipment may cause questions and/or concerns for members of the community. It is vitally important that community members’ questions and/or complaints regarding Hercules Police Department’s possession and use of military equipment are addressed.

The Hercules Police Department is committed to a full and fair investigations of community complaints. As such, the Department has sound internal procedures for thorough and impartial investigations of community complaints. Resolving complaints in a fair, impartial, and expeditious manner will ensure the consistent high level of integrity and efficiency maintained by the Department.

### **2022 Community Concerns, Complaints & PD Internal Investigations Related to Military Equipment Use**

Community Concerns	Community Complaints	PD Internal Investigations
<b>0</b>	<b>0</b>	<b>0</b>

### **Internal Inventory & Audit (HPD Military Equipment)**

Per Hercules Police Department policy 709.3 (c), the Department’s military equipment coordinator, designated as a Department Range Instructor, is required to complete an internal inventory of all military equipment within the possession of the Department at least once annually. During the calendar year 2022, an internal inventory of the Department’s military equipment was completed on **October 12, 2022**, which identified all the Department’s military equipment in preparation to fulfill the obligations set by Assembly Bill 481. The Department did not add any new military equipment during 2022 to its inventory since that inventory was completed. All current military equipment inventory was found to be in good shape and working order.

**2022 Critical Incident/ Military Equipment Utilized**

<b>Case #</b>	<b>Date</b>	<b>Equipment Used</b>	<b>Reason for Use</b>
H22-840	8/30/22	2008 Ford Econoline 350 transport van	Marijuana Cultivation Investigation

**Conclusion**

This Annual Military Equipment Report reaffirms the Hercules Police Department’s commitment to providing transparency and information to our communities and elected officials in addition to ensuring compliance with California State law. The equipment, resources, and training outlined in this report allow Hercules Police Officers to better serve and protect Hercules, enhance the safety of officers and community, and bring critical incidents to a safe resolution.