

ORDINANCE NO. 537

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,

WHEREAS, this Ordinance was first presented to the City Council at a regularly scheduled and properly noticed City Council meeting on May 10, 2022 and was approved for introduction.

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 introduced at a regular meeting of the Hercules City Council on the **10** day of **May, 2022**, and was passed and adopted at a regular meeting of the Hercules City Council on the 14th day of June, 2022, by the following vote:

AYES: COUNCIL MEMBERS: T. Grimsley, C. Kelley, D. Romero, Vice Mayor A. Walker-Griffin, Mayor D. Bailey

NOES: None.

ABSTAIN: None.

ABSENT: None.

ATTEST:

Lauren Berges
City Clerk



DocuSigned by:

Dion Bailey

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Dion Bailey, Mayor

Hercules Police Department
Hercules Police Department Policy Manual

709 Military Equipment Funding, Acquisition and Use Policy

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).

DEFINITIONS

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

Governing body - The elected or appointed body that oversees the Police 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.

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Hercules Police Department

Hercules Police Department Policy Manual

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 Hercules Police Department as of May 1, 2022:

- Special Response Team Transport Vehicle
- Patrol Rifles
- Noise flash diversionary devices
- Tear Gas explosive canisters when assigned to Mutual Aid Mobile Field Force (MAMFF), powdered OC ferret rounds
- Kinetic energy weapons
- Unmanned, remotely piloted powered aerial devices

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Hercules Police Department

Hercules Police Department Policy Manual

- 37mm launchers

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):

- (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 used by any member of this jurisdiction shall be approved for use and in accordance with this Department policy. Military equipment used by other jurisdictions that are providing mutual aid to this jurisdiction shall comply with their respective military equipment use policies in rendering mutual aid.

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

Hercules Police Department
Hercules Police Department Policy Manual

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.

MILITARY EQUIPMENT INVENTORY pd

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Hercules Police Department
Hercules Police Department Policy Manual

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Military Equipment Funding, Acquisition, and Use Policy
pg. 5

MILITARY EQUIPMENT INVENTORY

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, cost \$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 during approved missions.

d. Expected lifespan

The expected lifespan of the Mavic 2 UAV is five years

e. Fiscal impact

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

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 (SRT) members and equipment to critical incidents and high-risk entry operations. The van is equipped with emergency lights and siren and 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.

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 high capacity magazines; shoulder fired smooth bored firearms capable of firing beanbag rounds, smoke canisters and Corson & Stoughton (CS) gas canisters also known as tear gas.

- i. Colt AR-15 semi-automatic rifle for patrol use, cost: \$920.00, quantity: 28
- 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 Oleoresin Capsicum (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 AR-15 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

Diversionsary 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 (MAMFF) 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

