

ORDINANCE NUMBER O- 21679 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 18 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO ADOPTING THE POLICE DEPARTMENT'S UPDATED MILITARY EQUIPMENT USE PROCEDURE AND RENEWING APPROVAL FOR USE, PURSUIT OF FUNDING FOR, AND ACQUISITION OF THE MILITARY EQUIPMENT DESCRIBED IN THE PROCEDURE.

WHEREAS, Assembly Bill 481 (AB 481) requires the Police Department (Department) to obtain the approval of the City Council (Council) by an ordinance adopting its Procedure prior to requesting military equipment from the federal government, seeking funds for military equipment, including grants and donations, acquiring military equipment, collaborating with another law enforcement agency in the use of military equipment in San Diego, using any new or existing military equipment in a manner not previously approved by the Council, or entering into an agreement for funding, receipt, acquisition, use of, or collaboration in the use of military equipment; and

WHEREAS, AB 481 defines military equipment in California Government Code (Government Code) section 7070(c) to include a wide range of equipment as described in the Department's updated 2023 Military Equipment Use Procedure (Procedure) (also known as Department Procedure 1.57 – Military Equipment); and

WHEREAS, on May 3, 2022, the Council adopted San Diego Ordinance O-21451 (May 3, 2022), adopting the Procedure and approving use of, pursuit of funding for, and acquisition of the military equipment described in the Procedure; and

WHEREAS, after approval, AB 481 requires the Department to submit to the Council an Annual Report for each type of approved military equipment; and

WHEREAS, each year the Council must review the Annual Report and the ordinance approving military equipment and vote whether to renew the ordinance; and

WHEREAS, in reviewing the Annual Report, the Council shall determine whether the military equipment has complied with the following standards: (1) the equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; (2) the equipment use procedure will safeguard the public's welfare, safety, civil rights, and civil liberties; (3) the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety; and (4) if there has been any non-compliance, that corrective measures have been taken to remedy nonconforming uses and ensure future compliance; and

WHEREAS, the Council may vote to renew Ordinance O-21451, or, if Council determines non-compliance with the standards set forth above, it may disapprove renewal or request modifications to the use procedure to resolve the non-compliance; and

WHEREAS, in order to promote public safety, civil rights, and officer safety, the Department desires to continue using, seeking funding for, acquiring, and collaborating, when necessary, with other law enforcement agencies, in the use of the military equipment described in its Procedure; and

WHEREAS, although the federal government allows local law enforcement agencies to obtain certain types of military equipment through a program authorized by section 2576a of Title 10 of the United States Code, commonly known as the "1033 Program" or "LESO

Program”, the Department has not participated in this program since 2020, and does not intend to participate in the future; and

WHEREAS, in 2022, the Council approved the equipment categories of small, unmanned aircraft systems (drones) and certain rifles; and

WHEREAS, the Department has added additional equipment to each of these categories, outlined in the updated Procedure; and

WHEREAS, the mission of the San Diego Police Department (Department) is to provide the highest quality police services to the communities it serves; and

WHEREAS, the Department values transparency and public input, and welcomes open dialogue about its practices and operations; and

WHEREAS, as required by Government Code sections 7071 and 7072, the Department posted the 2022 Annual Report and the updated Procedure online and held a community meeting on April 19, 2023; and

WHEREAS, the preservation and sustainability of public safety, civil rights, and officer safety is paramount; and

WHEREAS, the Department responds to a wide variety of critical incidents, instances of civil unrest, and life and death situations, and operates in numerous unpredictable, dynamic environments; and

WHEREAS, a variety of equipment options is needed for safe and effective resolution of those situations; and

WHEREAS, each situation is evaluated by incident commanders or supervisors who, based on circumstances and Department directives, determine which equipment should be used; and

WHEREAS, the Department's diverse catalogue of military equipment, as defined in state law, and associated training gives police officers the confidence and capability to de-escalate volatile situations, enhance the safety of the public and officers, and bring critical incidents to a safe resolution; and

WHEREAS, from time to time, the Department may be asked to assist or need to be assisted by other law enforcement agencies, which may include use of military equipment, as defined in state law; and

WHEREAS, partnerships with other law enforcement agencies are an integral part of maintaining the continuity of public safety within the region; and

WHEREAS, in applying the requirements of AB 481 to charter cities, the California Legislature declared oversight of acquisition and use of military equipment to be a matter of statewide concern, rather than a municipal affair, thereby superseding any inconsistent provision in the San Diego Charter; and

WHEREAS, the Mayor, as the City's Manager, directs the Police Chief, and the City Council, as the legislative body, makes legislative policy; and

WHEREAS, the executive and legislative branches of City government recognize the importance of working together to protect public safety by creating policies which protect the residents of San Diego; and

WHEREAS, the Council has examined the Department's updated Procedure and finds that the Police Department has submitted all information described in Government Code section 7070(d), enabling the Council to make the following findings; and

WHEREAS, pursuant to Government Code section 7071(d), the Council finds that the military equipment described in the updated Procedure is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; and

WHEREAS, pursuant to Government Code section 7071(d), the Council further finds that the updated Procedure will safeguard the public's welfare, safety, civil rights, and civil liberties; and

WHEREAS, pursuant to Government Code section 7071(d), the Council further finds that continued use of existing military equipment and purchase of military equipment described in the Procedure is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety; and

WHEREAS, pursuant to Government Code section 7071(d), the Council further finds that the Department will ensure use of existing military equipment described in the updated Procedure will comply with the updated Procedure in the future; and

WHEREAS, pursuant to Government Code section 7071(e), the Council has reviewed the Department's Annual Military Equipment Report for 2022; and

WHEREAS, the Council finds that the equipment described in the Annual Military Equipment Report has complied with the standards set forth in Government Code section 7071(d), described above; and

WHEREAS, the Council wishes to adopt the updated Military Equipment Use Procedure and renew Ordinance O-21451 to include all equipment described in the Procedure; and

WHEREAS, the Office of the City Attorney has drafted this ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the 2023 Police Department Military Equipment Use Procedure, on file with the City Clerk as document number 21679, is hereby adopted.

Section 2. That by adoption of the 2023 Military Equipment Use Procedure, the Council approves seeking funds for new military equipment described in the Procedure, including grants and donations, acquiring military equipment described in the Procedure, collaborating as needed with another law enforcement agency in the deployment or use of military equipment in San Diego, using existing military equipment as described in the Procedure, and soliciting or entering into an agreement for funds, acquisition, use of, or collaboration for use of military equipment described in the Procedure.

Section 3. That San Diego Ordinance O-21451 (May 3, 2022) is hereby renewed.

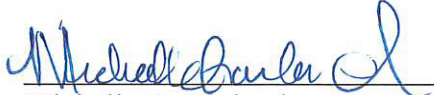
Section 4. That this approval is not intended to and shall not supersede existing processes to seek approval for the appropriation and expenditure of specific funds through the annual budget process, or existing processes for the approval and execution of contracts, donations, and grants, or the requirement to seek approval for qualifying technologies through the Transparent and Responsible Use of Surveillance Technology Ordinance.

Section 5. That the Council shall review this ordinance annually and vote whether to renew the ordinance, consistent with the requirements of state law.

Section 6. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 7. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Michelle A. Garland
Chief Deputy City Attorney

MAG:hm
May 18, 2023
Or.Dept:PSE
Doc. No.: 331097_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 11 2023.

DIANA J.S. FUENTES
City Clerk

By 
Deputy City Clerk

Approved: 7/18/23
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUL 11 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 18 2023.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By *Kristelle Medina*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUN 20 2023, and on JUL 18 2023.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By *Kristelle Medina*, Deputy

Office of the City Clerk, San Diego, California
21679
Ordinance Number O-_____