



**Agenda Item No. 12e.**

### **Staff Report**

**Date:** July 14, 2022

**To:** Mayor Kuhl and Council Members

**From:** Raffaello Pata, Police Chief

**Subject:** Adoption of Ordinance No. 715, adopting a Military Equipment Use Policy per Assembly Bill 481 (AB 481)

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#### **Recommendation**

It is recommended that the Town Council adopt Ordinance No. 715, which was introduced at the June 16, 2022 Council meeting.

#### **Background and Discussion**

State Assembly Bill 481 was enacted in January 2022, and was authored to address the funding, acquisition, and use of military equipment by local law enforcement. Ross Police Policy 706 (attached as Exhibit A) identifies what military equipment is by statute, and the department's annual responsibility, compliance and protocol for outside agency assistance that may use military equipment.

#### **Fiscal, resource and timeline impacts**

None.

#### **Attachments**

- Ordinance No. 715 with Exhibit A (2022 Town of Ross Police Department Military Equipment Use Policy)

# **TOWN OF ROSS**

## **ORDINANCE NO. 715**

### **AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ROSS ADOPTING A MILITARY EQUIPMENT USE POLICY**

**WHEREAS**, effective January 1, 2022, Assembly Bill 481 (AB 481) (Government Code sections 7071 *et. seq.*) sets forth a process by which law enforcement agencies are to obtain approval from their governing bodies of a military equipment use policy through the adoption of an ordinance; and

**WHEREAS**, AB 481 added California Government Code Sections 7070, 7071, and 7072 to codify the requirements set forth in AB 481 including that the Town Council of Town of Ross approve a Military Equipment and Use policy by Ordinance; and

**WHEREAS**, pursuant to Government Code Section 7071(a)(1), requires that an ordinance must be timely adopted before a law enforcement agency may, among other things, collaborate with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the Town of Ross; and

**WHEREAS**, the Town of Ross Police Department does not currently have military equipment (as that term is defined in Government Code section 7070(c)) in its inventory, but does rely on mutual aid from other jurisdictions who may have military equipment in its possession and who may in providing that mutual aid seek to deploy such military equipment in the Town of Ross; and

**WHEREAS**, the Ross Police Department works closely with other local, county, state and federal law enforcement agencies within Marin County on police related matters, including safeguarding the public's welfare and safety, working on regional task forces, conducting training exercises, providing mutual aid and responding to emergencies; and

**WHEREAS**, in exigent circumstances, there is sometimes the need to deploy military equipment from or lend military equipment to outside entities to promote the safety and security of community members; and

**WHEREAS**, the continued collaboration with other law enforcement agencies in the deployment or other use of military equipment within the City is necessary to safeguard the public's welfare, safety, civil rights and civil liberties and there is no reasonable alternative that can achieve the same objective of officer and civilian safety; and

**WHEREAS**, Ross Police Policy 706 sets forth a military equipment use policy that is consistent with the Police Department's current practices, has been posted on the Department's website for at least thirty (30) days, complies with all the requirements of AB 481, will ensure

ongoing regulation and compliance with the law going forward and will provide a means of community engagement and transparency regarding use of military equipment by the Department; and

**WHEREAS**, public notice has been provided in accordance with applicable law; and

**WHEREAS**, the Town Council desires to approve a military use policy in compliance with AB 481.

**NOW, THEREFORE**, the Town Council of the Town of Ross, California, does hereby ordain as follows:

Section 1. The Town Council of the Town of Ross finds and determines as follows:

A. The facts set forth in the recitals are true and correct and incorporated herein by this reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this ordinance.

B. Relying in part on mutual aid from neighboring jurisdictions requires the Town authorize the use of military equipment as set forth in this ordinance and Ross Police Policy 706 and finds it is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety. The collaboration with other agencies who may acquire or use military equipment for mutual aid, or other necessary collaboration, as set forth in Ross Police Policy 706 is part of the Police Department's overall approach to Critical Incident Management, Use of Force, De-Escalation and public safety. The collaboration with other agencies who may use military equipment will enable the department to partner with those agencies to properly respond to both planned and unplanned events efficiently and effectively, as needed.

C. This ordinance and Ross Police Policy 706 will safeguard the public's welfare, safety, civil rights, and civil liberties by ensuring required reporting out, the opportunity for community engagement and feedback, and transparency and oversight regarding the deployment and use of the specified military equipment in the Town of Ross.

D. The Ross Police Department is not proposing to purchase any military equipment, as defined in AB 481 at this time.

E. Prior military equipment use, as defined by AB 481, by the Ross Police Department complied with the military equipment use policy that was in effect at the time of the use.

F. This ordinance and Ross Police Policy 706 comply with the requirements of AB 481.

Section 2. The Town of Ross Town Council finds that this ordinance and Ross Police Policy 706 are exempt from the provisions of the California Environmental Quality Act ("CEQA") because they will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project," as defined in Section 15378 of the CEQA Guidelines.

**Section 3.** Approval of Military Equipment Policy. The Town Council adopts the 2022-2023 Military Equipment Use Policy, as set forth in Exhibit A. The Town Council further directs staff to establish an annual review procedure to review and provide for approval of any renewal of the military equipment use policy, in accordance with Government Code section 7072, to occur before May 1st of each subsequent year.

**Section 4.** Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The Town Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**Section 5.** Effective Date. This ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the Town Clerk of the Town of Ross shall cause this ordinance to be published pursuant to the provisions of Government Code Section 36933.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the 16th day of June 2022, and was adopted at a regular meeting of the Ross Town Council on the 14<sup>th</sup> day of July 2022, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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P. Beach Kuhl, Mayor

**ATTEST:**

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Linda Lopez, Town Clerk

## EXHIBIT A

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**2022 Town of Ross Police Department Military Equipment Use Policy (DRAFT)**

## **Military Equipment**

### **709.1. PURPOSE AND SCOPE**

California Government Code section 7071(b) requires that law enforcement agencies submit a proposed Military Equipment Use Policy to their governing body for approval prior to engaging in certain specified acts, including the procurement, use and deployment of Military Equipment within its jurisdiction.

California Government Code §7070(c) provides a list of equipment types that are considered to be “military equipment” for purposes of this policy requirement, and this Military Equipment Use Policy includes information for any such equipment types that are possessed by the Town of Ross Police Department, or reasonably likely to be deployed in the Town of Ross by its law enforcement partners.

### **709.2. POLICY**

It is the policy of the Town of Ross Police Department that members of this department comply with the provisions of California Government Code § 7071 with respect to military equipment, and that any law enforcement agency that deploys military equipment within the Town of Ross jurisdiction, do so consistent with the requirements of Government Code section 7071 and subject to any Military Equipment use policy they have adopted.

### **709.3. DEFINITIONS**

**Military Equipment Use Policy.** California Government Code section 7070(d) defines a Military Equipment Use Policy as 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.

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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.

**Military Equipment.** California Government Code § 7070(c) defines Military Equipment as any of the following:

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).

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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.

#### **709.4. ANNUAL MILITARY EQUIPMENT REPORT**

Pursuant to California Government Code § 7070(d)(6), and in accordance with California Government Code § 7072, the Town of Ross Police Department will submit to the Town of Ross Town Council an Annual Military Equipment Report and will make that report publicly available on its internet website. The Annual Military Equipment Report required by this section will remain publicly available on the Town's internet website for as long as the military equipment is available for use. In addition, 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. The Annual Military Equipment Report will 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.

The Ross Town Council will use the Annual Military Equipment Report as a mechanism to ensure the Ross Police Department's compliance with this Military Equipment Use Policy, and to help it determine whether to approve, revise, or revoke components of the Military Equipment Use Policy for the subsequent year.

#### **709.5. COLLABORATION OR COORDINATION WITH OTHER AGENCIES**

Law enforcement agencies responding to a call for mutual aid or who participate in collaboration with the Ross Police Department within the Town of Ross shall adhere to their own policies on the use of military equipment.



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### **709.6. POLICY COMPLIANCE**

Government Code section 7070 requires that this policy specify the mechanisms to be used by the Department to ensure compliance with this policy. Complaints regarding violations of this policy are subject to investigation and discipline in accordance with Ross Police Policy 1004, and other policies of the Department related to officer discipline. Complaints, questions, or other inquiries can be made as described below in the Public Involvement section. Further, The Chief will designate a Military Equipment Coordinator, whose responsibilities are described herein, which will include assisting with ensuring compliance with this policy.

### **709.7. PUBLIC INVOLVEMENT**

Pursuant to California Government Code §7070(d)(7), members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment in this policy by any of the following means:

1. Via email to: Town of Ross Police Department, Attention Chief of Police
2. Via phone call to: 415-453-1453
3. Via mail sent to: [rpata@townofross.org](mailto:rpata@townofross.org)

The Ross Police Department is committed to responding to complaints, concerns and/or questions received through any of the above methods in a timely manner.

### **709.8. MILITARY EQUIPMENT COORDINATOR**

The Chief of Police shall 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 the Ross 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.

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- (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.

#### **709.9. MILITARY EQUIPMENT INVENTORY**

The Town of Ross does not possess, has not purchased, or obtained any military equipment as defined in the Government Code other than standard issue weapons which are excluded from the Military Equipment definition.

If in the future, the Ross Police Department intends to or does procure such military equipment, it will complete a military equipment inventory consistent with Government Code section 7070(d). The inventory will provide 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. The inventory will include the purposes and authorized uses, the fiscal impact, the legal and procedural rules that govern the use, and the training required, for each type of military equipment.