



DEPARTMENTAL GENERAL ORDER

K-7: Military Equipment Funding, Acquisition and Use Policy

Effective Date: 20 May 2022

Coordinator: Special Operations Section

COMMAND INTENT

The purpose of this policy is to provide rules for the approval, acquisition, use, and reporting requirements of military equipment, as outlined in Government Code § 7070, Oakland Municipal Code (OMC) 9.65, et. seq., in order to safeguard the public's welfare, safety, civil rights, and civil liberties.

A. POLICY AND APPLICABILITY

It is the policy of the Oakland Police Department (OPD) to have legally enforceable safeguards, including transparency, oversight, and accountability, in place to protect the public's welfare, safety, civil rights, and civil liberties with respect to the funding, acquisition, and use of equipment defined by statute as military equipment. The acquisition of military equipment and its deployment in our communities may impact the public's safety and welfare. The public has a right to know about any funding, acquisition, or use of military equipment by local government officials, as well as a right to participate in any government agency's decision to fund, acquire, or use such equipment. Decisions regarding whether and how military equipment is funded, acquired, or used should consider the public's welfare, safety, civil rights, and civil liberties, and should be based on meaningful public input. The members of this Department will comply with the provisions of Assembly Bill 481, Government Code § 7070, Oakland Municipal Code (OMC) 9.65, et. seq. with respect to military equipment.

B. DEFINITIONS

The definitions related to this policy are defined in Government Code § 7070 and OMC 9.65:

Governing body – Means the elected body that oversees a law enforcement agency or, if there is no elected body that directly oversees the law enforcement agency, the appointed body that oversees a law enforcement agency. In the case of a law enforcement agency of a county, including a sheriff's department or a district attorney's office, "governing body" means the board of supervisors of the county. [Government Code § 7070(a)]. As it pertains to the City of Oakland, the Oakland City Council is the Governing body, but OPD must go through the Oakland Police Commission for requests or submitting reports pertaining to military equipment.

Law Enforcement Agency – A police department, including the police department of a transit agency, school district, or any campus of the University of California, the California State University, or California Community Colleges. [Government Code § 7070(b)(2)].

Military equipment – Defined military equipment includes, but not limited to, the following [Government Code § 7070(c)(1)-(15)] and [OMC 9.65]:

Controlled equipment – This term and term “Military equipment” are used interchangeably.

- Unmanned, remotely piloted, powered aerial or ground vehicles [Government Code § 7070].
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision [Government Code § 7070].
- Wheeled vehicles that are built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers. Police versions of standard consumer vehicles are specifically excluded from this section [OMC 9.65]
- High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two-and-one-half (2½)-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 [Government Code § 7070].
- Wheeled vehicles that are built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two-and-one-half (2½)-ton truck, or a five (5)-ton truck, or vehicles built or modified to use a breaching or entry apparatus as an attachment. Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section [OMC 9.65].
- Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion [Government Code § 7070].
- Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion [OMC 9.65].
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units [Government Code § 7070].
- Weaponized aircraft, vessels, or vehicles of any kind [Government Code § 7070].
- Weapon-bearing aircraft, vessels, or vehicles of any kind, whether manned or unmanned [OMC 9.65].

- 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 [Government Code § 7070].
- Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, equipment that is ballistic, such as a slug, or equipment that is explosive in nature, but excluding handheld battering rams that can be operated by one person [OMC 9.65].
- Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision [Government Code § 7070] and [OMC 9.65].
- Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision [Government Code § 7070] and [OMC 9.65].
- Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in § 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 state agency [Government Code § 7070] and [OMC 9.65].
- Any firearm or firearm accessory that is designed to launch explosive projectiles [Government Code § 7070].
- Active area denial weapons, such as the taser shockwave, microwave weapons, water cannons, and the long-range acoustic device (LRAD). [Government Code § 7070]. [OMC 9.65].
- The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons, and "riot guns" used to disperse chemical agents [OMC 9.65]. [Government Code § 7070].¹
- Any weapon designed for hand-to-hand combat, including any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat, but excluding service-issued telescopic or fixed-length straight batons [OMC 9.65].

¹ Riot guns was added to this section from OMC 9.65.

- Explosives and pyrotechnics, such as "flashbang" grenades and explosive breaching tools, and chemical weapons such as "teargas" and "pepper balls" but excluding standard, service-issued handheld pepper spray [OMC 9.65] [Government Code § 7070].
- Crowd-control equipment, such as riot batons, riot helmets, and riot shields, but excluding service-issued telescopic or fixed-length straight batons [OMC 9.65].
- Military surplus equipment [OMC 9.65].
- Any other equipment as determined by a governing body (City Council) or a state agency to require additional oversight [Government Code § 7070] and [OMC 9.65].

Controlled Military Equipment Impact Report- means a publicly released, written document that includes, at a minimum, all of the following [OMC 9.65]:

1. Description: A description of each type of controlled equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the controlled equipment.
2. Purpose: The purposes and reasons for which the Oakland Police Department (hereinafter, "Police Department") proposes to use each type of controlled equipment.
3. Fiscal Cost: The fiscal cost of each type of controlled equipment, including the initial costs of obtaining the equipment, the estimated or anticipated costs of each proposed use, the estimated or anticipated costs of potential adverse impacts, and the estimated or anticipated annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.
4. Impact: An assessment specifically identifying any potential impacts that the use of controlled equipment might have on the welfare, safety, civil rights, and civil liberties of the public, and what specific affirmative measures will be implemented to safeguard the public from potential adverse impacts.
5. Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.
6. Alternatives: A summary of all alternative method or methods the Police Department considered to accomplish the purposes for which the controlled equipment is proposed to be used, the annual costs of alternative method or methods, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public.

7. Location: The location(s) it may be used, using general descriptive terms.
8. Third Party Dependence: Whether use or maintenance of the controlled equipment will require the engagement of third-party service providers.
9. Track Record: A summary of the experience (if any) other entities, especially government entities, have had with the proposed controlled equipment, including, if available, quantitative information about the effectiveness of the controlled equipment in achieving its stated purpose in other jurisdictions, and any known adverse information about the controlled equipment (such as unanticipated costs, failures, or civil rights and civil liberties abuses).
10. Additionally, the Annual Impact Report will include the following from the Government Code 7072:
 - A summary of any complaints or concerns received concerning the military equipment.
 - The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
 - 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.
 - The quantity possessed for each type of military equipment.
 - If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

Some of these additions are already captured on Appendix A- Military Equipment List.

Controlled Equipment Use Policy- means a publicly released, legally enforceable written document governing the use of controlled equipment by the Oakland Police Department that addresses, at a minimum, all of the following [OMC 9.65] and [Government Code § 7070]:

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 [Government Code § 7070] and Appendix A.

Purpose: The specific purpose or purposes that each type of controlled equipment is intended to achieve [OMC 9.65] and [Government Code § 7070].

Authorized Use: The specific uses of controlled equipment that are authorized, and rules and processes required prior to such use [OMC 9.65] and [Government Code § 7070].

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 [Government Code § 7070].

The legal and procedural rules that govern each authorized use [Government Code § 7070].

Prohibited Uses: A non-exclusive list of uses that are not authorized.

Training: The course of training that must be completed before any officer, agent, or employee of the Police Department is allowed to use each specific type of controlled equipment [OMC 9.65]. 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 [Government Code § 7070].

Auditing and Oversight: The mechanisms to ensure compliance with the controlled equipment use policy, including which independent persons or entities have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy [OMC 9.65] and [Government Code § 7070].

Transparency: The procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of controlled equipment, and how the Police Department will ensure that each complaint, concern, or question receives a response in a timely manner [OMC 9.65] and [Government Code § 7070].

Annual Controlled Equipment Report -means a publicly released written document that includes, at a minimum, all of the following information for the immediately preceding calendar year:

1. Production descriptions and specifications for controlled equipment and inventory numbers of each type of controlled equipment in the Police Department's possession. The Police Commission may waive the remaining obligations for annual reporting for a specific type of equipment if the Police Department certifies, in advance of issuing the Annual Controlled Equipment Report, that the equipment was not used or purchased in the immediately preceding calendar year.
2. A summary of how controlled equipment was used.
3. If applicable, a breakdown of where controlled equipment was used geographically by police area. For each police area, the Police Department shall

report the number of days controlled equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.

4. A summary of any complaints or concerns received concerning controlled equipment.
5. The results of any internal audits, any information about violations of controlled equipment use policies to the extent permitted by law, and any actions taken in response.
6. The estimated annual cost for each type of controlled equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for controlled equipment in the calendar year following submission of the annual report.
7. Impact: An updated assessment specifically identifying any potential impacts that the use of the controlled equipment might have on the welfare, safety, civil rights, and civil liberties of the public, and what specific affirmative measures will be implemented to safeguard the public from potential adverse impacts.
8. Mitigations: Specific, affirmative technical and procedural measures that have been implemented to safeguard the public from such impacts.
9. Alternatives: An updated summary of all alternative method or methods the Police Department considered to accomplish the purposes for which the controlled equipment is proposed to be used, the annual costs of alternative method or methods, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public.

C. MILITARY EQUIPMENT COORDINATOR

The Chief shall designate the Special Operations Section Commander or designee as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

1. Acting as liaison to the governing body for matters related to the requirements of this policy.
2. Identifying equipment that qualifies as military equipment in the current possession of the Oakland Police Department, or the equipment OPD intends to acquire that requires approval by the governing body.
3. Facilitate an inventory of all military equipment at least annually.

4. Collaborating with any allied agency that may use military equipment within the jurisdiction of Alameda County (Government Code § 7071).

5. Preparing for, scheduling, and coordinating the annual community engagement meeting to include:

- a. Publicizing the details of the meeting.
- b. Preparing for public questions regarding the Oakland Police Department's funding, acquisition, and use of equipment.

6. Preparing the annual military equipment report for submission to the governing body and ensuring that the report is made available on the Oakland Police website (Government Code § 7072) (OMC 9.65).

D. APPROVAL FOR FUNDING, ACQUISITION, AND USE

The Oakland Police Department or authorized designee shall submit to the Oakland Police Commission a Controlled Equipment Impact Report and a Controlled Equipment Use Policy prior to engaging in any of the following:

- Requesting the transfer of Controlled Equipment pursuant to Section 2576a of Title 10 of the United States Code.
- 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.
- Accepting funds for Controlled Equipment, including, but not limited to, private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- Acquiring Controlled Equipment either permanently or temporarily, including by borrowing or leasing.
- Collaborating with another law enforcement agency, such as commanding, controlling, or otherwise directing that agency or its personnel, in the deployment or other use of Controlled Equipment within Oakland.
- Using any new or existing Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to OMC 9.65.
- 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.
- Acquiring military equipment through any means not provided above.

The Police Department shall not accept funding for, acquire, or use Controlled Equipment without the review and recommendation, by the Police Commission, and approval, by City Council, of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy submitted pursuant to OMC 9.65.

The Police Department shall not seek or apply for state, federal or private funds or in-kind or other donations for Controlled Equipment without prior review and approval by the Police Commission at a regularly noticed meeting. The Police Department may seek such approval here without submitting an Impact Report and/or a Controlled Equipment Use Policy, by informing the Police Commission of the needs for the funds and/or equipment, or otherwise justifying the request.

Submission to the Police Commission

- When seeking the review and recommendation of the Police Commission, the Police Department shall submit to the Police Commission a Controlled Equipment Impact Report and Controlled Equipment Use Policy.
- The Controlled Equipment Impact Reports and Controlled Equipment Use Policies shall be made publicly available on the Department's website for as long as the Controlled Equipment is proposed or approved for use.
- The Police Commission shall consider Controlled Equipment Impact Reports and Controlled Equipment Use Policies as an agenda item for review at least one open session of regularly noticed meeting.

Annual Reports on the Use of Controlled Equipment

The Oakland Police Department shall submit an Annual Controlled Equipment Report to the Police Commission no later than March 15th of each year, unless the Police Commission advises the Police Department that an alternate date is preferred. The Police Department shall make each annual report available on its website for as long as the Controlled Equipment is available for use. Within 60 days of the Police Department's submission and publication of an Annual Controlled Equipment Report, the Police Commission shall place the report as an agenda item for an open session of a regular meeting.

Notwithstanding the above, the Oakland Police Department may acquire military equipment without first obtaining City Council approval in the following situations:

1. In the event of an emergency, the Oakland Police Department may acquire additional stock of approved military equipment without City Council approval only if the Chief determines that doing so is necessary to respond to the emergency.
2. If there is an unanticipated exhaustion or reduction in the stock of ammunition, flash bangs, or chemical agents covered by this policy that would impair the Oakland Police Department's ability to maintain essential public safety functions or ensure the safety and security of the jails, OPD may acquire the minimum

additional stock necessary to maintain these functions until City Council approval can be obtained. This exception applies only to ammunition, flash bangs, or chemical agents, and does not permit OPD to acquire any other military equipment without prior Council approval.

3. The Chief of Police shall submit a report within 30 days through the Police Commission to the City Council documenting the emergency. At a minimum the report shall contain the following:
 - Summary
 - Dates of the emergency
 - Items purchased by OPD that are defined as “Military equipment.”
 - Describe if items were used and the reason for the use.
 - Fiscal Cost
 - Purchased items used during the emergency

E. MILITARY EQUIPMENT USE CONSIDERATIONS

Military equipment shall only be used by an OPD employee only after applicable training, including any course required by the Commission on Peace Officer Standards and Training (POST) has been completed, unless exigent circumstances arise. The military equipment acquired and authorized by the Oakland Police Department is:

1. Necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
2. Reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
3. The acquisition of the Military equipment is necessary to safe guard officer and public safety.

F. MILITARY EQUIPMENT REPORTING

Upon approval of a military equipment policy, OPD or the authorized designee shall submit a military equipment report to the Police Commission 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 (OMC 9.65) [Government Code § 7072].

1. The Oakland Police Department shall also make each annual military equipment report publicly available on its internet website for as long as the military equipment is available for use.

2. 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:
 - a. A summary of how the military equipment was used and the purpose of its use.
 - b. A summary of any complaints or concerns received concerning the military equipment.
 - c. The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.
 - d. 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.
 - e. The quantity possessed for each type of military equipment.
 - f. If OPD intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

G. COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Oakland Police Department through the Police Commission 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.

H. COORDINATION WITH OTHER JURISDICTIONS

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

Mutual Aid requests for Crowd Management will be managed in accordance with General Order L-03, Training Bulletin III-G, and any other Court Order.

Commented [AD1]: Probably should remove the footnote since this temporary court order will be replaced by a permanent injunction.

I. INQUIRY AND COMPLAINT PROCESS

(Government Code 7070 d (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.

The Oakland Police Department DGO M-3: **Complaints Against Departmental Personnel or Procedures** will inform all employees and the public of procedures for accepting, processing and investigating complaints concerning allegations of member employee misconduct.²

Any member of the public can also use the OPD Internal Affairs 24-hour Complaint Hotline at (866) 214-8834 to file your complaint - leave a detailed message describing the complaint.

Anyone can also send their complaint via U.S. Mail:
Oakland Police Department - Internal Affairs Division
455 - 7th Street
Oakland, CA 94607

Oakland Community Police Review Agency (CPRA):
Anyone can also file a complaint in person by visiting CPRA at 250 Frank Ogawa Plaza, Suite 6302 Oakland, CA 94612 (near City Hall) and file the complaint with an Intake Technician. The phone number at CPRA is (510) 238-3159. Office hours are Monday through Friday, 9:00 a.m. to 5:00 p.m.

For general inquiries regarding OPD Military equipment can be made by the following:

1. By email at militaryequipmentinquiries@oaklandca.gov.
2. By mail to:

Oakland Police Department
Special Operations Section
Re: Military Equipment Coordinator
2651 73rd Ave
Oakland, CA 94607

² DGO M-3 states, "IAD investigations shall be completed, reviewed, and approved within 180 days unless approved by the IAD commander."

General questions or concerns will be routed to the Military Equipment Coordinator for response in a timely manner. The Military Equipment Coordinator shall track all inquiries and responses for inclusion into the Military Equipment Report.

J. AUDITING AND OVERSIGHT

Government Code 7072 (3) The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.

*OMC 6.95 (5) 5. Auditing and Oversight: The mechanisms to ensure compliance with the controlled equipment use policy, including which **independent persons or entities** have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy.*

The Oakland Police Department will conduct a yearly internal audit and provide any information on violations of this policy. This report will be added to the yearly Annual Report.

The Oakland Police Commission will be the independent entity with oversight authority. The Office of Inspector General (OIG) will conduct audits to ensure compliance and accuracy of the inventory list.

K. REPORTING/ RECORDS KEEPING

The Support Operations Commander will keep records of the Military equipment used by the Oakland Police Department. Defined Military equipment will have a reporting section in each of the policies to assure accurate usage is captured.

L. MILITARY EQUIPMENT INVENTORY

The attached list is the current qualifying list of equipment utilized by the Oakland Police Department. The Office does not currently possess controlled or prohibited equipment acquired from the United States military. Instead, the department's current inventory consists of commercially available equipment.

Please refer to the attached list.

- Appendix A – Military Equipment Inventory

By order of

DEPARTMENTAL GENERAL ORDER K-7
OAKLAND POLICE DEPARTMENT

Effective Date
DD MMM YY

LeRonne L. Armstrong
Chief of Police

Date Signed: _____

DRAFT