

City of Scotts Valley CITY COUNCIL STAFF REPORT

DATE: April 6, 2022

TO: Honorable Mayor and City Council

FROM: Jayson Rutherford, Captain

APPROVED: Mali LaGoe, City Manager

SUBJECT: **PRESENTATION OF SCOTTS VALLEY POLICE DEPARTMENT
LEXIPOL POLICY #706 – MILITARY EQUIPMENT USE.**

SUMMARY OF ISSUES

California Assembly Bill 481, codified in Government Code sections 7070 through 7075 requires a law enforcement agency (LEA) to obtain approval from the applicable governing body, via adoption of a “military equipment” use policy by ordinance, prior to the LEA funding, acquiring, or using military equipment. In accordance with Government Code section 7071(b), the policy must be presented to the City Council 30 days before consideration of the ordinance. A copy of the policy, Military Equipment Policy – Scotts Valley Police Lexipol Policy #706, is attached to this report as Exhibit A (the “Policy”).

In order to approve the Policy, the City Council must determine (A) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; (B) The proposed military equipment use policy will safeguard the public’s welfare, safety, civil rights, and civil liberties; (C) If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety; and (D) Prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

The Scotts Valley Police Department (“SVPD”) did not purchase any military equipment from the State of California Department of General Services (DGS) or receive any military equipment from the Defense Logistics Agency Law Enforcement Support Program (formerly 1033).

Items deemed to be “military equipment” by AB 481 are used as a component of overall best practices for LEAs throughout the country. These tools have been tested in the field, and are used by LEAs to enhance citizen safety and officer safety. Loss of these items would jeopardize the welfare of citizens and SVPD officers.

The term “military equipment”, as used in AB 481, in fact does not necessarily indicate equipment that has been used by the military. Pursuant to AB 481, items deemed to be “military equipment” include, but are not limited to, unmanned aerial or ground vehicles, armored vehicles, command and control vehicles, pepper balls, less lethal shotguns, less lethal 40mm projectile launchers, long range acoustic devices, firearms categorized as assault weapons and rifles, and flashbangs.

SVPD is committed to using the most up to date tools and equipment to safeguard the citizens of Scotts Valley. Although very few items deemed to be “military equipment” by AB 481 are in fact employed by SVPD, Council is asked to approve Policy 706 in its entirety due to potential future equipment acquisitions and temporary department use of allied agency equipment.

SVPD Officers are trained on all department issued equipment before utilizing the equipment in the field. Officers receiving the equipment undergo training on the nomenclature, functionality, and risks associated with the use of the equipment. Furthermore, officers are required to requalify annually.

Officers must comply with mandated training as regulated by Federal, State and Local statutes. Most of the training is managed and administered by the California Commission on Peace Officer Standards and Training (POST), which sets minimum training standard for California law enforcement officers.

The following is a summary of the equipment the SVPD currently utilizes that is subject to AB 481:

AB 481 – Specialized Firearms

SVPD currently issues two different manufacturers of AR-15 .223 caliber rifles covered under SVPD Policy #306.3.3.

- Colt LE6920 AR-15 Tactical Carbine
- Bushmaster XM-E2S AR-15 Tactical Carbine

Officers issued a department patrol rifle must successfully complete a 16 hour POST Certified Basic Patrol Rifle Operator’s course and successfully complete the Department rifle qualification course. Officers are required to requalify annually.

There is demonstrated need for officers to carry the patrol rifle on duty as they are generally the first personnel to arrive on the scene of a critical and dynamic incident. Officers are trained to immediately move toward and engage armed subjects in deadly force situations.

The patrol rifle has multiple advantages over the traditional handgun. A patrol rifle can deliver controlled firepower in excess of 100 yards with accurate target hits. Rifle ammunition has a greater range than handgun ammunition and can penetrate soft body armor. Additionally, the rifle allows officers to create a greater distance between themselves and individuals. The increased distance provides more time for officers to react and decide the best outcome for the situation.

AB 481 – Kinetic Energy Weapons

SVPD currently issues Remington 870 shotguns converted to Less Lethal only capability and firing Safariland 12g Drag Stabilized Bean Bag Round, as covered under SVPD Policy #303.9.

Officers utilizing a Less Lethal shotgun must successfully complete department training consisting of policy review, written test, and qualification course. Officers are required to requalify annually.

There is a demonstrated need for officers to carry the less lethal shotgun on duty as it gives officers an additional use of force option that is less likely to cause great bodily injuries or be lethal.

Next Steps

The City Council will hold a public hearing to consider the Ordinance adopt the Policy on April 20, 2022. Final adoption of the Ordinance will be considered on May 18, 2022. If the Ordinance is adopted, SVPD will prepare an Annual Report to include the use of military equipment, any complaints received, any internal audits or other information about violations of the Military Equipment Use policy.

FISCAL IMPACT

There are no costs associated with this policy.

STAFF RECOMMENDATION

It is recommended that City Council receive the Scotts Valley Police Department Lexipol Policy #706 – Military Equipment.

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ORDINANCE NO. 200

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY
AMENDING TITLE 9 OF THE SCOTTS VALLEY MUNICIPAL CODE BY ADDING
CHAPTER 9.22, USE OF MILITARY EQUIPMENT BY THE POLICE DEPARTMENT**

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies; and

WHEREAS, Assembly Bill 481 (AB 481), codified at California Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance adopting a “military equipment” use policy at a regular meeting held pursuant to open meeting laws prior to taking certain actions relating to the funding, acquisition, or use of “military equipment”. The term “military equipment” is defined in California Government Code Section 7070; and

WHEREAS, AB 481 allows the City Council to approve the funding, acquisition, or use of military equipment, within its jurisdiction only if it makes specified determinations; and

WHEREAS, the proposed military equipment use policy is found within Scotts Valley Police Department Lexipol Policy Manual, General Order 706. The policy was published on February 16, 2022 and displayed on the Scotts Valley Police Department website on March 10, 2022 is being presented to the City Council on April 6, 2022. A copy of the policy is attached hereto as Exhibit A; and

WHEREAS, the Scotts Valley Police Department Policy 706 meets the requirements of California Government Code 7070; and

WHEREAS, this ordinance adds to the Municipal Code to affirm Scotts Valley Police Department Policy 706 and authorize the use of “military equipment” by the members of the Scotts Valley Police Department as described in Policy 706; and

WHEREAS, in the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq. and found this activity is not a “project” as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF SCOTTS VALLEY DOES
ORDAIN AS FOLLOWS:**

SECTION 1. The foregoing facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. That a new Chapter 9.22 is added to Title 9 of the Scotts Valley Municipal Code to read as follows:

“CHAPTER 9.22 - MILITARY EQUIPMENT USE POLICY.

Section 9.22.010- Findings and Purpose

Sec. 9.22.010 – Findings and Purpose.

(a) The City Council has made the following determinations:

(1) The military equipment inventoried and presented to the City Council is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; and

(2) The Military Equipment Use Policy (“Policy”) will safeguard the public’s welfare, safety, civil rights, and civil liberties; and

(3) The military equipment identified in the Military Equipment Use Policy is reasonably cost effective compared to available alternatives that can achieve the same objective of Officer and civilian safety; and

(4) Prior military equipment use complied with the applicable Equipment Use Policy (which included equipment now defined as military equipment) that was in effect at the time, or if prior uses did not comply with the accompanying Military Equipment Use Policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

(b) The Police Department has submitted a proposed Policy to the City Council and has made those documents available on the Police Department’s website for at least 30 days prior to the public hearing concerning the military equipment at issue.

(c) The Policy was considered by the City Council as an agenda item in an open session of a regular meeting, noticed in accordance with the Ralph M. Brown Act, at which public comment was permitted.

(d) The Policy shall be made publicly available on the Police Department’s website for as long as the military equipment is available for use.

(e) The Police Department shall submit an annual military equipment report to the City Council, containing the information required in Government Code Section 7072, and the City Council shall determine whether each type of military equipment identified in that report has complied with the standards for approval set forth in (a)(1)-(4) above.

(f) The City Council shall review this ordinance, and vote on whether to renew it, on an annual basis at a regular meeting, in accordance with Government Code Section 7071(e)(2)

(g) The City Council approves the use of the Policy and finds that it satisfies the requirements of Government Code Section 7070(d).”

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of

competent jurisdiction such portion shall be deemed a separate, distinct and independent provision of such Ordinance and shall not affect the validity of the remaining portions thereof.

SECTION 4. REPEALS CONFLICTING ORDINANCES. All other ordinances of the City of Scotts Valley or provisions of the Scotts Valley Municipal Code which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 5. CEQA COMPLIANCE. The City Council finds and determines that the enactment of this Ordinance is not a “project” as that term is used in the California Environmental Quality Act (“CEQA;” Cal. Pub. Resources Code Section 21000 et seq.) or the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.). Therefore, no environmental assessment is required or necessary.

SECTION 6. EFFECTIVE DATE. The above and foregoing ordinance was introduced for a first reading on April 20, 2022, and passed and adopted on May 18, 2022, at a duly held meeting of the City Council of the City of Scotts Valley by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED: _____
Donna R. Lind, Mayor

ATTEST: _____
Lauren Lambert, Deputy City Clerk

APPROVED
AS TO FORM: _____
Kirsten Powell, City Attorney