

AN ORDINANCE OF THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
ADDRESSING THE USE OF MILITARY EQUIPMENT BY THE BART POLICE DEPARTMENT

WHEREAS, the San Francisco Bay Area Rapid Transit District (BART) Board of Directors has invested heavily in maintaining a safe and secure transportation system hardened against terrorist sabotage, criminal behavior, and threats to public peace and safety; and

WHEREAS, the Board of Directors has and continues to believe that the safety and security of the BART system requires the maintenance and support of every law enforcement resource available to maintain public safety and BART's system security; and

WHEREAS, the Board recognizes that there is a point at which law enforcement resources may be viewed as unnecessary and unsettling to the riding public, and

WHEREAS, the Board wishes to harmonize these competing interests in a manner that permits public discourse and discussion about the decision-making process of adding military equipment for safety and security into the BART transit system; and

WHEREAS, the Board of Directors recognizes that military equipment use by law enforcement should be judiciously balanced with the need to reasonably protect recognized civil liberties; and

WHEREAS, the Board of Directors finds that proper transparency, oversight and accountability are fundamental to minimizing the mitigatable risks to the afore-mentioned civil liberties posed by use of military equipment by law enforcement personnel, and

WHEREAS, the Board of Directors finds it essential to have an informed public discourse about whether to adopt additional military equipment to that already utilized within the District, and
WHEREAS, the existing use of military equipment already employed within the BART transportation system is extensive, it shall be grandfathered in as a "baseline" and be exempt from further review to limit the otherwise unreasonably burdensome cost of the proposed policy; and

WHEREAS, the Board of Directors finds it desirable that safeguards be in place to protect reasonable expectations of privacy and freedom of speech and assembly, duly balanced against a need to preserve public peace and safety, and to address exigent circumstances before any new military equipment for law enforcement purposes is deployed.

WHEREAS, the Board of Directors finds that if either new military equipment is approved for use or existing equipment is used in a materially different manner or for a materially different purpose, there must be clear internal policies and procedures to ensure that reasonable safeguards are being followed and that the military equipment's benefits outweigh its costs.

NOW, THEREFORE, BE IT ENACTED by the Board of Directors of the San Francisco Bay Area Rapid Transit District:

17-601 Name of Ordinance

A. This Ordinance shall be known as the Military Equipment Use Ordinance.

17-602 Definitions

A. "Military Equipment" includes all of the following (Per CA Gov. Code §7070):

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).
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.
- B. "District" means any department, agency, bureau, and/or subordinate division of the San Francisco Bay Area Rapid Transit District.
- C. "Police Department" or "BART Police Department" means any division, section, bureau, employee, volunteer and/or contractor of the San Francisco Bay Area Rapid Transit District's Police Department.
- D. "Board of Directors" means the governing legislative body of the San Francisco Bay Area Rapid Transit District.
- E. "Military Equipment Use Policy" means 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.
 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.

- F. "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person is occurring, has occurred, or is about to occur.
- G. "State agency" means the law enforcement division of every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.
- H. "Type" means each item that shares the same manufacturer model number.

17-603 Military Equipment Use Policy Requirement

- A. The BART Police Department shall obtain approval of the Board of Directors, by a resolution adopting a Military Equipment Use Policy (MEUP) at a regular meeting of the Board of Directors held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) prior to engaging in any of the following:
 - 1. Requesting Military Equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
 - 2. 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.
 - 3. Acquiring Military Equipment either permanently or temporarily, including by borrowing or leasing.
 - 4. Collaborating with another law enforcement agency in the deployment or other use of Military Equipment within the territorial jurisdiction of BART.
 - 5. Using any new or existing Military Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.
 - 6. 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.
 - 7. Acquiring Military Equipment through any means not provided by this section.
- B. No later than May 1, 2022, if seeking to continue the use of any Military Equipment that was acquired prior to January 1, 2022, the BART Police Department shall commence a Board of Directors approval process in accordance with this section. If the Board of Directors does not approve the continuing use of Military Equipment, including by adoption pursuant to a Military Equipment Use Policy submitted pursuant to this code, within 180 days of submission of the proposed Military Equipment Use Policy to Board of Directors, the BART Police Department shall cease its use of the Military Equipment until it receives the approval of Board of Directors in accordance with this code.

- C. In seeking the approval of Board of Directors, the BART Police Department shall submit a proposed Military Equipment Use Policy to the Board of Directors and make those documents available on the Police Department's internet website at least 30 days prior to any public hearing concerning the Military Equipment at issue.
- D. The Board of Directors shall only approve a Military Equipment Use Policy pursuant to this chapter if it determines all of the following:
 - 1. The Military Equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
 - 2. The proposed Military Equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
 - 3. 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.
 - 4. 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.
- E. In order to facilitate public participation, any proposed or final Military Equipment Use Policy shall be made publicly available on the internet website of the Police Department for as long as the Military Equipment is available for use.
- F. The Board of Directors shall review this ordinance at least annually and vote on whether to renew it at a regular meeting held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

17-604 Use in Exigent Circumstances

- A. Notwithstanding the provisions of this Chapter, the Police Department may acquire, borrow and/or use Military Equipment in Exigent Circumstances without following the requirements of this code.
- B. If the Police Department acquires, borrows, and/or uses Military Equipment in Exigent Circumstances, in accordance with this section, it must take all of the following actions:
 - 1. Provide written notice of that acquisition or use to the Board of Directors within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged under local, state or federal law.
 - 2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed amended Military Equipment Use Policy to the Board of Directors within 90 days following the borrowing, acquisition and/or use, and receive approval, as applicable, from the Board of Directors.

3. Include the Military Equipment in the Police Department's next annual Military Equipment Report.

17-605 Reports on the Use of Military Equipment.

- A. The Police Department shall submit to Board of Directors an annual Military Equipment Report for each type of Military Equipment approved by the Board of Directors within one year of approval, and annually thereafter for as long as the Military Equipment is available for use.
- B. The Police Department shall also make each annual Military Equipment Report required by this section publicly available on its internet website for as long as the Military Equipment is available for use.
- C. 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:
 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.
- D. 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, at which the general public may discuss and ask questions regarding the annual Military Equipment report and the law enforcement agency's funding, acquisition, or use of Military Equipment.
- E. The Board of Directors shall determine, based on the annual Military Equipment Report submitted pursuant to this section, whether each type of Military Equipment identified in that report has complied with the standards for approval set forth in this code and the Military Equipment Use Policy. If the Board of Directors determines that a type of Military Equipment identified in that annual Military Equipment Report has not complied with the standards for approval, the Board of Directors shall either disapprove a renewal of the authorization for that type of Military Equipment or require modifications to the Military Equipment Use Policy in a manner that will resolve the lack of compliance.

17-607 Severability

- A. If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter.
- B. The Board of Directors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

In regular session of the Board of Directors of the San Francisco Bay Area Rapid Transit District introduced on the ____ day of _____, 2022 and finally passed and adopted this ____ day of _____, 2018, on regular roll call of the members of said Board by the following vote:

Ayes:

Noes:

Abstentions:

WHEREUPON, the President declared the above and foregoing ordinance duly adopted and SO ORDERED.

President, Board of Directors

ATTEST:

April Quintanilla, Interim District Secretary