



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <div style="float: right; border: 1px solid black; padding: 2px;"> <small>DocuSigned by:</small> <i>Michael Jones</i> <small>47000790F2D7463...</small> </div>		GENERAL MANAGER ACTION REQ'D:		
DATE: 5/5/2022 9/1/2022		BOARD INITIATED ITEM: No		
Originator/Prepared by: Olivia Jackson Dept: Office of the Chief <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Olivia Jackson</i> <small>5A906366B7C145F...</small> </div> Signature/Date: <div style="text-align: right;">9/1/2022</div>	General Counsel <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Jana Belan</i> <small>F8FD7B3A73E74E8...</small> </div> <div style="text-align: right;">9/1/2022 []</div>	Controller/Treasurer <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Chris Gan</i> <small>EE11C8CEEEA04FD...</small> </div> <div style="text-align: right;">9/1/2022 []</div>	District Secretary <div style="text-align: right;">[]</div>	BARC <div style="border: 1px solid black; padding: 2px; margin-top: 10px;"> <small>DocuSigned by:</small> <i>Shane Edwards</i> <small>8128A2EB2F014F3...</small> </div> <div style="text-align: right;">9/1/2022 []</div>

BART Police Department Use of Specialized or Military Equipment Policy/Ordinance

PURPOSE:

To have a second reading and commence the Board approval process for an ordinance governing the use of specialized or military equipment by the BART Police Department (BART PD) in satisfaction of the requirements under Government Code Section 7071 (which sets forth the means by which specialized or military equipment may henceforth be acquired and used by local law enforcement agencies).

DISCUSSION:

In summary, AB 481 requires BART PD to obtain approval from the Board of Directors at a regular and open meeting, prior to taking certain actions related to funding, acquisition, or use of “military equipment”, as defined in Government Code § 7070(c). That section requires that any law enforcement agency seeking to use specialized or military equipment must first adopt an ordinance setting out the local government's policy that complies with Government Code Section 7070 et seq.

The Police Department released Draft Lexipol Policy 711 to the community by posting it on the District website, at least thirty (30) days prior to the Board of Directors’ consideration of the agenda item in compliance with Government Code § 7071. This was to encourage public participation, transparency, and community partnership. Any proposed or final policy will be posted on the District website page as long as the military equipment is available for use. The policy and the attached reports to the Board will include how the equipment is being used, the maintenance and use costs, internal audits, and community feedback on the use.



As explained in the attached, if approved by ordinance, and for as long as the military equipment is available for use, BART PD must abide by the terms of its ordinance when:

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.

Approvals under this policy are subject to annual review by the Board of Directors to assist BART PD in its ongoing oversight. The policy shall be approved if the Board determines that the benefits to the community outweigh the costs and that the proposed manner of use reasonably safeguards civil liberties and rights. Four findings must be made:

First, that the military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

Second, that the proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

Third, that 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.

Fourth, 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 policy shall continue in effect until it is amended or repealed by an ordinance of the Board of Directors.

FISCAL IMPACT:

The proposed Specialized or Military Equipment Use Ordinance will have no fiscal impact on the District.

ALTERNATIVES:

If the Board does not approve the proposed ordinance continuing the use of specialized or military equipment, the BART PD must cease its use of the identified specialized or military equipment until it receives approval from the Board.

RECOMMENDATION:

Staff recommends that the Board approve the motion to advance the process to adopt the ordinance.

MOTION:

The Board adopts the attached Military Equipment Use Policy and the Military Equipment Use Ordinance in concert with making the following findings by resolution in support of the ordinance:

1. The Board finds the military equipment addressed in the proposed policy and ordinance is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
2. The Board finds that the proposed policy and ordinance will safeguard the public welfare, safety, civil rights and civil liberties.
3. The Board finds that purchasing the military equipment addressed in the military equipment use policy is reasonably cost effective compared to available alternatives that could achieve the same objective of officer and civilian safety.
4. The Board finds that, when the information required under AB 481 is received regarding the BART Police Department's prior use of military equipment (as defined in said law), it will faithfully determine whether prior military use has complied with Board policies, that BART Police will take corrective action to curb nonconforming uses, if any, and will ensure future compliance with the terms of the Military Equipment Use Policy and the Military Equipment Use Ordinance.