

**EFFECTIVE DATE
OF ORDINANCE**

July 20, 2022

ORDINANCE NO. 2818 N.C.S.

Introduced by: Brian Barnacle

Seconded by: Dennis Pocekay

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA
ADOPTING AND APPROVING PETALUMA POLICE DEPARTMENT'S MILITARY EQUIPMENT
FUNDING, ACQUISITION, AND USE POLICY, IN COMPLIANCE WITH CALIFORNIA
ASSEMBLY BILL NO. 481 (AB 481)**

WHEREAS, on September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481 (AB 481) (codified in Government Code sections 7070 through 7075.), relating to the use of military equipment as defined in the statute by California law enforcement agencies; and

WHEREAS, AB 481 seeks to provide transparency, oversight, and an opportunity for meaningful public input on decisions regarding whether and how military equipment is funded, acquired, or used by local police departments; and

WHEREAS, the Petaluma Police Department is in possession of certain items of equipment that qualify as "military equipment" under AB 481; and

WHEREAS, AB 481 requires that a law enforcement agency possessing and using equipment subject to AB 481 must prepare a publicly released, written, Military Equipment Funding, Acquisition, and Use Policy including the inventory, description, purpose, use, acquisition, maintenance, fiscal impacts, procedures, training, oversight, and complaint process, applicable to the use of equipment subject to AB 481; and

WHEREAS, the Military Equipment Policies required by AB 481 and supporting information must be adopted by California law enforcement agency governing bodies by ordinance, and be reviewed annually; and

WHEREAS, in compliance with AB 481, on April 18, 2022, the Petaluma Police Department submitted the draft Petaluma Military Equipment Funding, Acquisition, and Use Policy (Policy) to the City Council as City Council agenda Item 4B, and posted the proposed Policy on the City's website for 30 days before the June 6, 2022, public hearing concerning this ordinance; and

WHEREAS, this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378, because adoption of an ordinance authorizing the Petaluma Police department's use of existing and budgeted equipment subject to AB 481 does not meet CEQA's definition of a "project," because such administrative action does not have the potential for resulting either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment; and

WHEREAS, the City Council considered the proposed AB 481 Policy at a duly noticed regular meeting on June 6, 2022 at which time all interested members of the public were provided the opportunity to provide public comment, and introduced this ordinance adopting and approving the Petaluma Police Department's Military Equipment Funding, Acquisition, and Use Policy, incorporating specified changes to the ordinance and the policy approved pursuant to the ordinance in compliance with California Assembly Bill No. 481.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Petaluma as follows:

Section 1. FINDINGS. The City Council hereby finds:

1. That the foregoing recitals are true and correct and hereby incorporates them into this ordinance as findings and determinations of the City Council.
2. This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378. Adoption of an ordinance authorizing the police department's use of existing and budgeted equipment subject to AB 481 does not meet CEQA's definition of a "project," because such administrative action does not have the potential for resulting either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.
3. The Petaluma Military Equipment Funding, Acquisition, and Use Policy, attached to and made a part of this ordinance as Exhibit 1 and identified as Petaluma Police Policy 709 has been posted on the City's website for at least 30 days commencing on April 18, 2022.
4. The City Council has conducted a public hearing on Policy 709 during a regularly scheduled City Council meeting on June 6, 2022, and considered all written and verbal comments, as well as the report and presentation from staff.
5. The City Council has reviewed Policy 709 and finds that it meets the requirements of State law and is consistent with the public safety provisions of the Petaluma Police Department Policy Manual.

Section 2. PROPOSED MILITARY EQUIPMENT POLICY DETERMINATIONS. The City Council determines that:

1. The military equipment as defined in AB 481 that is identified in Policy 709 is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety. The equipment in the City's inventory that is subject to AB 481 is highly specialized equipment. Some of the AB 481 equipment that the City possesses is necessary for addressing extraordinary public safety threats, such as armored vehicles for safely entering active shooter and potential live fire incidents, and mobile command vehicles for such incidents as well as for providing first responder command and control for events such as wildfires and other natural disasters. Other AB 481 equipment that the City possesses or plans to acquire is specialized equipment for addressing extraordinary public safety threats with less than lethal means, such as drones, battering rams, slugs and breaching apparatuses, noise-flash diversionary devices, teargas, and similar non-lethal equipment.
2. Policy 709 will safeguard the public's welfare, safety, civil rights, and civil liberties by restricting the use of AB 481 equipment to circumstances in which use of such equipment is lawful and warranted to protect public safety, and by providing for reporting on the use of AB 481 equipment to ensure compliance with Policy 709.
3. Purchasing and maintaining in inventory the equipment identified in Policy 709 is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety. As noted above, the City's AB 481 equipment is highly specialized and intended for extraordinary public safety threats such that there may be no available alternative that can achieve the same safety objectives. Also, much of the equipment was either received from the federal government at no cost or was previously purchased, obviating or reducing the need for new purchases.

4. Prior use of AB 481 equipment by the Petaluma Police Department complied with the policies governing the use of such equipment that were in effect at the time. There is no record of the Petaluma Police Department using equipment subject to AB 481 in a manner that did not comply with the equipment use policies in effect at the time.

Section 3. APPROVAL OF POLICY 709. The City Council of the City of Petaluma approves and adopts Policy 709, which is attached and made a part of this ordinance as Exhibit 1, and directs that:

1. Policy 709 shall be maintained on the Police Department's website page, as long as the Policy is in use.
2. Annually, the Police Department shall hold a well-publicized and conveniently located community engagement meeting regarding Petaluma Police Department Policy 709 and its use of equipment subject to AB 481 pursuant to Government Code section 7072 (b). This annual meeting will be noticed and conducted in accordance with the requirements that apply to legislative bodies under California Brown Act.
3. Annually, the City Council shall review this ordinance, the Policy 709 and the annual military equipment report prepared by the Police Department pursuant to Government Code section 7072, and determine by resolution whether to continue this ordinance and Policy 709 in effect or to modify Policy 709 or initiate the amendment or repeal of this Ordinance or Policy 709. This report will include demographic information including race and ethnicity related to any military equipment use. In addition to the annual report required by statute, the Petaluma Police Department will provide the City Council a quarterly report until July 2023
4. Annually, the City Council shall determine, based on the annual military equipment report submitted pursuant to Government Code section 7072, whether each type of military equipment identified in that report has complied with the standards for approval set forth in AB 481 and this ordinance.
5. Staff shall seek approval from the City Council prior to the acquisition or use of any specialized or military equipment, as defined in Gov't Code section 7070, that is not held in the Police Department's current inventory unless exigent circumstances exist where delaying the acquisition or use of the equipment would jeopardize the safety of the Petaluma community or members of the Police Department. If such circumstances exist, notification of the acquisition or use of the equipment, including a summary of the exigent circumstances preventing the Police Department from giving prior notice, will be provided to the City Council as soon as practicable but no later than 48 hours following the equipment's acquisition or use.
6. This ordinance and Policy 709 shall continue in effect until amended or repealed by ordinance of the City Council.

Section 4. SEVERABILITY. If any part of this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision will not affect the validity of the remaining parts of this ordinance. The City Council of the City of Petaluma hereby declares that it would have passed and adopted this ordinance and each of its provisions irrespective of any part being held invalid.

Section 5. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after the date of its adoption by the Petaluma City Council.

Section 6. POSTING/PUBLISHING OF NOTICE. The City Clerk is hereby directed to post and/or publish this ordinance or a synopsis of it for the period and in the manner required by the City Charter. The City Clerk is also hereby directed to file a Notice of Exemption concerning this ordinance with the Office of the Sonoma County Clerk in accordance with Section 15062 of the CEQA Guidelines.

INTRODUCED and ordered posted/published this 6th day of June, 2022.

ADOPTED this 20th day of June, 2022 by the following vote:

Ayes: Mayor Barrett, Vice Mayor Pocekay, Barnacle, Fischer, Healy, King, McDonnell
Noes: None
Abstain: None
Absent: None

DocuSigned by:
Teresa Barrett
604102E6B48F42E...
Teresa Barrett, Mayor

ATTEST:

DocuSigned by:
Kendall Rose
184689A429E4492...
Kendall Rose, CMC, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Eric Danly
5EE85AE94F3048D...
Eric Danly, City Attorney