



COUNTY OF SAN DIEGO

AGENDA ITEM

BOARD OF SUPERVISORS

NORA VARGAS
First District

JOEL ANDERSON
Second District

TERRA LAWSON-REMER
Third District

NATHAN FLETCHER
Fourth District

JIM DESMOND
Fifth District

DATE: April 26, 2022 and May 10, 2022

29

TO: Board of Supervisors

SUBJECT

NOTICED PUBLIC HEARING:

DISTRICT ATTORNEY – AN ORDINANCE ADDING ARTICLE LXIV TITLED DISTRICT ATTORNEY AND NEW SECTION 955 OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES FOR APPROVAL OF THE SAN DIEGO COUNTY DISTRICT ATTORNEY’S BUREAU OF INVESTIGATION MILITARY EQUIPMENT USE POLICY (DISTRICTS: ALL)

OVERVIEW

On September 30, 2021, Governor Newsom signed into law Assembly Bill 481 (AB 481). Assembly Bill 481 is intended to increase transparency, accountability, and oversight surrounding the acquisition and use by state and local law enforcement agencies of equipment the state has identified as “military equipment.” AB 481 states that no later than May 1, 2022, a law enforcement agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2022, shall commence a governing body approval process in accordance with this section. Today’s request seeks this approval.

Governing body approval under AB 481 must take the form of an ordinance adopting a publicly released, written military equipment use policy, which must address a number of specific topics, including the type, quantity, capabilities, purposes, and authorized uses of each type of equipment, the fiscal impact of their acquisition and use, the legal and procedural rules that govern their use, the training required by any officer allowed to use them, the mechanisms in place to ensure policy compliance, and the procedures by which the public may register complaints.

The District Attorney’s Bureau of Investigation currently owns equipment that falls under the identified types as defined in AB 481. The listed equipment is used to assist in de-escalation, firearms training, education and court related expert testimony, and to enhance officer safety and public safety when conducting enforcement action. The equipment increases the safety of law enforcement personnel and citizens and provides a variety of options for a safe and timely resolution of critical incidents county wide.

Today's request is for the Board of Supervisors to approve an ordinance relating to the military equipment use policy as required by California Assembly Bill 481. Note that per AB 481, the San

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Diego County District Attorney's Bureau of Investigation military use policy has been posted on the San Diego County District Attorney's public website for 30 days.

RECOMMENDATION(S)
DISTRICT ATTORNEY

On April 26, 2022: Approve the introduction of the Ordinance (first reading), read title, and waive further reading of the Ordinance:

1. AN ORDINANCE ADDING NEW ARTICLE LXIV TITLED DISTRICT ATTORNEY AND NEW SECTION 955 OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES FOR APPROVAL OF THE SAN DIEGO COUNTY DISTRICT ATTORNEY'S BUREAU OF INVESTIGATION MILITARY EQUIPMENT USE POLICY
2. Receive the San Diego County District Attorney's presentation related to Assembly Bill 481

If, on April 26, 2022, the County of San Diego Board of Supervisors takes action as recommended, then on May 10, 2022, consider and adopt (second reading):

1. AN ORDINANCE ADDING NEW ARTICLE LXIV TITLED DISTRICT ATTORNEY AND NEW SECTION 955 OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES FOR APPROVAL OF THE SAN DIEGO COUNTY DISTRICT ATTORNEY'S BUREAU OF INVESTIGATION MILITARY EQUIPMENT USE POLICY

EQUITY IMPACT STATEMENT

Public safety encompasses more than just the enforcement of the laws. The San Diego County District Attorney's Bureau of Investigation provides law enforcement services that aim to protect human rights, liberty, and security of person. It is the policy of the San Diego County District Attorney to be transparent in the purchase and use of equipment the state has defined as military equipment. Decisions regarding the use, procurement and funding of this equipment will take into consideration the public's welfare, safety, civil rights, and allow for public input. The department also strives for equitable outcomes in our communities, which means that the law enforcement services afford our communities a chance to lower crime and improve quality of life throughout the entire jurisdiction. Ensuring that everyone is provided public safety is essential for thriving communities. The department is committed to keeping our communities safe and as crime free as possible.

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FISCAL IMPACT

There is no fiscal impact associated with today's requests to receive a presentation related to Assembly Bill 481 and consider and adopt an ordinance approving the San Diego County District Attorney's Bureau of Investigation Military Equipment Use Policy. There will be no change in net General Fund cost and no additional staff years.

BUSINESS IMPACT STATEMENT

N/A

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

On September 30, 2021, Governor Newsom signed into law Assembly Bill 481 (AB 481). Assembly Bill 481 is intended to increase transparency, accountability, and oversight surrounding the acquisition and use of specified equipment by state and local law enforcement agencies. Requirements of AB 481 include that each law enforcement agency's governing body shall commence a process to adopt a written military equipment use policy by ordinance in a public forum by April 30, 2022, to continue the use of its previously acquired military equipment effective May 1, 2022.

Assembly Bill 481 added Government Code 7070 defining the following 15 types of items as military equipment:

- Type 1: Unmanned, remotely piloted, powered aerial or ground vehicles
- Type 2: Mine-resistant ambush-protected vehicles or armored personnel carriers
- Type 3: High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached
- Type 4: Tracked armored vehicles that provide ballistic protection to their occupants
- Type 5: Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units
- Type 6: Weaponized aircraft, vessels, or vehicles of any kind
- Type 7: Battering rams, slugs, and breaching apparatuses that are explosive in nature
- Type 8: Firearms of .50 caliber or greater, excluding standard-issue shotguns
- Type 9: Ammunition of .50 caliber or greater, excluding standard-issue shotgun ammunition
- Type 10: Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code §30515, with the exception of standard-issue handguns
- Type 11: Any firearm or firearm accessory that is designed to launch explosive projectiles
- Type 12: Flash bang grenades and explosive breaching tools, tear gas and pepper balls excluding standard service issued handheld pepper spray.
- Type 13: TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices

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Type 14: Kinetic energy weapons and munitions

Type 15: Any other equipment as determined by a governing body or a state agency to require additional oversight

The San Diego County District Attorney's Bureau of Investigation is currently in possession of equipment under types 10, 12, and 14 from the above list. All items currently in possession by the San Diego County District Attorney's Bureau of Investigation had already been approved during the associated budgetary periods commensurate with the items purchased.

The San Diego County District Attorney's Bureau of Investigation has prepared a military equipment use policy that must be adopted by the Board of Supervisors (Board) by an ordinance. In approving the policy, the Board must find that 1) the military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety; and 2) the proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

The San Diego County District Attorney works to ensure the provision of adequate public safety services in a transparent manner, including the purchase and use of equipment identified in AB 481. Pursuant to state law, the Department has prepared a proposed military equipment use policy for adoption by the Board of Supervisors. The policy includes information for each piece of equipment listed in state law, including the description, quantity, capability, life span, purpose, authorized usage, cost, required training, and authority for use. The policy also identifies where the equipment is stored or used and sets forth mechanisms to ensure compliance with the policy, and for members of the public to register complaints or concerns about each type of military equipment.

The policy will remain publicly available on the San Diego County District Attorney's internet website for as long as the military equipment is available for use. Within one year of approval of the policy, and annually thereafter, the San Diego County District Attorney's Bureau of Investigation will submit a military equipment report to the Board of Supervisors that will include a summary of how the specified equipment was used and the purpose of its use, as well as any complaints or concerns received concerning the equipment, and other items required pursuant to Government Code 7072. That report will also be publicly available on the San Diego County District Attorney's internet website for as long as the military equipment is available for use.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's proposed actions support the Justice Strategic Initiative of the County of San Diego's 2022-2027 Strategic Plan by ensuring transparency in the use and procurement of military equipment for the benefit of providing law enforcement services to the residents of San Diego County.

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Respectfully submitted,



SUMMER STEPHAN
District Attorney

ATTACHMENT(S)

ATTACHMENT A – SAN DIEGO COUNTY DISTRICT ATTORNEY'S BUREAU OF INVESTIGATION MILITARY EQUIPMENT USE POLICY

ATTACHMENT B – AN ORDINANCE ADDING NEW ARTICLE LXIV TITLED DISTRICT ATTORNEY AND NEW SECTION 955 OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES FOR APPROVAL OF THE SAN DIEGO COUNTY DISTRICT ATTORNEY'S BUREAU OF INVESTIGATION MILITARY EQUIPMENT USE POLICY (CLEAN COPY)

ATTACHMENT C – Summary of Ordinance