



# COUNTY OF SAN DIEGO

## AGENDA ITEM

### BOARD OF SUPERVISORS

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First District

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Fourth District

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Fifth District

**DATE:** April 9, 2024

**02**

**TO:** Board of Supervisors

### **SUBJECT**

**DISTRICT ATTORNEY – ACCEPT THE DISTRICT ATTORNEY’S ANNUAL MILITARY EQUIPMENT REPORT AND REVIEW AND RENEW THE MILITARY EQUIPMENT USE POLICY ORDINANCE PER SECTION 955 TO ARTICLE XXV OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES (DISTRICTS: ALL)**

### **OVERVIEW**

On September 30, 2021, Governor Newsom signed into law Assembly Bill 481 (AB 481). Codified in Government Code sections 7070-7075, AB 481 requires a military equipment use policy be approved by the governing body of a law enforcement agency for such equipment to be requested, acquired, or deployed by the agency. On May 10, 2022 (1), the Board of Supervisors approved and adopted the San Diego County District Attorney’s (DA) Office Bureau of Investigation Military Equipment Use Policy under Article LXIV Section 955 of the San Diego County Code of Administrative Ordinances (Ordinance 10789) and on May 2, 2023 (1), the Board of Supervisors approved an updated Military Equipment Use Policy.

Government Code 7072 requires law enforcement agencies to present an annual report to their governing body on the use of the equipment, complaints or concerns regarding the use of the equipment, results of any internal audits on the use of the equipment, the annual costs for the equipment, the quantity possessed by the agency, and the intent to purchase additional equipment in the following year.

Today's request is for the Board of Supervisors to accept the San Diego District Attorney’s Office Bureau of Investigation Annual Military Equipment Report and review and renew Ordinance 10789.

### **RECOMMENDATION(S)**

#### **DISTRICT ATTORNEY**

1. Accept and file the San Diego District Attorney’s Office Bureau of Investigation Annual Military Equipment Report per California Assembly Bill No. 481 and determine each type of equipment in the Report has complied with the standards for approval set forth in Government Code section 7071(d).

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2. Review and renew Ordinance 10789:  
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

**EQUITY IMPACT STATEMENT**

The District Attorney’s Office seeks to ensure an equitable and transparent justice system for all San Diego communities. To advance fairness and equity, the District Attorney’s Office is committed to gathering community input, while simultaneously assessing current and emerging public safety risks and needs when making decisions regarding the use, procurement, and funding of state defined military equipment. As part of the District Attorney’s ongoing dedication to public safety, the actions in this Board Letter would provide local law enforcement services to facilitate equitable outcomes throughout San Diego communities by protecting human rights, liberties, and security of all residents.

**SUSTAINABILITY IMPACT STATEMENT**

The proposed action contributes to the County of San Diego’s sustainability goals of community engagement and safety. Investing in local law enforcement services and equipment enables a local and coordinated response, bringing critical incidents to a prompt and safe resolution while safeguarding public safety. Investments in local resources also enhance investigative support services and the overall prosecutorial process. To prevent, prosecute, and protect San Diego communities from harm, the District Attorney’s Office’s use of local resources and equipment not only increases organizational capacity, but it leads to positive social and economic enhancements contributing to overall regional sustainability.

**FISCAL IMPACT**

There is no fiscal impact associated with today’s request to receive and consider approving the San Diego County District Attorney’s annual report related to Assembly Bill 481.

**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). AB 481 is intended to increase transparency, accountability, and oversight surrounding the acquisition and use of specified equipment by state and local law enforcement agencies.

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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
- 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 Bureau of Investigation is comprised of sworn peace officers responsible for providing a full range of professional law enforcement and investigative support services to the District Attorney. In that capacity, Investigators are regularly tasked with executing search and arrest warrants, high-risk extraditions, witness protection activities, high-risk surveillances, undercover operations, and participating in county-wide mutual aid events. The San Diego County District Attorney’s Office Bureau of Investigation continues to possess equipment described in types 1, 10, 12, and 14 from the above list, as detailed in Attachment A, and previously approved under Article LXIV Section 955 of the San Diego County Code of Administrative Ordinances (Ordinance 10789). The equipment possessed by the Bureau as defined in AB481 is equipment similarly possessed by every law enforcement agency in San Diego County. This equipment increases the safety of law enforcement personnel and citizens, provides a variety of options for safe and timely resolution of incidents county-wide, and is consistent with law enforcement best practices throughout the region.

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Within one year of approval of Ordinance 10789, and annually thereafter, the San Diego County District Attorney’s Office Bureau of Investigation is required to submit an Annual Military Equipment Report to the Board of Supervisors detailing use of the equipment, complaints or concerns regarding the use of the equipment, results of any internal audits on the use of the equipment, the annual costs for the equipment, the quantity possessed by the agency, and the intent to purchase additional equipment in the following year. 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.

Pursuant to Government Code Section 7071(e), in reviewing the DA's Department's Annual Military Equipment Report and the ordinance (Attachment A), the Board must determine whether each type of equipment listed in the Report has complied with the standards for approval set forth in Section 7071(d), which are also codified in the ordinance. These standards are: (A) the military equipment is necessary because there is no reasonable alternative that can achieve the same objection of officer and civilian safety; (B) the 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 use and ensure future compliance. If the Board finds that any type of equipment has not complied, they must either disapprove renewal of that type of military equipment or require modifications to the policy to resolve the lack of compliance.

Within 30 days of submitting and publicly releasing this report, the San Diego County District Attorney’s Bureau of Investigation will 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.

Today's request is for the San Diego County Board of Supervisors to accept the annual Military Equipment Report, determine that each type of equipment has complied with the standards for approval set forth in Government Code section 7071(d), and review and renew the ordinance relating to the military equipment use policy in compliance with AB 481.

**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 2024 - 2029 Strategic Plan by ensuring transparency in the use and procurement of the District Attorney’s resources for the benefit of San Diego County residents.

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Respectfully submitted,



SUMMER STEPHAN  
District Attorney

**ATTACHMENT(S)**

Attachment A – SAN DIEGO COUNTY DISTRICT ATTORNEY’S OFFICE BUREAU OF INVESTIGATION 2024 ANNUAL MILITARY EQUIPMENT REPORT

Attachment B - SAN DIEGO COUNTY DISTRICT ATTORNEY’S OFFICE BUREAU OF INVESTIGATION POLICY 5.9 - MILITARY EQUIPMENT USE

Attachment C - 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