

ORDINANCE NO. 22-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH ADDING A NEW SUBSECTION TO SECTION 2-4 OF CHAPTER 2 OF THE FIREBAUGH MUNICIPAL CODE REGARDING POLICE ACQUISITION AND USE OF "MILITARY EQUIPMENT"

WHEREAS, on September 30, 2021, California Assembly Bill 481 ("AB 481") was signed into law; and

WHEREAS, AB 481 and Government Code sections 7070, through 7072 require that the City Council of the City of Firebaugh approve a Military Equipment Use Policy by ordinance; and

WHEREAS, the amendment of Section 2-4 (Law Enforcement) of Chapter 2 (Administration), to add Subsection 2-4.4 (Military Equipment Use Ordinance) is necessary to comply with the requirements of AB 481 and Government Code Sections 7070 through 7072.

BE IT ORDAINED by the Council of the City of Firebaugh as follows:

SECTION 1. Subsection 2-4.4, of Section 2-4, of Chapter 2 of the Firebaugh Municipal Code is hereby added to read as follows:

SECTION 2-4

LAW ENFORCEMENT

Subsection 2-4.4

"MILITARY EQUIPMENT" USE ORDINANCE

2-4.4.1: NAME OF ORDINANCE

2-4.4.2: FINDINGS AND DETERMINATIONS

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2-4.4.1: NAME OF ORDINANCE

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

2-4.4.2: FINDINGS AND DETERMINATIONS

A. FINDINGS. The City Council finds:

1. On September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, which codified procedures of funding, acquisition and use of military equipment by law enforcement agencies under Government Code sections 7070 through 7075.

2. Assembly Bill 481 requires law enforcement agencies to obtain approval from the applicable governing body by ordinance adopting a military equipment use policy prior to taking certain actions relating to funding, acquisition, or use of military equipment.
3. Assembly Bill 481 allows a city council of a city to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it makes specified determinations pursuant to Government Code section 7071.
4. Assembly Bill 481 requires law enforcement agencies to annually submit to the applicable governing body a military equipment report for each approved type of military equipment for as long as the military equipment is available for use, and to make each annual report publicly available on its website for as long as the equipment is available for use.
5. Assembly Bill 481 requires a city council that has adopted an ordinance approving a military equipment use policy to annually review the military equipment report submitted by the law enforcement agency to determine whether each type of military equipment identified in the report continues to comply with the standard of approval.
6. Assembly Bill 481 requires a city council that has adopted an ordinance approving a military equipment use policy to annually review the ordinance and vote on whether to renew the ordinance at a regular meeting.
7. Policy 708 of the Firebaugh Police Department Policy Manual has been prepared by the Firebaugh Police Department as its proposed military equipment use policy, and it has been published on the Firebaugh Police Department's internet website since May 1, 2022.
8. A duly noticed public hearing was conducted by the City Council at its regular meeting on June 7, 2022, to consider and adopt Policy 708.

B. DETERMINATIONS. Based on the above-findings and the information provided to the City Council at the public meeting, the City Council determines that Policy 708 of the Firebaugh Police Department Policy Manual complies with standards for approval under Government Code section 7071:

1. The identified military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
2. Policy 708 of the Firebaugh Police Department Policy Manual will safeguard the public's welfare, safety, civil rights, and civil liberties.
3. The purchase and use of the military equipment identified in Exhibit A of Policy 708 is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
4. All military equipment uses prior to the adoption of Policy 708 of the Firebaugh Police Department Policy Manual complied with applicable Department policy in effect at that time and will continue to conform with future compliance.
5. Policy 708 of the Firebaugh Police Department Policy Manual is approved and adopted.

2-4.4.3: DEFINITIONS

A. "Military Equipment" includes all of the following (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. "City" means any department, agency, bureau, and/or subordinate division of the City of Firebaugh.
- C. "Police Department" means any division, section, bureau, employee, volunteer and/or contractor of the Firebaugh Police Department.
- D. "City Council" means the governing body that is the Firebaugh City Council.
- 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.

2-4.4.4: MILITARY EQUIPMENT USE POLICY REQUIREMENT

- A. The Firebaugh Police Department shall obtain approval of the City Council, by an ordinance adopting a Military Equipment Use Policy ("MEUP") at a regular meeting of the City Council held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with section 54950) of Part 1 of Division 2 of Title 5), 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 the City of Firebaugh.
 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 Firebaugh Police Department shall commence a City Council approval process in accordance with this section. If the City Council 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 City Council, the Firebaugh Police Department shall cease its use of the Military Equipment until it receives the approval of City Council in accordance with this code.
- C. In seeking the approval of City Council, the Firebaugh Police Department shall submit a proposed Military Equipment Use Policy to City Council 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 governing body shall consider a proposed Military Equipment Use policy as an agenda item for an open session of a regular meeting and provide for public comment in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with section 54950) of Part 1 of Division 2 of Title 5).

- E. The governing body shall only approve a Military Equipment Use Policy pursuant to this subsection 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.
- F. 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.
- G. The City Council shall review any ordinance that is has adopted pursuant to this subsection approving the funding, acquisition, or use of Military Equipment at least annually and vote on whether to renew the ordinance 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).

2-4.4.5: USE IN EXIGENT CIRCUMSTANCES

- A. Notwithstanding the provisions of this subsection, 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 City Council 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 City Council within 90 days following the borrowing, acquisition and/or use, and receive approval, as applicable, from the City Council.
 3. Include the Military Equipment in the Police Department's next annual Military Equipment Report.

2-4.4.6: REPORTS ON THE USE OF MILITARY EQUIPMENT

- A. The Police Department shall submit to City Council an annual Military Equipment Report for each type of Military Equipment approved by the City Council 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 Police Department 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 City Council shall determine, based on the annual Military Equipment Report submitted pursuant to this subsection, 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 City Council determines that a type of Military Equipment identified in the annual Military Equipment Report has not complied with the standards for approval, the City Council shall either disapprove a renewal of the authorization of or that type of Military Equipment or require modification to the Military Equipment Use Policy in a manner that will resolve the lack of compliance.

2-4.4.7: SEVERABILITY

- A. If any section, subsection, sentence, clause, phrase, or word of this subsection, 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 subsection.

B. The City Council hereby declares that it would have passed this subsection 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 subsection or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 2. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 3. The City Clerk is directed to cause this ordinance or a summary of this ordinance to be published once in a newspaper of general circulation published and circulated within the City of Firebaugh, within fifteen (15) days after its adoption. If a summary of the ordinance is published, the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which the ordinance is adopted and again after the meeting at which the ordinance is adopted. The summary shall be approved by the City Attorney.

The foregoing Ordinance No. 22-03 was introduced at a regular meeting of the City Council of the City of Firebaugh on the 2nd day of May, 2022, and was passed and adopted at a regular meeting of the City Council on the _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Brady Jenkins, Mayor
City of Firebaugh

Rita Lozano, Deputy City Clerk
City of Firebaugh

Military Equipment and Use

708.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Gov. Code §§ 7070, 7071, and 7072).

708.1.1 DEFINITIONS

Definitions related to this policy include (Gov. Code § 7070):

Governing body – The elected or appointed body that oversees Firebaugh Police Department (“Department”).

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- 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, excluding unarmored all-terrain vehicles and motorized dirt bikes.
- Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld ram designed to be operated by one person.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard Department-issued shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons pursuant to Penal Code sections 30510 and 30515, except standard Department-issued handguns.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools, including, but not limited to, grenades.
- Munitions containing tear gas or oleoresin capsicum (“OC”), excluding standard Department-issued handheld pepper spray.

- TASER® Shockwave, microwave weapons, water cannons, and Long Range Acoustic Devices ("LRADs").
- Kinetic energy weapons and munitions, including, but not limited to, projectile launchers, bean bag rounds, and rubber bullet.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.
- Notwithstanding Government Code sections 7070 paragraphs (1) through (15). "Military Equipment" does not include general equipment not designated prohibited or controlled by the federal defense logistics agency.

708.2 POLICY

It is the policy of the Department that Department members comply with the provisions of Government Code section 7071.

708.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police or his authorized designee shall designate an employee within the Department to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying Department equipment that qualifies as military equipment in the Department's current possession, or the equipment that the Department intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of the Department (Gov. Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 1. Publicizing the details of the meeting.
 2. Preparing for public questions regarding the Department's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Gov. Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Department will respond in a timely manner.

708.4 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment for the Department:

See **Exhibit A**, attached hereto.

708.5 APPROVAL

The Chief of Police or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting this military equipment policy. As part of the approval process, the Chief of Police or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on Department's website at least thirty (30) days prior to any public hearing concerning the military equipment at issue (Gov. Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Gov. Code § 7071):

- (a) Requesting military equipment made available pursuant to Title 10 of the United States Code section 2576a.
- (b) 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.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this Department.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) 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.
- (g) Acquiring military equipment through any means not provided above.

708.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment used by any member of this Department shall be approved for use and in accordance with this Department policy. Military equipment used by other jurisdictions while providing mutual aid to this Department, or otherwise engaged in law enforcement operations within this jurisdiction, shall comply with their respective military equipment use policies in rendering mutual aid.

708.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Police or the authorized designee shall submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for Department use (Gov. Code § 7072).

The Chief of Police or the authorized designee shall also make each annual military equipment report publicly available on Department's website (<https://firebaugh.org/police/>) for as long as the military equipment is available for Department use. The report shall include all information

required by Government Code section 7072 for the preceding calendar year for each type of military equipment in Department's inventory.

708.8 COMMUNITY ENGAGEMENT

Within thirty (30) days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Department shall discuss the report and respond to public questions regarding the Department funding, acquisition, or use of military equipment.

Pursuant to California Government Code section 7070, subdivision (d)(7), members of the public may register complaints or concerns or submit questions about the use of each specific type of Military Equipment in this policy by any of the following means:

- (a) Via email to: Salvador.raygoza@fcle.org
- (b) Via phone call to: (559) 659-3051
- (c) Via USPS mail to:
 - Firebaugh Police Department
 - Attn: Military Equipment Use Coordinator
 - 1575 11th Street
 - Firebaugh, CA 93662

EXHIBIT A

Military Equipment Owned by the Firebaugh Police Department as identified by AB 481

Equipment Type: Unmanned Aircraft Systems (UAS/Drones) – Gov. Code § 7070, subd. (c)(1)
Quantity Owned/Sought: 3 owned
Equipment Capabilities: Remotely piloted aerial vehicles capable of providing live and recorded video images captured from aerial positions, including images enhanced by Forward Looking Infrared (FLIR) and optical zoom lenses.
Manufacturer Product Description: <u>DJI MAVIC Enterprise Pro Platinum:</u> Powerful, industrial-grade flight platform with world class agility and speed. The aircrafts visual sensors enable enhanced hovering precision. This platform comes with a Thermal Forward Looking InfraRed (FLIR) system which allows use at night or in low light situations. <u>DJI MAVIC Air 2:</u> This product is a commercially purchased UAS platform equipped with a camera capable of still photography or video.
Purpose/Authorized Uses: UAS/Drones may be utilized to enhance the Department's mission of protecting lives and property when other means and resources are not available or are less effective. Uses may include but are not limited to: search and rescue; suspect apprehension; crime scene documentation; tactical operations; scene security; hazard monitoring, identification and mitigation; response to emergency calls; crisis communications; legally authorized surveillance.
Fiscal Impacts: The initial costs of equipment, licensing, software and training was approximately \$10,000. Ongoing cost associated with UAS operation and maintenance is estimated to be approximately \$1,000 per year.
Legal/Procedural Rules Governing Use: Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations. The use of the UAS potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to FAA altitude regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure). Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy. Reasonable precautions can include, for example, deactivating or turning imaging devices away from such areas or persons during UAS operations.
Training Required: Prior to piloting any UAS/Drone staff members must complete all training required by our FAA COA.
Compliance: The Chief of Police will ensure compliance with the military use policy. Violations of this policy will be dealt with according to department policies.
Other Notes: Lifespan for UAS's platforms are approximately 2-3 years due to ever-changing technology.