



MEMORANDUM

TO: Tyfahra Milele
Chair, Oakland Police Commission

FROM: LeRonne L. Armstrong
Chief of Police

SUBJECT: Militarized and Controlled Equipment Update

DATE: May 12, 2022

PURPOSE

This memorandum is to provide an update on the Department's efforts on completion of the requirements of California Government Code § 7070 et seq. (aka "AB 481") and Oakland Municipal Code Chapter 9.65. Collectively, these will be referred to as the "militarized and controlled equipment laws."

BACKGROUND

The Oakland City Council passed CMS 13657 on July 6, 2021, enshrining Chapter 9.65 into the Oakland Municipal Code. This ordinance requires that the Police Department (OPD) produce reports and use policy / policies prior to taking specific actions with militarized or otherwise controlled equipment. Those actions include acquiring, borrowing, accepting funds for, or otherwise using the equipment. Additionally, the ordinance gave the Department one (1) year from the date of passage (July 6, 2022) to produce the required reports and policy / policies for equipment controlled by the ordinance that was already in use by the Department at the time of passage of the ordinance.

The State of California took much of the language in Oakland's ordinance and adopted it in an assembly bill (AB 481) that was passed by the legislature and signed into law on September 30, 2021. This law, comprising sections 7070-7075 of the Government Code, requires that law enforcement agencies (OPD is a law enforcement agency under this statute) obtain the approval of their governing body prior to taking certain actions relating to the funding, acquisition, or use of military equipment, which is defined in the law.

OPD'S TRACKING OF CONTROLLED EQUIPMENT

OPD is cognizant of and shares the ultimate goals of the drafters of both of these pieces of legislation – that the public be given transparent information on the type of equipment used by OPD in its mission to provide law enforcement and life-saving services to the community of Oakland. To that end, the Department already has controls and tracking of several items which are of concern or are listed in these laws. For example:

Armored Vehicles

- **Policy:** OPD has a policy ([TB III-P.04](#), created through the Police Commission ad hoc committee process) on the use of its armored vehicles.

- **Necessity vs. Impact¹:** The armored vehicles have allowed OPD to respond to multiple critical incidents involving firearms or dangerous persons while providing safe physical cover behind which de-escalation strategies can be implemented. Policy also sets strict limits on when these vehicles may be deployed.
- **Tracking:** OPD's policy requires that armored vehicle deployments be tracked, and this information is tabulated and available to public inspection through records requests.
- **Replacement:** The Department has provided information to the Commission on replacement possibilities for the "Bearcat" armored vehicle at a public meeting, and stands ready to move forward when funding is secured.

Specialized firearms, including assault weapons as defined by law

- **Policy:** OPD has policies which cover the use of these weapons, including [DGO K-05 Tactical Operations Team](#) and [DGO K-06 Patrol Rifle Program](#).
- **Necessity vs. Impact:** OPD's specialized firearms, used by specified, trained officers, allow for long distance force options to facilitate providing time and distance, which are frequently key components in de-escalating critical incidents involving firearms or dangerous persons.
- **Tracking:** Pointing or deployment of these firearms is covered by the reporting components of [DGO K-04 Reporting and Investigating the Use of Force](#) as well as the exhibiting of firearms tracking provisions of [Special Order 9196](#).
- **Replacement:** OPD has no current plans on replacing or augmenting the limited quantities of these weapons, though it will comply with the provisions of these laws if and when that becomes necessary (see below for discussions on current challenges).

Projectile Launch Platforms such as 40mm launchers and "bean bag" Specialty Impact Munitions

- **Policy:** OPD has policy ([TB III-H](#)) on the use of Specialty Impact Munitions (SIM). Additionally, use is further restricted by OPD's crowd control policy ([TB III-G](#)) and its use of force policy ([DGO K-03](#), created through a Commission ad hoc process).
- **Necessity vs. Impact:** OPD's use of SIM, which are only used by trained officers and are even more tightly controlled during crowd control, allow for long distance less-than-lethal force options as well as the ability to engage with objects (such as break windows to facilitate communication, or remove cameras used for counter-surveillance). These tools allow commanders additional options beyond simply forcing a resolution to a critical incident, often leading to de-escalation and the end of these incidents without the use of significant force.
- **Tracking:** Pointing or deployment of these weapons systems is covered by the reporting components of [DGO K-04 Reporting and Investigating the Use of Force](#) as well as the exhibiting of firearms tracking provisions of [Special Order 9196](#). Additionally, the use of SIM against any property (e.g. a window or door) is documented in the deploying member's police report.
- **Replacement:** OPD has no current plans on replacing or augmenting the limited quantities of these weapons, though it will comply with the provisions of these laws if and when that becomes necessary (see below for discussions on current challenges).

Additional equipment

¹ Oakland's municipal code chapter requires that equipment be reviewed for necessity vs. available alternatives, whether the use policy safeguards public welfare and rights, whether the use of the equipment will be based on minimizing disproportionate impacts based on protected classes, and whether the equipment is the most cost effective option.

OPD has other equipment which is controlled by these laws, including robots and UAVs, light-sound diversionary devices, chemical munitions, riot batons, crowd control helmets, explosive breaching equipment, long and magnetic acoustic devices, and command and control vehicles. There are policies in place for much of this equipment; if the items do not have specific use policies the equipment is typically subject to specific training and restrictions on the members who are issued the equipment or allowed to use it, as well as the situations in which they may use them. In short, OPD exercises significant control over the items listed in these laws.

SIGNIFICANT CHALLENGES

As noted above, OPD exercises significant control over the equipment items listed in the militarized and controlled equipment laws. However, when the Oakland ordinance was passed (the state law largely mirrors the Oakland ordinance but does not require as much reporting) the Department expressed serious concerns about the lack of staffing needed to keep up with the significant administrative workload imposed by the ordinance.

This staffing challenge continues. In its agenda report on the ordinance when it was presented to the City Council, the Department originally stated that it would require the equivalent of four (4) Administrative Assistant II positions to complete the additional creation of policy, impact reports, annual reports, and tracking required by this ordinance. To date, the Department has been unable to fill any of these positions; only one position is authorized and, while the Department has been diligent in attempting to fill the position, the candidate who was ultimately selected will not start until June 13, 2022. Due to the discrepancy between the requested staffing and the actual staffing, it is anticipated that the work will take longer than desired.

PROPOSED PLAN OF ACTION

OPD proposes the following plan of action for the short term:

Develop an overall “Military Equipment Funding, Acquisition, and Use Policy”

After the passage of AB 481, every law enforcement agency throughout the state is required to have a policy, and virtually all which have provided draft policies have created one overall policy which complies with the law while also not over-taxing policy writing (and oversight body) resources. OPD proposes doing the same, utilizing the ad hoc process if desired by the Police Commission.

Receive a three (3) month extension from the Police Commission

Oakland’s ordinance provides for the possibility of a three (3) month extension from the one-year deadline for review of previously acquired equipment. OPD proposes that the Commission approve an extension allowing for these three months, with a new deadline of October 6, 2022.

Work with Police Commission on requests to City Council for Funding

The vital work of reporting and transparency comes with a cost: staff time, and the attendant need for additional professional staff as well as technological assistance to collect and report the information needed to oversight bodies and the public. OPD proposes to work with the Commission on joint funding memoranda for things such as the full four (4) administrative assistants needed to properly comply with the mandates imposed by this ordinance, as well as technology that might assist the Department in complying such as an asset management system and attendant Asset Manager professional staff position.

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CONCLUSION

The Department continues to move forward in its work with the Police Commission on the vital mission of transparency and good governance in the realm of law enforcement and public safety, while also realizing the challenges posed by things such as staffing shortfalls and competing priorities (for instance, the Department is grateful for the near-full-time work of the Commission and its ad hoc committees on several policies that were needed for the City's recent appearance at Court for a case management conference). The Department looks forward to working with the Commission on addressing these challenges while continuing to provide the professional, just, and constitutional policing for which the Department and its members have become known.

Respectfully submitted,

LeRonne L. Armstrong
Chief of Police
Oakland Police Department