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Date: June 8, 2021
To: Members of City Council and Members of the Public
From: Vice Mayor Kaplan
Re: **Ordinance Adding Chapter 9.65 To The Oakland Municipal Code Establishing Rules For The Oakland Police Department's Acquisition And Use Of Military And Militaristic Equipment**

Dear Colleagues on the City Council and Members of the Public,

RECOMMENDATION

Adopt An Ordinance Adding Chapter 9.65 To The Oakland Municipal Code Establishing Rules For The Oakland Police Department's Acquisition And Use Of Military And Militaristic Equipment

EXECUTIVE SUMMARY

The acquisition of military and militaristic equipment and its deployment in Oakland can adversely impact the public's safety and welfare, including introducing significant risks to civil rights, civil liberties, and physical and psychological well-being, and incurring significant financial costs. The public has a right to know about any funding, acquisition, or use of military or militaristic equipment by the City of Oakland, as well as a right to participate in any City decision to fund, acquire, or use such equipment. Decisions regarding whether and how military or militaristic equipment is funded, acquired, or used should give strong consideration to the public's welfare, safety, civil rights, and civil liberties, and should be based on meaningful public input.

This ordinance will add a chapter to Oakland's Municipal Code to regulate the Oakland Police Department's acquisition and ongoing use of specified military and militaristic equipment by requiring the Police Department to submit policies, impact reports, and annual reports regarding the equipment to the Oakland Police Commission for review, who will make recommendations to the City Council regarding the acquisition and use of the equipment.

BACKGROUND/LEGISLATIVE HISTORY AND ANALYSIS

The Law Enforcement Equipment Acquisition Working Group created by President Barack Obama in Executive Order 13688 (later rescinded by President Donald Trump) recommended requiring "local civilian government (non-police) review of and authorization for law enforcement agencies'

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request for or acquisition of controlled equipment," and that such review included detailed justification for the acquisition and collecting information on and reporting on its use. Several studies indicate that police departments in the United States that acquire military-grade equipment are more likely to use violence and are no more successful in reducing crime than those that acquire less such equipment.

Legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before military or militaristic equipment is funded, acquired, or used. The lack of a public forum to discuss the acquisition of military or militaristic equipment jeopardizes the relationship police have with the community, which can be undermined when law enforcement is seen as an occupying force rather than a public safety service. If military or militaristic equipment is acquired, reporting measures must be adopted that empower the City Council and public to verify that mandated civil rights safeguards have been strictly adhered to.

By adopting this ordinance, the City of Oakland can further regulate the Oakland Police Department's (OPD) acquisition and ongoing use of specified military and militaristic equipment by allowing for public input and creating greater transparency. It will require the Police Department to submit a Controlled Equipment Use Policy, Controlled Equipment Impact Report, and an Annual Controlled Equipment Report to the Oakland Police Commission for review, who will then make recommendations to the City Council.

OPD must submit a Controlled Equipment Use Policy and Controlled Equipment Impact Report to the Police Commission if they are requesting to do the following things: transfer of Controlled Equipment; accept funds for Controlled Equipment; acquire Controlled Equipment either permanently or temporarily, including by borrowing or leasing; collaborate with another law enforcement agency, such as commanding, controlling, or otherwise directing that agency or its personnel, in the deployment or other use of Controlled Equipment within Oakland; use any new or existing Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to the ordinance, solicit or respond to a proposal for, or entering into an agreement with, any other person or entity to seek funds for; and, apply to receive, acquire, use, or collaborate in the use of Controlled Equipment.

The Police Commission will recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy. The City Council will only approve a proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy after first considering the recommendation of the Police Commission and determining that the City's interest in community safety outweighs the potential adverse effects of using Controlled Equipment. If the Council does not approve or reject the Commission's decision, the Commission's decision will become final.

This ordinance also requires that the Oakland Police Department submit an Annual Controlled Equipment Report to the Police Commission no later than March 15th of each year, unless the Police Commission advises the Police Department that an alternate date is preferred. The Police

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Commission will place the report as an agenda item for an open session of a regular meeting within 60 days of the Police Department's submission and publication of the Annual Controlled Equipment Report. This report will list each type of Controlled Equipment in use and the Police Commission will determine whether the equipment continues to meet the criteria for approval. If the Police Commission determines the use of all Controlled Equipment identified in the Annual Controlled Equipment Report continues to meet the criteria for approval, a review packet, including the report, will be submitted to City Council. If the Police Commission determines that the use of any Controlled Equipment identified in the report no longer meets the criteria for approval, the Police Commission may recommend to the City Council that a prior approval be revoked or modified.

SUSTAINABLE OPPORTUNITIES

Economic: This ordinance will ensure that the use of Controlled Equipment is the most cost-effective option among all available alternatives. Thus, it may lead to cost-savings for the City and allow for those funds to be allocated elsewhere, including to support vital community programs and services.

Environmental: None

Social Equity: By creating a system of transparency and opportunities for public input through the Police Commission review process, it will ensure that the use of Controlled Equipment will not be used in a manner that disproportionately impacts members of the public based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability.

Respectfully submitted,



Vice Mayor Rebecca Kaplan
Oakland City Councilmember At Large