


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

EMERGENCY ORDINANCE APPROVING CONTROLLED EQUIPMENT USE POLICIES FOR THE OAKLAND POLICE DEPARTMENT TO ACQUIRE AND USE THE FOLLOWING TYPES OF “MILITARIZED” EQUIPMENT IN CONFORMANCE WITH GOVERNMENT CODE SECTION 7070 AND OAKLAND MUNICIPAL CODE CHAPTER 9.65:

- (1) TRAINING BULLETIN V-F.2 (CHEMICAL AGENTS); AND**
- (2) TRAINING BULLETIN III-H (SPECIALTY IMPACT MUNITIONS)**

WHEREAS, California Government Code Section 7070 (Government Code 7070) and Oakland Municipal Code Chapter 9.65 (Chapter 9.65) require that that the City Council authorize the Oakland Police Department’s (OPD) acquisition and use of “Controlled Equipment” or “Militarized” equipment by approving Controlled Equipment Use Policies for such equipment, and

WHEREAS, additionally, Chapter 9.65 requires the Police Commission to review a Controlled Equipment Use Policy and a Controlled Equipment Impact Report for each form of Controlled Equipment to be considered by City Council for approval and to make a recommendation to City Council regarding whether the City Council should approve OPD’s acquisition and use of such Controlled Equipment; and

WHEREAS, in the fall of 2022, OPD presented several Controlled Equipment Use Policies, including Training Bulletin V-F.2 (Chemical Agents) and Training Bulletin III-H (Specialty Impact Munitions), for the Police Commission’s consideration and feedback on proposed policy changes; and

WHEREAS, the Police Commission completed its deliberations on several Controlled Equipment Use Policies, including Training Bulletin V-F.2 (Chemical Agents) and Training Bulletin III-H (Specialty Impact Munitions), and recommended that City Council approve these policies; and

WHEREAS, at their January 17, 2023 meeting, City Council considered an ordinance to approve the recommendations of the Police Commission to approve several Controlled Equipment Use Policies, including Training Bulletin V-F.2 (Chemical Agents) and Training Bulletin III-H (Specialty Impact Munitions); and

WHEREAS, at the January 17, 2023 meeting, the City Council adopted an ordinance approving several Controlled Equipment Use Policies but rejected approval of Training Bulletin V-F.2 (Chemical Agents) and Training Bulletin III-H (Specialty Impact Munitions); and

WHEREAS, following the January 17, 2023 City Council meeting, the Police Commission convened to consider additional changes to Training Bulletin V-F.2 (Chemical Agents) and Training Bulletin III-H (Specialty Impact Munitions) based on City Council feedback and concerns; and

WHEREAS, upon completion of its post January 17, 2023 deliberations, the Police Commission has recommended that the City Council approve Training Bulletin V-F.2 (Chemical Agents) and Training Bulletin III-H (Specialty Impact Munitions) as set forth in **Exhibits F and D**, respectively; and

WHEREAS, in regard to the Controlled (Militarized or Military) Equipment Use Policies specified above and pursuant to Government Code Section 7070, the Oakland City Council hereby finds and determines as follows:

- (A) The proposed controlled, militarized, or military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety;
- (B) The proposed controlled, militarized, or 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;
- (D) Prior controlled, militarized, or military equipment use complied with the controlled or 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; and

WHEREAS, in regards to the Controlled (Militarized or Military) Equipment Use Policies specified above and pursuant to Oakland Municipal Code Chapter 9.65, the Oakland City Council hereby finds and determines that upon review of the applicable Controlled Equipment Impact reports and consideration of the recommendations of the Police Commission, the City's interest in community safety outweighs the potential adverse effects of using such controlled, militarized, or military equipment. and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The Oakland City Council hereby determines that the preceding recitals are true and correct and hereby adopts and incorporates them into this ordinance.

SECTION 2. Emergency Need.

In accordance with Section 213 of the Oakland City Charter, the City Council finds and declares that adoption of this Emergency Ordinance is necessary for preserving the public peace, health and safety for the following reasons:

- A. Training Bulletin V-F.2 (Chemical Agents) and Training Bulletin III-H (Specialty Impact Munitions) must be approved by a statutory deadline of March 30, 2023.
- B. If these Controlled Equipment Use policies are not approved by such deadline, the Oakland Police Department (OPD) must stop use of the equipment in question until City Council approval occurs.
- C. If there is such a lapse in approval to use this equipment, that poses a risk that OPD will not be able to use the equipment in situations where it is needed for de-escalation of dangerous situations.

SECTION 3. Approval of Controlled Equipment Use Policies Recommended by the Police Commission. The following Controlled Equipment Use Policies as recommended by the Police Commission are approved for acquisition and use and included in the **Exhibits** for reference as indicated below:

- (A) Training Bulletin III-H: **Specialty Impact Munitions (Exhibit D)**;
- (B) Training Bulletin V-F.2: **Chemical Agents (Exhibit F)**;

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 5. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

**EMERGENCY ORDINANCE APPROVING CONTROLLED EQUIPMENT USE POLICIES FOR THE OAKLAND POLICE DEPARTMENT TO ACQUIRE AND USE THE FOLLOWING TYPES OF “MILITARIZED” EQUIPMENT IN CONFORMANCE WITH GOVERNMENT CODE SECTION 7070 AND OAKLAND MUNICIPAL CODE CHAPTER 9.65:
(3) TRAINING BULLETIN V-F.2 (CHEMICAL AGENTS); AND
(4) TRAINING BULLETIN III-H (SPECIALTY IMPACT MUNITIONS)**

State and City of Oakland (City) law require that certain types of equipment, deemed “militarized” or military equipment, be approved by the local governing body prior to being acquired and used by local law enforcement. This Emergency Ordinance approves two forms of such equipment as specified above in the title for this ordinance.