

ORDINANCE NO. 2035

AN ORDINANCE ADOPTING A MILITARY EQUIPMENT USE POLICY

THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED, STATE OF CALIFORNIA,
ORDAINS AS FOLLOWS:

SECTION 1: Findings:

A. On September 30, 2021, Governor Gavin Newsom signed into law Assembly Bill 481, relating to the use of military equipment by law enforcement agencies.

B. Assembly Bill 481, codified at California Government Code sections 7070 through 7075, requires law enforcement agencies to obtain approval of the applicable governing body, by an ordinance adopting a "military equipment" use policy, at a regular meeting held pursuant to open meeting laws, prior to taking certain actions relating to the funding, acquisition, or use of military equipment. The term "military equipment" is defined in California Government Code section 7070.

C. Assembly Bill 481 allows the governing body of a County to approve the funding, acquisition, or use of military equipment within its jurisdiction only if it makes specified determinations.

D. The proposed Military Equipment Use Policy is found within Merced County District Attorney's Office Policy No. 705, set forth in Exhibit "A".

E. Merced County District Attorney's Office Policy No. 705 was published on the Merced County District Attorney's Office website on September 21, 2023. Merced County District Attorney's Office Policy No. 705 was presented to the Merced County Board of Supervisors on October 24, 2023.

F. Merced County District Attorney's Office Policy No. 705 meets the requirements of California Government Code section 7070, subdivision (d).

SECTION 2. Determinations: Based on the findings above, in addition to information provided to the Board of Supervisors at the public meeting, the Board of Supervisors determines as follows:

1. The military equipment identified in Merced County District Attorney's Office Policy No. 705 is necessary, because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.

2. Merced County District Attorney's Office Policy No. 705 will safeguard the public's welfare, safety, civil rights, and civil liberties.

3. The military equipment identified in Merced County District Attorney's Office Policy No. 705 is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.

4. Merced County District Attorney's Office Policy No. 705 set forth in Exhibit "A" is approved and adopted.

SECTION 3. Validity: If any section, subsection, sentence, clause, word, or phrase of this ordinance is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the remainder of this ordinance. The Board of Supervisors hereby declare that they

would have passed this ordinance, and each section, subsection, sentence, clause, word or phrase thereof, irrespective of the fact that one or more section, subsection, sentence, clause, word, or phrase be declared invalid or unconstitutional.

SECTION 4. Enactment: This ordinance shall become effective and be in full force on and after thirty (30) days of its passage and adoption, and prior to the expiration of fifteen (15) days from the passage and adoption thereof, shall be published in a newspaper of general circulation printed and published in the County of Merced, State of California, together with the names of the members of the Board of Supervisors of the County of Merced, voting for or against the same.

The foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Merced, State of California, at a regular meeting thereof held on the 24th day of October, 2023 by the following vote:

SUPERVISORS:

AYES: Scott M. Silveira, Josh Pedrozo, Daron McDaniel, Lloyd Pareira, Jr.

NOES: None


ABSENT: Rodrigo Espinosa



Scott M. Silveira, Chairman
Merced County Board of Supervisors

Attest:

Raul Lomeli Mendez
Clerk of the Board of Supervisors of the
County of Merced, State of California

By: _____
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:
MERCED COUNTY COUNSEL

By: _____
FORREST W. HANSEN

Military Equipment Use

705.1 PURPOSE AND SCOPE

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

705.1.1 DEFINITIONS

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

Governing body – The elected or appointed body that oversees the Bureau.

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.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- 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, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- 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 firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

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705.2 POLICY

It is the policy of the Merced County District Attorney's Office Bureau of Investigation that members of this bureau comply with the provisions of Government Code § 7071 with respect to military equipment.

705.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Investigations should designate a member of this bureau 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 bureau equipment that qualifies as military equipment in the current possession of the Bureau, or the equipment the Bureau 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 Merced County District Attorney's Office Bureau of Investigation (Government 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 bureau's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief of Investigations and ensuring that the report is made available on the bureau website (Government 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 Bureau will respond in a timely manner.

705.4 MILITARY EQUIPMENT INVENTORY

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

(a) **Specialized Firearms/Ammunition Less Than .50 Caliber**

Description	Sig Sauer LE 400 AR-15 Rifle (.223)
Quantity	(2)

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Capability	Provides officers the ability to engage hostile suspects at distances generally greater than the effective distance of their handguns. Additionally, AR-15 rifles offer advantages over handguns, such as increased accuracy potential and the ability to defeat soft body armor.
Life Span	20 years
Manufacturer Description	The AR-15 is a lightweight, magazine fed semi-automatic version of the M16 rifle sold for civilian and law enforcement use in the United States.
Purpose	The AR-15 is an effective weapon in close quarter combat situations and at intermediate and extended range. The AR-15 platform is capable of firing quickly and more accurately than a pistol while holding more rounds in the magazine and having better ballistic qualities.
Authorized Use	May be deployed in situations where an investigator reasonably anticipates an armed encounter or a suspect wearing body armor, faced with a situation that may require accurate and effective fire at long range, a barricaded suspect or where there is a need to meet or exceed a suspect's firepower.
Costs	Initial Cost: \$2,000.00 Re-Occurring Costs: \$0 Maintenance Costs: \$0-\$500 per rifle/every (2) years Year Obtained: 2023 How Purchased: Department funds
Required Training	16 hour - CA POST certified tactical rifle course or Bureau tactical rifle course taught by CA POST certified tactical rifle instructor. Annual qualification.
Authority	Bureau of Investigations Policy 304.3.3: Patrol Rifles Bureau of Investigation Policy 300: Use of Force

(b) Less Lethal and Specialty Impact Munitions Equipment

Description	Remington 870 Pump Action, 12-Gauge Shotgun
Quantity	(2) Remington 870 Less Lethal Shotguns; (85) Drag Stabilized 12-Gauge Bean Bag Rounds
Capability	Extended range, less lethal impact weapon
Life Span	Varies
Manufacturer Description	The Remington 870 is a pump action shotgun manufactured for public, law enforcement and military use, worldwide. The barrel has a fixed cylinder choke for optimum performance with buckshot and slugs at close range. The receiver is milled from a solid billet of steel for maximum strength and twin action bars that prevent binding and twisting while cycling the action. The drag stabilized 12-gauge round is a translucent 12-gauge shell loaded with a 40 gram tear shaped bag made from a cotton and ballistic blend and filled with #9 shot. This design utilizes four stabilizing tails and smokeless powder as the propellant. This round has a velocity of 270 feet per second with a maximum effective range of 75 feet.
Purpose	To deploy drag stabilized 12-gauge bean bag rounds to safely resolve critical incidents involving violent and/or armed individuals.
Authorized Use	May be deployed for impact to individuals demonstrating assaultive, resistive or life-threatening behavior.

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Costs	Initial Cost: \$500
	Recurring Cost: \$0
	Maintenance Costs: \$0
	Year Obtained: Unknown
	How Purchased: Department funds
Required Training	4 hour - CA POST certified less lethal course or Bureau less lethal course taught by CA POST certified less lethal weapons instructor. Annual qualification.
Authority	Merced County District Attorney's Office Policy 302.9: Kinetic Energy Projectile Guidelines
	Glock 17T 9mm Simunition Pistol
Description	Glock 17 9mm, Semi-Automatic Pistol Conversion
Quantity	(4)
Capability	The Simunition conversion kit installed on the Glock 17 service pistol, including the conversion bolt, bolt carrier assembly and safety-ring, allow simunition rounds to be fired safely from a functional Glock 17 service platform.
Life Span	Varies
Manufacturer Description	The Simunition conversion kit provides real world firearm training with designs to fit the user's own service weapons. The kits enhance basic firearms familiarization and skill development in tactical scenarios, individual and team situations, close-quarter combat and VIP protection. The kits offer a realistic training experience by allowing the user to use a converted duty weapon and fire a non-lethal cartridge directly at a human target without inflicting serious injury.
Purpose	To enhance realism in law enforcement training. The converted simunition pistols allow users to train safely with duty equipment that produce realistic operational recoil, sights and cycling.
Authorized Use	Used for training purposes only.
Costs	Initial Cost: \$500/each
	Recurring Cost: \$0
	Maintenance Costs: \$0
	Year Obtained: Unknown
	How Purchased: Department funds
Required Training	Bureau personnel undergo in-service firearm handling instruction and scenario based training which are conducted using a 9mm simunition pistol platform.
Authority	Used for training purposes only.
	Mossberg 835 Ultra Mag 12 Gauge Simunition Shotgun
Description	Mossberg 835 Ultra Mag, 12 Gauge Shotgun Conversion
Quantity	(1)
Capability	The simunition conversion kit installed on the Mossberg 835 Ultra Mag, 12 gauge shotgun, including barrel discriminator, allow simunition rounds to be fired safely from a functional 12 gauge Mossberg shotgun platform.

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Life Span	Varies
Manufacturer Description	The Simunition conversion kit provides real world firearm training with designs to fit the user's own service weapons. The kits enhance basic firearms familiarization and skill development in tactical scenarios, individual and team situations, close-quarter combat and VIP protection. The kits offer a realistic training experience by allowing the user to use a converted duty weapon and fire a non-lethal cartridge directly at a human target without inflicting serious injury.
Purpose	To enhance realism in law enforcement training. The converted simunition shotgun allows users to training safely with duty equipment that produce realistic operational recoil, sights and cycling.
Authorized Use	Used for training purposes only.
Costs	Initial Cost: \$500 Recurring Cost: \$0 Maintenance Costs: \$0 Year Obtained: Unknown How Purchased: Department funds
Required Training	Bureau personnel undergo in-service firearm handling instruction and scenario based training which are conducted using a 12 gauge simunition shotgun platform.
Authority	Used for training purposes only.

(c) Specialty Impact Munitions

Description	Simunition cartridge rounds in various caliber
Quantity	(450) cartridges 9mm; (200) cartridges .38/.357 cal. (for use in conversion shotgun cartridge kit)
Capability	This is a non-operational munition used for training purposes only. When utilized in a pistol caliber barrel training platform, simunitions have an effective range of 25 feet.
Life Span	(5) year shelf life
Manufacturer Description	The FX marking cartridges, which come in (5) colors, are patented, reduced-energy, non-lethal cartridges that leave a detergent-based, water-soluble color marking compound on the target. The visible impacts allow accurate assessments of simulated lethality.
Purpose	These cartridges allow shooters to obtain a visual assessment of round placement in a training environment.
Authorized Use	Used for training purposes only.
Costs	Initial Cost: \$300/case (500 cartridges) Recurring Costs: \$0 Maintenance Costs: \$0 Year Obtained: Unknown How Purchased: Department Funds
Required Training	Bureau personnel undergo firearm handling instruction and scenario based training which are conducted using a 9mm simunition pistol platform.
Authority	Used for training purposes only.

ST Action Pro Inc. Blank Cartridge

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Description	12 gauge dummy cartridge, totally inert, hull with ABS plastic insert
Quantity	(19) 12 gauge shotgun cartridges; (34) .40 caliber cartridges; (44) 8mm cartridges (unknown manufacturer)
Capability	This is a blank cartridge incapable of firing a live projectile.
Life Span	(5) year shelf life
Manufacturer Description	This cartridge provides proper noise and weapon cycle signature without firing any live projectile. The ST Action Pro trainers have been recognized as the finest, most durable dummy rounds available and have been used by law enforcement, military, security and training agencies worldwide since 1999.
Purpose	The training cartridges are designed to diagnose shooting problems, enhance gun handling drills and malfunction drills without the use of live fire scenarios.
Authorized Use	Used for training purposes only.
Costs	Initial Cost: \$40/box (25 cartridges) Recurring Costs: \$0 Maintenance Costs: \$0 Year Obtained: Unknown How Purchased: Department Funds
Required Training	Bureau personnel undergo in-service firearm handling instruction and scenario based training which are conducted using blank cartridges in 12 gauge shotgun platform.
Authority	Used for training purposes only.

(d) Unmanned, Remotely Piloted, Powered Aerial or Ground Vehicles

Description	Unmanned Aerial System (UAS)
Quantity	1
Capability	Fly, hover, broadcast video, record video, photography
Life Span	3-5 years
Manufacturer Description	Entry level UAS equipped with 4k HDR video and 48 MP photo capability, true vertical camera and bi-directional obstacle sensing
Purpose	Provide aerial support for law enforcement operations, aerial photography/videography for court exhibits
Authorized Use	For official law enforcement operations with need for aerial perspective. Only authorized operators who have completed the required training shall be permitted to operate the UAS. Use of vision enhancement technology is permissible in viewing areas only where there is no protected privacy interest or when in compliance with a warrant or court order.
Costs	Initial Cost: \$1,253.53 Re-Occurring Costs: \$0 Maintenance Costs: \$95/per battery How Purchased: Department funds
Required Training	All UAS operators hold FAA Part 107 certificates and are licensed by the Federal Aviation Administration (FAA) for UAS operation
Authority	FAA Part 107 Merced County District Attorney's Office Policy 608: Unmanned Aerial Systems

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705.5 APPROVAL

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

- (a) Requesting military equipment made available pursuant to 10 USC § 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 bureau.
- (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.

705.6 COORDINATION WITH OTHER JURISDICTIONS

Military equipment should not be used by any other law enforcement agency or member in this jurisdiction unless the military equipment is approved for use in accordance with this policy.

It is common practice for local, state, and federal law enforcement agencies to request resources and military equipment for incidents including but not limited to, search warrants, barricaded suspects, large scale crime scenes, search and rescue operations, protests, riots, and other emergency operations conducted to restore public safety. Likewise, the Bureau may temporary use or borrow equipment from other local, state, and federal law enforcement agencies for incidents including but not limited to those already listed above.

The coordination and collaboration with other law enforcement agencies regarding the sharing of military equipment, which has already been approved by each respective governing body, is often necessary to insure public safety, when all other resources or alternatives have failed or cannot achieve the same objective. The Bureau may collaborate with another law enforcement agency in the deployment or other use of military equipment listed in the Bureau's or other agency seeking

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assistance military equipment use policy within Merced County. All borrowed military equipment from other law enforcement agencies, shall be used in accordance with Bureau policy, applicable laws and only by individuals with proper training.

705.7 ANNUAL REPORT

Upon approval of a military equipment policy, the Chief of Investigations or the authorized designee should 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 use (Government Code § 7072).

The Chief of Investigations or the authorized designee should also make each annual military equipment report publicly available on the bureau website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment in bureau inventory.

705.8 COMMUNITY ENGAGEMENT

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

General questions or concerns will be routed to the Supervising Investigator for response. The Supervising Investigator shall track all inquiries and responses for inclusion in the Military Equipment Use Report.

Inquiries can be made in the following manner:

- In person: District Attorney's Office - Merced or Los Banos locations
- Telephone: (209) 385-7383
- Mail: Merced County District Attorney's Office - 550 W. Main St., Merced, CA 95340
- Email: dainfo@countyofmerced.com