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Sent: Monday, July 4, 2022 10:31 AM
To: CityClerk <CityClerk@longbeach.gov>
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Subject: Agenda Item 22-0753 – LBPB Military Equipment Use Policy – July 5.

-EXTERNAL-

City Clerk: Please include the following in the subject agenda packet for the July 5 meeting.

To: Honorable Mayor and City Council

Subject: Agenda Item 22-0753 – LBPB Military Equipment Use Policy – July 5.

Recommended Reading

It is recommended that prior to evaluating the 22 page proposed policy designed to accommodate the requirements of AB 481 that Council Members read the [five point finding and declaration](#) by the California Legislature in order to fully appreciate the import and purpose of the legislation.

Letter of Transmittal Misleading

In his July 5 letter of transmittal under the heading **TIMING CONSIDERATIONS** the City Manager states: “City Council action is requested on July 5, 2022 to comply with the requirements set forth by Assembly Bill AB 481.”

Correction: The *requirements set forth* in AB 481 allows the Council a full 180 days from the date the proposed policy is submitted to Council to approve or disapprove the proposed policy statements.

The Council has until Jan. 13, 2023 to study, receive public input from their constituents, ask questions of the City Manager and the LBPB and direct that additions, deletions and clarifications be made to the proposed policy.

Additions and Revisions Required and Recommended

The proposed Military Weapons policy was published and posted on the LBPB website on May 6, a violation of the AB 481 requirement to publish and post no later than May 1.

The requirements of AB 481 are not met in several areas of the proposed policy.

The Council should direct the City Manager to require the LBPB to revise and resubmit for Council approval.

The most outstanding failure is the omission of mechanisms designed 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*.

Questions Posed to LBPB

Questions were submitted to the advertised LBPDP email address on May 11 following the May 6 public announcement, as follows:

Question: Why is the [“Strongwatch Freedom-on-the-Move” camera vehicle](#) - a technology used by the military in combat zones to facilitate operational control and direction of units - once seen [deployed by the LBPDP during the BLM Peacewalk](#) - not included on the list under the category of Command-and-Control Vehicles built or modified to facilitate the operational control and direction of public safety units?

LBPDP RESPONSE: The “Strongwatch Freedom-on-the-Move” camera vehicle will be included in the AB 481 equipment list, and we are in the process of amending the special order.

COMMENT: The special order was amended and posted on the LBPDP website on June 29 and this Council agenda item was revised and updated on July 1 to include the surveillance vehicle and its Camera equipment.

However, when the LBPDP acknowledged its use we found that the description of the full camera and software capabilities advertised by the vendor were not included in the policy description.

A subsequent request for clarification was not answered.

REQUEST TO COUNCIL: It is requested that Council obtain clarification in order to determine if the Strongwatch equipment [includes the capability to 1\) engage facial recognition software, 2\) engage license plate scan software 3\) human sensing and trailing software and 4\) other undisclosed capabilities.](#)

It is requested that the Council determine whether policy statements should be added that prohibit civil liberty violations – as may have occurred when the surveillance platform was [deployed during the BLM Peace March](#) and that the LBPDP include in the policy statement the retention period of all video and still frame photography captured by the surveillance platform and enumerate the reasons for such retention.

QUESTION: Why was the [MobileEye vehicle](#) – especially if modified – not included in the list along with a policy approval level for its use?

LBPDP RESPONSE: Upon consulting with the City Attorney’s Office, it has been determined that the MobileEye vehicle does not fall within the definition of ‘military equipment’ as outlined in Government Code Section 7070(c)(1-5), as the vehicle is used as a deterrent rather than to direct public safety units.

REQUEST TO COUNCIL: The City Attorney’s opinion did not recognize that AB 481 provides - in [Chapter 12.8, Section \(15\)](#) - that “Any other equipment as determined by a governing body or a state agency to require additional oversight” may be included in the policy.

The MobileEye vehicle capabilities have never been fully described to the public.

Public trust in its use would be enhanced if LBPDP policy and procedure of such use, deployment and retention periods applied to the video and still photography was included in the policy statement.

BOILERPLATE SHOULD NOT BE ACCEPTABLE IN POLICY STATEMENTS

It is not enough for the individual statements of policy related to military equipment use to make boilerplate statements that “all laws will be followed.”

The LBPD military equipment use policies should state exactly how it would apply for each piece of military equipment without referencing law and policy buried in other documents that the reader is required to chase down.

Additionally, the policy statements exhibit no understanding that the appearance of weapons and equipment – as described in the following paragraphs - can escalate fear and conflict, especially if there are cognitive barriers such as a mental health crises or non-English speakers with English-only speaking officers.

The following military equipment policies suffer from the use of boilerplate and in several categories do not comply with other legal requirements:

CHEMICAL AGENTS: The policy for chemical agents, including teargas, and impact projectiles (#1, #5, #6 in the LBPD inventory; #4 for the Port inventory), fails to comply with AB 48, the other new state law governing use of those weapons.

AB 48 prohibits use of chemical agents and impact projectiles for crowd control unless there is a clear threat to life or of serious bodily injury, and only after specific measures have been taken.

These measures include de-escalation techniques, clear announcements that the weapons will be deployed, and opportunity for people to leave the scene.

AB 48 (Penal Code § 13652) also prohibits use of these weapons only to enforce a curfew, respond to a verbal threat, or enforce a law enforcement directive (which could be as simple as a verbal command to do something).

RIFLES: The same applies to rifles. The policy says who can use them. It does not state under what circumstances they can be used. For example, should the deployment of a [rifle be prohibited in a crowded indoor environment like a department store?](#)

BEARCAT: The policy language addresses who can use the Bearcat, but there is no statement that addresses authorization without consideration of alternatives.

FLASH BANGS: Authorized for “high risk warrant services” but the policy does not state they should not be authorized without consideration of alternatives.

DRONES: The proposed policy states who can use Drones, but there is no limit on their use. For example, if a drone is to be used in a criminal investigation under what circumstances should a warrant be required.

An excellent example of an [outstanding drone policy](#) is that developed by the City of Oakland.

40 MM LAUNCHERS are described as “intended for use in situations where standoff distance is desired” but there is no prohibition or limitation on their use at close or medium range.

“The [LBPD policy manual](#) does say officers should consider “distance and angle to the target” before discharging these munitions but doesn’t actually say close distance firing should be avoided, as in situations like that which occurred in the May 31 demonstrations in which [KPCC reporter Adolfo Guzman was struck in the neck with a foam round](#).”

Conclusion

The military use document appears rushed, infused with Lexipol boilerplate and absent the serious constitutional review and community participation this kind of policy development deserves.

The Council should ask: Was the proposed policy vetted by the Office of Constitutional Policing? Was it exposed to and discussed with the communities most affected by the police use of military equipment as stated in the preamble to AB 481?

We look forward to the Council's deliberations and contribution toward a second draft policy statement aimed at satisfying the community-centric requirements of AB 481.

Sincerely,

Stephen Downing
Long Beach Resident – CD 3

Those contributing to the analysis resulting in these comments and recommendations include:

Greg Buhl, Attorney and head researcher at CheckLBPD.

John Lindsay-Poland, co-director, California Healing Justice program

Jennifer Tu, American Friends Service Committee