

ORDINANCE NO. 2022-339

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENIFEE, CALIFORNIA, ADDING CHAPTER 11.50 OF TITLE 11 OF THE MENIFEE MUNICIPAL CODE ESTABLISHING RULES FOR THE MENIFEE POLICE DEPARTMENT'S ACQUISITION AND USE OF MILITARY EQUIPMENT.

WHEREAS, on September 30, 2021, Governor Newsom signed into law, effective January 1, 2022, Assembly Bill 481 which directed law enforcement agencies to establish rules for the funding, acquisition and/or use of military equipment; and

WHEREAS, the City Council finds the public has a right to know about any funding, acquisition, or use of military equipment by the City of Menifee, as well as a right to participate in any City decision to fund, acquire, or use such equipment; and

WHEREAS, the City Council finds that decisions regarding whether and how military 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; and

WHEREAS, the City Council finds that 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 equipment is funded, acquired, or used; and

WHEREAS, the City Council finds that if military equipment is acquired, annual reporting and review measures must be adopted that empower the City Council and public to verify that mandated civil rights safeguards have been strictly adhered to; and

NOW, THEREFORE, the City Council of the City of Menifee DOES HEREBY ORDAIN as follows:

SECTION 1. The above recitals are true and correct and incorporated herein.

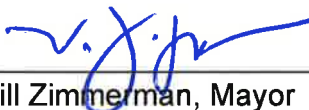
SECTION 2. Chapter 11.50 of Title 11 of the Menifee Municipal Code is hereby added to read in its entirety as attached as Exhibit A.

SECTION 3. This Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines because there is no possibility that this Ordinance or its implementation would have a significant negative effect on the environment. (14 Cal. Code Regs. § 15061(b)(3).) City staff shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

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

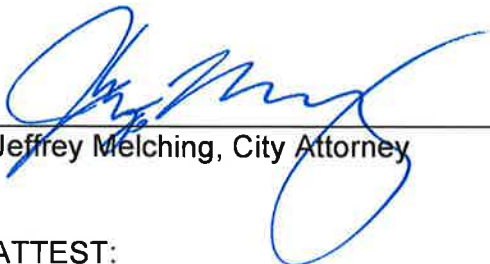
SECTION 5. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

This Ordinance was introduced on the 6 day of April 2022 and **PASSED** and **ADOPTED** by the City Council of the City of Menifee at a regular meeting held on the 4 day of May, 2022.



Bill Zimmerman, Mayor

APPROVED AS TO FORM:



Jeffrey Melching, City Attorney

ATTEST:



Stephanie Roseen, Acting City Clerk

Exhibit A

Chapter 11.50 of Title 11
REGULATIONS OF CITY'S ACQUISITION AND USE OF MILITARY EQUIPMENT

Sections:

- § 11.50.010 Name of Ordinance**
- § 11.50.020 Definitions**
- § 11.50.030 Acquisition and Use of Military Equipment**
- § 11.50.040 Annual Reports on the Use of Military Equipment**
- § 11.50.050 Enforcement**
- § 11.50.060 Transparency**
- § 11.50.070 Severability**

§ 11.50.010 Name of Ordinance.

(A) REGULATIONS ON CITY'S ACQUISITION AND USE OF MILITARY EQUIPMENT

§ 11.50.020 Definitions.

(A) "Military Equipment" means:

- (1) Unmanned, remotely piloted, powered aerial or ground vehicles.
- (2) Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.
- (3) High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached. However, unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this subdivision.
- (4) Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- (5) Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- (6) Weaponized aircraft, vessels, or vehicles of any kind.
- (7) Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.
- (8) Firearms of .50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.

(9) Ammunition of .50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.

(10) Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.

(11) Any firearm or firearm accessory that is designed to launch explosive projectiles.

(12) "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray.

(13) Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).

(14) The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons.

(15) Any other equipment as determined by City Council or a state agency to require additional oversight.

(B) "City" means any department, agency, bureau, and/or subordinate division of the City of Menifee as provided by Title 1, Chapter 1.01 of the Menifee Municipal Code.

(C) "City Staff" means City personnel authorized by the City Administrator or designee to seek City Council approval of the acquisition of military equipment in conformance with this Chapter.

(D) "Military Equipment Use Policy" means a publicly released, written document governing the use of military equipment by the Police Department that addresses, at a minimum, all of the following:

(1) A description of each type of military equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the military equipment.

(2) The purposes and authorized uses for which the Police Department proposes to use each type of military equipment.

(3) The fiscal impact of each type of military equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.

(4) The legal and procedural rules that govern each authorized use.

(5) The training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed before any officer or employee of the Police Department is allowed to use each specific type of military equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the Military Equipment Use Policy.

(6) The mechanisms 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 of the policy.

(7) The procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of military equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

(E) "Annual Military Equipment Use Report" means a written document that shall contain, at a minimum, the following information for the immediately preceding calendar year for each type of military equipment:

(1) A summary of how the military equipment was used and the purpose of its use.

(2) A summary of any complaints or concerns received concerning the military equipment.

(3) The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response.

(4) The total annual cost for each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the Annual Military Equipment Report.

(5) The quantity possessed for each type of military equipment.

(6) If the Police Department intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

§ 11.50.030 Acquisition and Use of Military Equipment.

(A) City Council Submission and Approval

(1) The Police Department shall obtain approval of the City Council, by an ordinance adopting a Military Equipment Use Policy at a regular meeting of the City Council held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable, prior to engaging in any of the following:

(a) Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code.

(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 territorial jurisdiction of the City Council.

(e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the City Council pursuant to this chapter.

(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 by this paragraph.

(2) Submission to City Council

(a) When seeking the review and approval of the City Council, the Police Department shall submit to the City Council a Military Equipment Use Policy.

(b) In order to facilitate public participation, a Military Equipment Use Policy shall be made publicly available on the department's website at least 30 days prior to any public hearing concerning the military equipment at issue.

(c) The City Council shall consider a proposed Military Equipment Use Policy as an agenda item for an open session of a regular meeting and provide for public comment in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.

(d) (1) The City Council shall only approve a Military Equipment Use Policy pursuant to this Chapter if it determines all of the following:

(A) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

(B) The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(C) If purchasing the military equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.

(D) Prior military equipment use complied with the 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.

(d)(2) In order to facilitate public participation, any proposed or final Military Equipment Use Policy shall be made publicly available on the police department's website for as long as the military equipment is available for use.

(e)(1) The City Council shall review any ordinance that it has adopted pursuant to this section approving the funding, acquisition, or use of military equipment at least annually and, subject to paragraph (2), vote on whether to renew the ordinance at a regular meeting held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) or the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), as applicable.

(e)(2) The City Council shall determine, based on the Military Equipment Use Policy, whether each type of military equipment identified in that report has complied with the standards for approval set forth in subdivision (d)1. If the City Council determines that a type of military equipment identified in that Military Equipment Use Policy has not complied with the standards for approval set forth in subdivision (d)1, the City Council shall either deny the authorization for that type of military equipment or require modifications to the Military Equipment Use Policy in a manner that will resolve the lack of compliance.

§ 11.50.040 Annual Reports on the Use of Military Equipment.

(A) Annual Military Equipment Use Report

(1) The Police Department shall submit an Annual Military Equipment Use Report to the City Council no later than March 15th of each year, unless the City Council

advises the police department that an alternate date is preferred. The Police Department shall make each annual report required by this section publicly available on its website for as long as the military equipment is available for use. Within 60 days of the Police Department's submission and publication of an Annual Military Equipment Use Report, the City Council shall place the report as an agenda item for an open session of a regular meeting.

(2) Within 30 days of submitting and publicly releasing an Annual Military Equipment Use Report pursuant to this section, the Police Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the Annual Military Equipment Use Report and the Police Department's funding, acquisition, or use of military equipment.

(B) Compliance & Revocation of Approval

(1) The City Council shall determine, based on the Annual Military Equipment Use Report, whether the use of each type of military equipment identified in that report continues to meet the criteria for approval set forth in Section 11.50.030(A)(2)(d)(1).

(2) If the City Council determines that the use of any military equipment identified in the report no longer meets the criteria for approval set forth in Section 11.50.030(A)(2)(d)(1), the City Council approval may be revoked or modified.

§ 11.50.050 Enforcement.

(A) Remedies for Violations of this Chapter

(1) This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specified alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation.

(2) Violations of this Chapter by a City employee may result in consequences that may include retraining, suspension, or termination, subject to due process requirements.

§ 11.50.060 Transparency.

(A) Disclosure Requirements

(1) It shall be unlawful for the City to enter into any military equipment-related contract or other agreement that conflicts with the provisions of this Chapter, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

(2) To the extent permitted by law, the City shall publicly disclose all of its military equipment-related contracts, including any and all related nondisclosure agreements, if any, regardless of any contract terms to the contrary.

§ 11.50.070 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of applications of this Chapter. The Council of the City of Menifee hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.



STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF MENIFEE)

I, Stephanie Roseen, City Clerk of the City of Menifee, do hereby certify that the foregoing Ordinance No. 2022-339 was duly adopted by the City Council of the City of Menifee at a meeting thereof held on the 4th day of May, 2022 by the following vote:

Ayes: Deines, Karwin, Liesemeyer Sobek, Zimmerman
Noes: None
Absent: None
Abstain: None


Stephanie Roseen, Acting City Clerk