

County of Santa Clara

Office of the Sheriff

55 West Younger Avenue
San Jose, California 95110-1721
(408) 808-4900



MEMORANDUM

Laurie Smith
Sheriff

DATE: May 26, 2021

TO: Honorable Members of the Board of Supervisors
Jeffrey V. Smith, County Executive

FROM: Laurie Smith, Sheriff

SUBJECT: Report Back on HHC Item #6: Funding, Acquiring, and Use of Military-Style Equipment, Lethal and Less-Lethal Armaments

On April 20, 2021, the Board of Supervisors considered a report from Procurement relating the Use of Force and Emergency Response (UOFER) Sensitive Procurement Project. The project was initiated on November 16, 2020 in response to a June 23, 2020 advisement from the County Executive. The Office of the Sheriff has been working cooperatively with County Procurement to provide them with information for a comprehensive report on the current inventory of all lethal and less-lethal armaments possessed by the Sheriff's Office as well as the process for procuring such equipment.

On the April 20, 2021 the Board of Supervisors considered the report from Procurement relating to the acquisition of military-style weaponry and lethal and less lethal armaments and referred the item to the Health and Hospital Committee for further considerations. Last week, we received the request for a report relating to our agency's use of military-style equipment and lethal and less lethal armaments.

In 2015, under the leadership of President Barack Obama, the White House and the US Department of Justice convened a Forum on Policing. The President's Task Force on 21st Century Policing became a foundation for many of the changes in policing. The Sheriff has long embraced these philosophies. We also have updated many of our policies and procedures pursuant to a referral from the Board of Supervisors to adapt many of our policies to be consistent with the "8 Can't Wait" reforms. We continue to make efforts in updating the way we serve our community, including training our deputies in important topics like Implicit Bias, Blue Courage, and Crisis Intervention Training, and providing them with adequate skills and resources to de-escalate potentially violent situations.

Proper equipment is vital to protect our deputies and the community they are sworn to protect. Not being properly equipped can have life-threatening consequences for all parties involved. This equipment includes safety, rescue and defensive equipment, which are critical tools for responding to violent situations while allowing for de-escalation and safe resolutions. Such equipment provides deputies with alternative options besides deadly force. Appropriate safety,

rescue, and defensive equipment and training have been critical to our response to many local tragedies, including the Gilroy Garlic Festival Mass Shooting, Lehigh Cement Mass Shooting, and many others.

Our deputies receive countless hours of training to ensure they have the tools and resources required to de-escalate situations. The training includes policies and procedures on the proper use of lethal and less lethal armaments. Less lethal armaments are utilized to de-escalate potentially violent situations when responding to emergencies in our community. We may also utilize this equipment when responding to civil unrest. The Office of the Sheriff understands the importance of balancing the First Amendment rights and other civil liberties of our community members with the interventions required to protect the safety of the community. We recognize that the majority of people are peaceful and respect order. However, it is important to have de-escalating tools available when violence occurs. Less lethal armaments are an effective tool and an alternative to lethal force when needed and used judiciously and appropriately.

On January 6, 2021, we all witnessed the violence that occurred in Washington DC when right-winged insurgents stormed the Capitol and violently assaulted Capitol Police leaving them vulnerable and unable to protect the Capitol complex. In these types of situations law enforcement must have the proper safety, rescue and defensive equipment including less lethal armaments to protect themselves and the community they serve. Our policies and California State “Use of Force” laws already restrict the use of force in first amendment situations and we believe modifications made to our Less Lethal Munitions General Order (#12.04) further clarify our long standing philosophy, training, and standards. After the June 23, 2020 referral, the Office of the Sheriff updated its General Order 12.04 which governs the Use of Force for less lethal munitions in crowd control situations. Specifically, it restricted the use of less lethal munitions against protestors exercising their First Amendment right to free speech and to peaceably assemble. In circumstances where individuals in crowd control situations become involved in an unlawful assembly, riot, rout, insurrection or other violent activity in violation of the law, less lethal options may be considered for use as needed for the Sheriff’s Office to fulfill its statutory obligation under California Government Code 26602, which states, “The Sheriff shall prevent and suppress any affrays, breaches of the peace, riots, and insurrections that come to his or her knowledge. . .” Any such force used, however, is still subject to be in compliance with state law and General Order 12.00 (Use of Force) which require that the level of force used is necessary and proportional.

As noted in County Counsel’s report, they researched the past 10 years and confirmed that the county did not have any settlements or judgments arising from the use of military-style equipment (including military equipment listed in A.B. 481 or military-style equipment) which is confirmation that the Sheriff’s Office is using such equipment appropriately and reasonably.

The Office of the Sheriff does not generally procure military specific equipment; however, we do strongly believe in providing our first responders with the appropriate safety, rescue, and defensive equipment and training to protect themselves and our community from harm. The Sheriff Office has the law enforcement expertise to understand which equipment it needs to carry out its legislative and constitutional mandate to protect the community they serve and to respond to violent insurrections. Proper equipment enhances the safety of deputies who are often called

upon to respond to dangerous or violent situations. The Sheriff has judiciously balanced the need for equipment and currently only has three items acquired through the Federal Military Surplus program, aka the “10-33 Program.” These three items are a camouflage netting set, sights Reflex (scopes), and a non-armored utility truck.

Our office will continue to work collaboratively with Procurement and has already provided a list of types of vehicles as requested by the board to be added to the list of UOFER equipment.

c: Chief Board Aides
Miguel Marquez, Chief Operating Officer
James Williams, County Counsel
Megan Doyle, Clerk of the Board of Supervisors