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CREEC | CIVIL RIGHTS EDUCATION
AND ENFORCEMENT CENTER

Northern
California

August 31, 2022

Mayor Darrell Steinberg
Sacramento City Hall
915 I Street, 5th Floor
Sacramento, CA 95814
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RE: Opposition to Sacramento Police Department Draft Military Equipment Use Policy

Dear Mayor and City Council:

We write to denounce the Sacramento Police Department's current proposed Military Equipment Use Policy ("Draft Policy"). We understand the Police Department has presented this proposal, in accordance with Assembly Bill 481—a new California state law, for the City of Sacramento, its City Council, and the public's consideration. This new law explicitly provides that community members have democratic control over whether their law enforcement agency can purchase, use, and/or maintain military weapons and equipment. We recognize this legislation as having provided an opportunity for the City's governing body to meaningfully engage with the will of its constituents and to implement effective tools of accountability for policing in the City of Sacramento. This is an important process at a critical juncture. We ask that you receive our letter with a degree of urgency that this important and history-making issue deserves.

We, the undersigned, are five legal nonprofits and law firms who have represented, or are currently representing, people who have experienced significant harms from the military equipment at issue. The Civil Rights Education and Enforcement Center (CREEC) is a nonprofit legal organization that fights for liberation through the lens of intersectional disability justice using a combination of education, legal advocacy direct services, and impact litigation. Lawyers' Committee for Civil Rights of the San Francisco Bay Area is one of the oldest civil rights institutions on the West Coast and has fought to dismantle systems of oppression and racism, and to build an equitable and just society. Siegel, Yee, Brunner & Mehta is a 48-year-old law firm focused on civil rights and representing individuals, community organizations, and labor unions clients in complex litigation throughout the United States. The ACLU of Northern California, founded in 1934, is an affiliate of the national ACLU working to protect and advance civil rights and civil liberties for all Californians. The Law Office of Mark E. Merin litigates civil rights cases in state and federal court against public entities and members of law enforcement agencies, often for the use of excessive force and, in many instances, for injuries and death caused by weapons which were provided by the military and which have no place in local police arsenals.

I. The Draft Policy would purchase weaponry that has — and will continue to — harm the Sacramento community.

People in Sacramento have faced horrific experiences with the very pieces of equipment and weapons at issue in the Draft Policy, and many are still navigating the enduring psychological harms.

Daniel Garza was shot multiple times in the head with impact munitions by the Police Department while observing a protest, and when he sought medical aid in a nearby parking lot, the Police Department shot him twice again. He experienced traumatic brain injury. To this day, he has persistent difficulties with his memory and cognition, and continues to experience pain and swelling in the part of his face where he was shot. He is among five other plaintiffs in *Garza v. City of Sacramento*, an ongoing lawsuit challenging the Police Department’s excessive use of force with military weapons among other things (complaint available [here](#)).

Nicollette Jones was also shot repeatedly with the same or similar weapons by the Police Department. While she chanted in support of racial justice, the Police Department officers kicked an active teargas canister toward her and shot impact munitions directly into her body at least eleven times. She still lives with the injuries she endured, including significant psychological trauma. Similarly, the Police Department has targeted Odette Zapata and others with extreme and illegal surveillance for participating in racial justice protests, including through military weapons like aerial surveillance. Both Nicollette and Odette are among four other plaintiffs in *White v. City of Sacramento*, an ongoing lawsuit challenging the Police Department’s culture of violence against racial justice protesters (complaint available [here](#)).

Many people who have protested in Sacramento are still navigating symptoms of psychological trauma, including disruptions in their sleep, severe depression, manic and irritable episodes, panic attacks when approached by the Police Department, and invasive thoughts about the sound of munitions and helicopters, as is typical after living through gun violence. There are also multiple accounts of people feeling so fearful of continued police violence that they bought military protective gear for themselves, including helmets, gas masks, and ballistic backpacks. The impact this dangerous method of militarized policing in Sacramento cannot be overstated.

We firmly oppose the continued harm people have and continue to endure as a result of military grade weapons and equipment in the Sacramento community.

II. The Draft Policy contravenes California state law.

California Assembly Bill 481 mandates that local governing bodies “shall only approve a military equipment use policy” if **all** of the following conditions hold:

- (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 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.¹

None of them hold here. We take them in turn. First, on (A), the Police Department's desired military weaponry is **not** necessary. There **are** reasonable alternatives that achieve the same objective of officer and civilian safety. Experts around the country agree that the militarization of law enforcement personnel erode officer and civil safety during free speech events.²

Second, on (B), the Draft Policy will **not** safeguard the public's welfare, safety, civil rights, or civil liberties. Sacramento residents have repeatedly declared they feel **less safe** with the presence of heavily armed law enforcement. Residents fear entering the downtown area because of the Police Department's use of this military equipment—such as explosives, chemical agents, impact munitions, and unmanned aircraft systems. Victims of police violence have consistently reported where the Police Department is in possession of military weapons. Officers have escalated situations rather than mitigated any harm, often resulting in serious preventable injuries.

The Police Department has, over time, demonstrated a propensity to undermine other statutory rights and common law interests of Sacramento citizens. The City has recently settled lawsuits totaling multiples of millions of dollars for the Police Department's legal violations.³ Other cities have faced huge court losses for the constitutional violations caused by these weapons. For example, in *Epps v. Denver*, the City of Denver had to pay \$14 million in damages and, the Columbus City had to pay \$5.75 million in *Alsaada v. City of Columbus*.⁴

Third, on (C), the military equipment is **not** cost-effective compared to available alternatives that can achieve the Police Department's stated safety objectives. The Police Department has repeated public statements that this proposed policy encompasses only what the Department already has and will not cost the City additional monies. However, this is not true. The Draft Policy has a total cost of around \$4,600,000 in military equipment (not including the cost of regular services weaponry). This cost does not include accurate estimations of the maintenance, replacement, and training of military equipment over multiple years.

¹ 2021 Cal. Stat. AB 481.

² E.R. Maguire & M. Oakley, *Policing Protests: Lessons from the Occupy Movement, Ferguson, and Beyond* (Harry Frank Guggenheim Foundation 2022), <https://www.hfg.org/s/Policing-Protests.pdf> (discussing the evolution of policing techniques for protests and realization of the lack of necessity for such weaponry) ; see R. J. Haar & V. Iacopino, *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons* (Physicians for Human Rights, 2016), <https://phr.org/resources/lethal-in-disguise/> (discussing health risks associated weaponry used by law enforcement officers in protest settings).

³ See also, e.g., *Cain v. City of Sacramento*, E.D. Cal. Case No. 2:17-cv-00848-JAM-DB (lawsuit settled for \$550,000 alleging that a police officer grabbed, tackled, and punched a man for jaywalking on April 10, 2017); *Hernandez v. City of Sacramento*, E.D. Cal. Case No. 2:17-cv-02311-JAM-DB (lawsuit settled for \$5,200,000 alleging police tased, beat, and pinned a man to the ground until he asphyxiated to the point of coma); *Mann v. City of Sacramento*, E.D. Cal. Case No. 2:16-cv-01847-WBS-DB (lawsuit settled for \$719,000 where mentally-ill man shot to death); *Namoca v. City of Sacramento*, E.D. Cal. Case No. 2:16-cv-02283-TLN-EFB (lawsuit settled for \$40,000 alleging that two police officers tackled a minor without lawful justification and dislocated his shoulder); *Thompson v. City of Sacramento*, E.D. Cal. Case No. 2:18-cv-00806-KJM-D (lawsuit settled alleging that a police officer slammed a woman's face multiple times into a patrol vehicle, breaking her nose and the orbital socket around her eye); *Halcomb v. City of Sacramento*, E.D. Cal. Case No. 2:14-cv-02796-MCE-DB (lawsuit settled for \$220,000 involving alleged use of excessive and unreasonable force).

⁴ *Epps v. City & Cty. of Denver*, Civil Action No. 1:20-cv-01878-RBJ, 2022 U.S. Dist. LEXIS 35895 (D. Colo. Mar. 1, 2022); *Jury awards \$14 million to George Floyd protesters in Denver who alleged police department used excessive force*, CBS News (Mar. 25, 2022), <https://www.cbsnews.com/news/george-floyd-denver-jury-awards-14m-to-protesters-who-alleged-police-department-used-excessive-force/>.

For years, community members have asked the City Council to invest in services outside of the Police department, which are known to reduce the rate of crimes and offer a real sense of safety in Sacramento. However, the Police department's budget has increased at record rates in the last few years. The current Police Department budget is over forty percent of the Cities budget, resulting in dwindling available funds for mental health, housing, and other services community members continue to request. The proposed Draft Policy for Acquisition, maintenance, and replacement of unnecessary military weapons will only continue to inflate the Police department's resources in lieu of other proven effective alternatives.

It must be said that a zero-cost practical alternative is having no military weapons and equipment at all. A.B. 481 expressly provides this rejection option to the City Council and the public.⁵

Finally, on (D), the Police Department's prior military equipment use **did not** comply with the policies that were in effect during the times the Department has used these weapons in the past. For example, the Police department's policies direct officers to follow the federal law when using impact munitions. Federal law prohibited police officers from shooting at people acting peacefully in a crowd. The Police department has nevertheless targeted and harmed many peaceful crowd participants, without making specific assessments of danger, including the people, we reference above. Moreover, when prior uses did not comply with the accompanying military equipment use policy, the Police department denied their misuse rather than implemented corrective actions to remedy nonconforming uses and ensure future compliance.

We agree with and support Sacramento residents and community organizations who have asked the City Council to analyze discriminatory, disparate, or other adverse impacts that the use of military equipment may have had on the public's safety, welfare, civil rights, and civil liberties, and on any community or group who serves marginalized people in Sacramento.

III. The Draft Policy failed to appropriately integrate the Sacramento community's input.

Assembly Bill 481 is intended to "rebuild community trust," according to Bill's author.⁶ The law states the community "...has a right to participate in any government agency's decision to fund, acquire, or use such equipment." The state law further requires that "[d]ecisions 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."⁷ However, the Police Department has not listened to Sacramento community members in good faith nor has the Department adequately integrated the community's perspective into the Draft Policy.

Recently, the Police Department held a series of "Cops & Coffee" meetings on July 13, 16, and 18, to discuss community concerns about the Draft Policy. Although these meetings were ostensibly to gather community input on the acquisition, use, and maintenance of militarized weapons, community members in attendance reported that the meetings were far from substantive or helpful. For example, Police Department officers were unable or unwilling to respond to basic questions regarding the use of militarized weapons. During the meetings, the Police Department gave no response to one community member who asked what military weapon training officers had completed ensuring no further unnecessary harm happens to community members. The presenting officers

⁵ *Action before May 20: Demilitarize Sacramento Police Department*, Google Docs, https://docs.google.com/document/d/1E0cHNLeRLtiyZQ-raD_zzbYslVsgv3JK7CiG-Zv6-RU/edit# (last visited July 19, 2022).

⁶ 2021 Cal. Stat. AB 481.

⁷ *Id.* (emphasis added).

appeared visibly uninterested in or disengaged from the discussion and did not take note any statements, nor did they otherwise record the input from community members during any of the meetings.

The meetings were also inaccessible to many community members, reinforcing the conclusion that the meetings were held in bad faith. Despite the continued pandemic risks, all meetings were in person without opportunities to attend remotely. These meetings were also unmoderated, despite a public request submitted in advance for a moderator or facilitating individual(s). Overwhelmingly, those community members who participated in the meetings, and those who voiced their opinion on social media,⁸ were against the Draft Policy. Despite this majority, the officers present alluded that they did not intend to do anything with the information or feedback from the community because the Police Department believed the equipment was necessary regardless of community input. Despite public outcry, it is clear the City has not facilitated true public participation in the decision on the Draft Policy. This charade of community consultation fails to fulfill the requirements of A.B. 481's requirement of public input on policies for weaponry procurement.

As described herein, the dangerous weaponry proposed by the Police Department's Draft Military Equipment Use Policy causes great harm to the community, contravenes state law, and does not have the support of the community. On these bases and others, we urge you to reject the Draft Military Equipment Use Policy.

Respectfully,

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Rick Jennings, II (District 7)

Mai Vang (District 8)
Howard Chan, City Manager
Susana Alcala Wood, Sacramento City Attorney
Mindy Cuppy, City Clerk
Kathy Lester, Chief, Sacramento Police Department

⁸ See J.U.I.C.E. (@juicesacramento), Instagram, <https://www.instagram.com/juicesacramento/?igshid=NmZiMzY2Mjc%3D> (last visited July 19, 2022); see also American Friends Service Committee California Healing Justice and Amnesty International Sacramento Chapter, *Action before May 20: Demilitarize Sacramento Police Department*, Google Docs, https://docs.google.com/document/d/1E0cHNLeRLtiyZQ-raD_zzbYslVsgv3JK7CiG-Zv6-RU/edit# (last visited July 19, 2022).