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JOHN W. WHITEHEAD
Founder and President

November 29, 2022

By Electronic Mail

Board of Supervisors
City and County of San Francisco
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: San Francisco Police Department’s Proposed Use of Equipment Policy, Item 28 on Nov. 29, 2022 Agenda

Dear Members of the Board:

As a civil liberties organization that works to protect the public from the excessive use of force by militarized police, The Rutherford Institute¹ is concerned about the proposed Law Enforcement Equipment Policy for the San Francisco Police Department (“SFPD”). Most concerning is item A: “Unmanned, remotely piloted, powered ground vehicle,” which consists of many remotely controlled robots. Part of the proposed “Authorized Use” for these robots is to use “deadly force . . . when risk of loss of life to members of the public or officers is imminent and outweighs any other force option available to SFPD.” Pursuant to the guidelines in Assembly Bill 481 (“AB 481”), we strongly encourage you to reject this proposed use of equipment.

AB 481 warns in Section 1 that “the acquisition of military equipment and its deployment in our communities adversely impacts the public’s safety and welfare, including increased risk of civilian deaths, significant risks to civil rights, civil liberties, and physical and psychological well-being, and incurment of significant financial costs. . . . 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.”

Thus, Section 7071(d)(1)(A&B) of AB 481 directs that “the governing body 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”

¹ The Rutherford Institute is a nonprofit civil liberties organization which seeks to protect individuals’ constitutional rights and educate the public about threats to their freedoms.

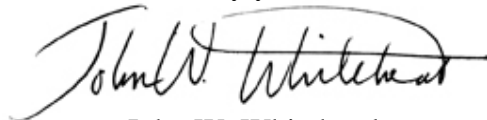
(emphasis added). The proposed military equipment use policy is not necessary or without a reasonable alternative, and it will not safeguard the public’s welfare, safety, civil rights, and civil liberties. Therefore, AB 481 directs that you not approve such a policy.

Viewing situations remotely limits a police officer’s understanding and awareness of a situation as well as the officer’s ability to resolve matters without deadly force. The wording in the proposed policy for using deadly force “when risk of loss of life to members of the public or officers is imminent and outweighs any other force option available” contains several vague and subjective terms that are capable of abuse. There is no definition or clear standard of what is sufficient to constitute a “risk of loss of life” or when that risk is “imminent.” Also, there is no standard for determining how that risk “outweighs” any other options available. There is thus a significant concern that these standards will be abused or misapplied to employ these robots when not necessary.

Additionally, at least out of SFPD’s and the City’s self-interest financially, qualified immunity might not provide protection from liability for excessive force or innocent persons harmed by these robots. Justice Clarence Thomas has asked why government officials “who have time to make calculated choices about enacting or enforcing unconstitutional policies, receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting?”² Since police officers’ lives will not be at any potential or perceived risk of harm when remotely operating an armed robot, they and the City should be exposed to greater liability for their miscalculations and harms caused by the excessive use of force.

Therefore, it is our hope that you will reject this proposed use of equipment.

Sincerely yours,

A handwritten signature in black ink that reads "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John W. Whitehead
President

² *Hoggard v. Rhodes*, 141 S. Ct. 2421, 2422 (2021) (Thomas, J., dissenting from the denial of certiorari).