



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: NOVEMBER 1, 2016
FROM: POLICE DEPARTMENT WARDS: ALL
SUBJECT: ASSET FORFEITURE PROGRAM RULES AND REGULATIONS AND EXPENDITURES

ISSUE:

Receive information regarding the Asset Forfeiture Program rules and regulations and expenditures.

RECOMMENDATION:

That the City Council receive this report for file.

LEGISLATIVE HISTORY

Asset forfeitures are governed by the following legislation:

State

1. California Health and Safety Code §11469 – 11493 (Uniform Controlled Substances Act)

State legislation provides guidelines in all cases where the property is seized and forfeited to the state or local government entity; and

Federal

1. 21 U.S.C. § 881(e)(1)(A) and (e)(3)
2. 18 U.S.C. § 981(e)(2)
3. 19 U.S.C. § 1616a
4. Title 31 U.S.C. 9703

Federal legislation provides guidelines for which types of properties are subject to seizure, seizure procedures, custody of property, disposition of forfeited property, civil forfeitures, and managerial accountability and flexibility.

DISCUSSION:

The purpose of asset forfeiture statutes is to strip drug dealers of their operating tools and economic base. Forfeiture laws are intended to be remedial by removing the tools and profits from those engaged in the drug trade, resulting in the following actions:

1. Removes tools of crime
2. Deprives wrongdoers of profits and proceeds of criminal activities
3. Weakens criminal enterprises by removing instrumentalities of crime
4. Recovers property that may be used to compensate victims
5. Enhances cooperation among federal, state and local law enforcement agencies

State Forfeitures

If property appears to be subject to forfeiture, Riverside Police Department (R.P.D.) contacts the District Attorney's (D.A.) Office while still on scene. Once property is seized, it remains with R.P.D. until the case is resolved by the D.A.'s Office, either administratively or judicially.

The forfeiture case is processed by the District Attorney's Office as a civil administrative forfeiture through the following process:

1. Notice of action must be served on all potentially interested parties;
2. Notice of proceeding must be published in a newspaper of general circulation;
3. If no claim opposing forfeiture is filed during the statutorily required period of actual or published notice, item is declared forfeited by D.A.
4. If a claim opposing forfeiture is filed, the administrative forfeiture proceeding halts, and the matter is converted into a judicial forfeiture action. Once converted into a judicial forfeiture action, in most cases the defendant must be convicted in an underlying or related criminal action.

If no claim is filed and the forfeiture is processed administratively, the D.A. will prepare and execute a declaration of forfeiture and distribute funds or proceeds of sale as follows:

1. 65% to Law Enforcement, with 15% of the law enforcement portion going to a Diversion Fund to be used for funding programs designed to combat drug abuse and divert gang activity. The Diversion fund is maintained by the D.A.'s Office;
2. 10% to the prosecuting agency;
3. 24% to the State of California's general funds to be used for school safety and security; and
4. 1% to the California District Attorneys Association to be used to provide a statewide program of education and training for prosecutors and law enforcement officers in ethics and proper use of asset forfeiture laws.

Forfeiture proceeds distributed to the R.P.D. are maintained in a separate account subject to appropriate accounting controls and financial audits of all deposits and expenditures. Funds are not appropriated into asset forfeiture expenditure accounts until City Council authorizes the appropriation.

Per California Health & Safety Code §11489, distributed proceeds shall not supplant any state or local funds that would otherwise be made available to the agency and that proceeds should

enhance law enforcement and prosecution resources.

Federal Forfeitures (Department of Justice, Department of the Treasury, Bureau of Narcotics Enforcement)

If the seizure was performed by a federal agency and R.P.D. participated in the seizure (i.e., as a member of a task force), R.P.D. is notified by the lead federal agency to submit a sharing request. The seized evidence is maintained by the U.S. Marshal Service, who will distribute shares after completion of the case and distributed based upon the level of participation if and when the court issues an order of forfeiture. Federal guidelines provide strict regulations regarding prohibited expenditures such as firearms or ammunition that are weaponized at .50 caliber or greater, weaponized aircraft, vessels and vehicles, tracked armored vehicles, bayonets, and grenade launchers. Prior approval must be obtained to purchase controlled items such as unmanned aerial systems, aircraft, vehicles, unmarked tactical or passenger vehicles.

Forfeitures are never guaranteed and can take months or years to complete. Evidence is either forfeited per appropriate legislation or returned to the innocent owner(s).

Both State and Federal expenditures are subject to audit and require annual reports.

Past expenditures included training, vehicles, buy money, audits, license plate readers, weapons, agility course, and helicopter repairs. Purchases made with state funds totaled \$231,509 in FY 2015/16. The state funds were carried over from cases originating from 2011-2014, including one 2012 forfeiture case distributed in February 2014, of which RPD received a share of \$543,632.

The purchases made with federal funds totaled \$164,677 in FY 2015/16. The federal funds were provided by a combination of 100 cases from 2008-2014 and distributed in fiscal year 2013/14.

The purchases made with federal treasury funds totaled \$50,829 in FY 2015/16. The federal treasury funds were provided by a combination of four cases distributed in fiscal year 2013/14.

Forfeiture funds were used to supplement General Fund expenditures.

FISCAL IMPACT:

There is no fiscal impact associated with this report.

Prepared by: Sergio G. Diaz, Chief of Police
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availability of funds: Scott G. Miller, Ph.D., Chief Financial Officer/City Treasurer
Approved by: Alexander T. Nguyen, Assistant City Manager
Approved as to form: Gary G. Geuss, City Attorney

Attachment: Presentation