



Office of the City Manager

June 16, 2017

To: Honorable Mayor and Members of the City Council

From:  Jovan Grogan, Deputy City Manager

Subject: Informational Report – Asset Forfeiture

INTRODUCTION

Recently, the Berkeley Police Department was awarded a grant from the Bay Area Urban Areas Security Initiative (UASI), a Federal program focusing on regional emergency preparedness, for the purchase of a bullet resistant van to enhance officer and community safety. The grant partially covered the cost of the van and the Department proposed asset forfeiture funds be used to pay the balance of the cost of the van. Council requested more information about the Asset Forfeiture process.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Police Department conducts Asset Forfeiture of funds when courts determine that the funds are the illegal proceeds or ill-gotten gains of narcotics trafficking. According to State Law Health and Safety Code 11489, funds seized by the state through the Asset Forfeiture process are disbursed to state and local entities and may only be spent to enhance law enforcement and prosecution resources. In this case, the funds are being used to provide a van with an appearance that could be for civilian use but has bullet-proof protection.

BACKGROUND

The forfeiture process seeks to remove the tools and profits of those engaged in illegal drug trade. Forfeiture Ethical Guidelines are outlined in Health and Safety Code 11469. It is incumbent on law enforcement organizations to protect the interests of innocent property owners.

The Department conducts asset forfeiture investigations in parallel with narcotics trafficking arrests. If a suspected drug dealer is found to be in possession of a large quantity of cash, a separate asset forfeiture investigation may be initiated by an investigator with special training to determine the source of the funds. The investigator's findings are then presented to the District Attorney's Office. The suspect is served with a notice of intent to seize the property and given an opportunity to claim the funds. The funds remain in police custody, deposited into an interest bearing account under the control and oversight of the Finance Department and Auditors Office.

An Alameda County prosecutor assigned to the Asset Forfeiture case makes a determination whether or not to take further action to seize the funds. The defendant is given the opportunity to claim the funds. A public notice is required in a local newspaper so that any third party may assert a lawful claim to the funds. It is the Berkeley Police Department's experience that a vast majority of the asset seizures are disclaimed or go unclaimed. If the funds are claimed, the

District Attorney's office initiates a civil forfeiture action within the judicial process in court. In this action, the State must prove there is proof beyond a reasonable doubt the suspect is guilty of drug trafficking before the funds are seized by the state.

If the court finds that the assets are to be forfeited to the state, the statute requires that the funds be disbursed to state and local agencies. Those include: the State of California General Fund to be used for school safety and security (24%); Drug and Gang and Diversion programs for youth; the prosecuting agency which prosecuted the forfeiture (10%); the local agency (65%) and the California District Attorneys Association (1%). The funds are to be used on statewide training programs for prosecutors and law enforcement officers in ethics and the proper use of asset forfeiture law. The funds disbursed through asset forfeiture cannot be used to cover or supplant routine funding made available to the agency. The legislative intent is that the forfeiture proceeds should enhance law enforcement and prosecution resources.

Asset forfeiture follows a similar process in the federal court system. In these instances, the US Department of Justice may adopt a case and the forfeiture is also adjudicated in Federal Court. Federal Adoption of Berkeley Police Department investigations is extremely rare.

For reference, in the past several years asset forfeiture funds have been approved to send officers to training conferences including the Police Executive Research Forum Senior Management Institute for Police, the California Association of Hostage Negotiators, and the California Association of Tactical Officers. Asset Forfeiture funds have also been spent on safety equipment including ballistic helmets, such as what was used to protect officers during the spring political clashes in Civic Center Park. They have also been used for a "throw phone" system, which allows negotiators on our Special Response Team to communicate with barricaded subjects in a crisis incident. All expenditures require approval of the Chief of Police and the City Manager on a case-by-case basis, and are subject to all City of Berkeley regulations regarding purchasing and contracting for services.

Berkeley Police Department General Order A-61 – Asset Forfeiture contains our policy regarding Asset Forfeiture, and is available on the City of Berkeley website.

CONTACT PERSON

Andrew R. Greenwood, Chief of Police, Police Department, (510) 981-5700

cc: Dee Williams-Ridley, City Manager
Andrew Greenwood, Chief of Police
Mark Numainville, City Clerk
Ann-Marie Hogan, City Auditor
Matthai Chakko, Assistant to the City Manager / Public Information Officer