

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 31, 2005

GENERAL ORDER A-61

SUBJECT: ASSET FORFEITURE

PURPOSE

- 1 - This Order establishes policy and procedure regarding the seizure, forfeiture, distribution and use of assets acquired by this Department as a result of narcotics-related law enforcement.

POLICY

- 2- It shall be the policy of this Department to enforce all statutes as they relate to the abatement and prosecution of narcotics trafficking offenses. When appropriate and practicable in the course of narcotic trafficking investigation, officers shall identify and seize assets, property, or other things of value which are believed to be or derived from the proceeds of, possessed to facilitate, or possessed with the intent to facilitate underlying or related narcotics trafficking activity.
- 3 - The Administrative Narcotics office of the Special Enforcement Unit (SEU) shall be responsible for supplemental investigation of assets subject to forfeiture seized by this Department, management of seized assets, and liaison with the District Attorney's office, or the Federal agency having jurisdiction over the litigation of the related civil forfeiture action. Except for seizures in excess of \$25,000.00, the most important requirement for the forfeiture case is that the asset must be related to someone's conviction in the underlying case (a pending case) or related criminal action (within five years) of a California drug trafficking offense. Simply, if there is no trafficking conviction, there is no forfeiture.

ETHICS

- 4 - Seizures of assets related to narcotics trafficking are made by law enforcement pursuant to State and Federal statutes. Whenever a seizure is made, officers shall remember that law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens. To this end, seizing agencies shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

PROCEDURES

- 5 - The following are subject to forfeiture (as condensed from Health and Safety Code Section 11470):
 - (a) All controlled substances manufactured, distributed, dispensed, or acquired in violation of law.

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- (b) All raw material, products, and equipment of any kind which are used, or intended for use, in manufacturing or delivering controlled substances.
 - (c) All property which is used, or intended for use, as a container for controlled substances, except real property or a conveyance (i.e., boat, airplane, or any vehicle).
 - (d) All books, records, research materials, and data that are used, or intended for use, in narcotic trafficking offenses.
 - (e) Any conveyance (i.e., boat, airplane, or any vehicle, other than an implement of husbandry) which has been used to facilitate the possession for sale or sale of controlled substances (quantity requirements apply; exceptions noted in Health and Safety Code).
 - (f) All monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished in exchange for a controlled substance, traceable as proceeds of such an exchange, or used, or intended to be used to facilitate any violation of Sections 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of the Health and Safety Code, or Section 182 of the Penal Code, if the violation occurred within five years of the seizure of the property.
 - (g) The real property of any property owner who is convicted of violating Sections 11366, 11366.5, or 11366.6 with respect to that property (exceptions noted in the Health and Safety Code).
- 6 - Absent a court order, seizures may be made if any of the following circumstances exist:
- (a) The seizure is incident to an arrest or a search pursuant to a warrant.
 - (b) The property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding.
 - (c) There is probable cause to believe that the property is directly or indirectly dangerous to health and safety.
 - (d) There is probable cause to believe that the property was used, or is intended for use in a narcotic trafficking offense.
 - (e) Real property subject to forfeiture may not be seized, absent exigent circumstances, without notice to the interested parties and a hearing to determine that the seizure is necessary to preserve the property, pending the outcome of the proceedings.

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- 7 - Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession such property was seized. In the event property seized was not seized out of anyone's possession, receipt for the property shall be delivered to the individual in possession of the premises at which the property was seized.
 - (a) When possible, the seizing officer should deliver to the person or location a Receipt for the Seizure of Property Subject to Forfeiture form (see page 5). If an Evidence Report form is used, the seizing officer shall be responsible for ensuring the proper forfeiture receipt is delivered as soon as is practicable.
- 8 - All assets seized shall be handled as set forth in General Order P-65. As soon as is practicable, all currency seized which is subject to forfeiture should be deposited into the bank account established to maintain such funds. The funds will remain in the account until authorized for release by the court having jurisdiction or other competent authority.
 - (a) Currency seized in the course of a narcotics-related arrest whose amount is below the minimum levels established by the District Attorney's office or Federal agency having jurisdiction shall be handled in accordance with guidelines set forth in General Order P-65, paragraphs 34-38.
- 9 - When a forfeiture matter has concluded and funds are distributed, forfeited proceeds shall be deposited into the appropriate account(s) established to maintain such funds. These accounts shall be subject to accounting controls and annual financial audits of all deposits and expenditures, unless otherwise provided by law.
 - (a) Of the assets forfeited and distributed pursuant to State statute, fifteen percent (15%) of the amount awarded to this Department shall be deposited into an account dedicated to support youth drug prevention and gang intervention programs.
- 10 - Copies of all transactions to or from accounts established to manage and facilitate this Department's Asset Forfeiture Program shall be communicated to the City's Finance Department via the *Administrative Division Lieutenant.
- 11 - Whenever assets subject to forfeiture are seized, two copies of the initial investigation or supplemental report shall be routed to the SEU Administrative Narcotics office.
 - (a) The SEU Administrative Narcotics office shall forward a complete copy of the investigative report, supplemental reports, and other related documents (i.e., search warrants, seizure orders, etc.) to the District Attorney's Office Asset Forfeiture Unit of the jurisdiction from which the assets were seized. The office will also make other notifications as

*Highlighted text is new.

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required by law.

USE OF FORFEITED ASSETS

- 12 - Forfeited assets distributed to this Department shall be used in the manner set forth in State and Federal statutes and procedures.
- 13 - **Cash assets that are to be used for Departmental purchases shall be transferred to the City Treasury, where they will be posted in the police department budget for expenditure.**
- 14 - **All expenditures using forfeited cash assets shall be approved by the Chief of Police, and shall be made using established City purchasing procedures through the Finance Department.**

References: Penal Code Section 1412-receipts, seizure of evidence
Health & Safety Code Section 11470, et. seq.-State asset forfeiture statutes
18 USC 881, et. seq. -Federal asset forfeiture statutes
Asset Seizure and Forfeiture Manual, State of California DOJ
A Guideline to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies, March 1994, U.S. DOJ
Model Law Enforcement Asset Forfeiture Policy & Procedure Manual-Health & Safety Code 11469(d), February 1996, CA District Attorneys Association
General Orders D-4, P-65
Special Enforcement Unit Manual

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RECEIPT FOR THE SEIZURE OF PROPERTY SUBJECT TO FORFEITURE
Health & Safety Code, sec. 11488(c)

Property Taken From: _____ Case: _____

On _____ of the _____
(Date) (Seizing Officer)

Berkeley Police Department seized the within described property pursuant to Health And Safety Code sections 111470 et seq. for the reason that the property is believed to be subject to forfeiture pursuant to said provisions of the law.

	(Itemized Property Seized)	(Apparent Value)
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____

A duplicate of this receipt was:

_____ delivered to _____
Name/Address/Phone/ID

Out of whose possession the property was seized: or

_____ delivered to _____
Name/Address/Phone/ID

The individual in possession of the premises at which the property was seized; or

_____ left in a prominent place at the premises at _____
Location

Dated: _____

Signature of Seizing Officer

Cc: Original- Service Division
Copy-Citizen