



== CITY OF ==
NEWPORT BEACH
City Council Staff Report

March 14, 2017
Agenda Item No. 7

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: Dave Kiff, City Manager
PREPARED BY: Dave Kiff, City Manager, dkiff@newportbeachca.gov
PHONE: 949-644-3001
TITLE: Resolution No. 2017-18: Amending Council Policy F-10 (*Civil Asset Forfeiture and Seizure*)

ABSTRACT:

The City's asset forfeiture policy is proposed to be updated to comply more closely with current law and appropriate practices.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2017-18, *A Resolution of the City Council of the City of Newport Beach, California, Amending City Council Policy F-10 Relating to Civil Asset Forfeiture and Seizure.*

FUNDING REQUIREMENTS:

There is no known fiscal impact related to this item. For the Council's information, the initial fund balance in the Narcotics Asset Forfeiture Fund (NAFF) was \$763,861 as of July 1, 2016, with year to date income of \$37,504 and expenditures of \$162,000. This would result in a NAFF Balance on June 30, 2017 of \$639,365.

In Newport Beach, the City has followed a Council Policy on Asset Forfeiture (Policy F-10) that was adopted in 1993, revised in 1994, and not changed since then. Generally, the City has received asset forfeiture funds and proceeds since that time and used the funds for one-time purchases or upgrades of law enforcement-related software, hardware and radios, or other products. Some years will see very limited proceeds coming to the NAFF. Others years may see amounts into six figures.

DISCUSSION:

Over the past several years, persons from across the political spectrum have expressed concern about narcotic-related asset forfeiture, whereby cash and/or a person's property can be held and/or taken should that person be charged or convicted with a drug-related crime. One aspect of public concern is whether or not a person was actually convicted of a crime before the seizure takes place.

Asset forfeiture in the United States follows (generally) a series of 1990s-era laws that were enacted to combat drug trafficking. Proponents of the law argued that the seizure of assets relating to drug trafficking would reduce trafficking itself, by taking away the rewards (cash, property) associated with profits on drug sales. Law enforcement at multiple levels asserts that vehicles, homes, boats, and other property as well as cash can be directly related to proceeds of a drug sale or used within the sale itself. In some cases, law enforcement has retained the actual cars or property for law enforcement use (this is not a Newport Beach practice).

Others have expressed concern that asset forfeiture can be done overzealously. In some cases, suspicious persons simply found with large amounts of cash can have the cash seized. In other cases, homes, autos, and other property that might relate to a case have been seized even while some persons not associated with a crime are impacted by those seizures – such as a lost house impacting an accused's family. Further, some have alleged that agencies have become dependent on seized assets for ongoing operations – another practice not applicable in Newport Beach.

Several states have recently reformed asset forfeiture laws. California has tended to have among the most restrictive laws in the nation, but it did (until January 1, 2017) allow what some considered to be a loophole. In this case, localities or state officials blocked by California law might transfer forfeiture prosecutions to Federal officials (with different Federal standards) and, in return, state and local officials would receive a portion (up to 80%) of the forfeiture proceeds from the Federal action (referred to as "equitable sharing").

The enactment of Senate Bill 443 (Mitchell, 2015) effectively prohibits state or local law enforcement from bypassing State restrictions and referring property seized to a Federal agency. The new law also (generally) now limits equitable sharing money received back from a Federal agency to actions: (a) where a conviction was obtained; (b) that were also consistent with State law; and (c) where the seizure was over \$40,000. Under SB 443, any seizure of a home, boat, or vehicle still requires a conviction regardless of value.

In Newport Beach, the City has followed a Council Policy on Asset Forfeiture (Policy F-10) that was adopted in 1993, revised in 1994, and not changed since then. Generally, the City has received asset forfeiture funds and proceeds since that time and used the funds for one-time purchases or upgrades of law enforcement-related software, hardware and radios, or other products.

Forfeiture proceeds trends do not appear to follow a pattern. Some years will see very limited proceeds coming to the City's NAFF. Other years may see amounts into six figures. The past two budget years (including the current one) show receipts of \$5,901 in FY 15-16 and estimated receipts of \$28,099 in FY 16-17.

Given that the Policy had not been changed since 1994, staff in the City Attorney's Office and the Police Department conferred with Council Member Will O'Neill to prepare an update to the City's policy on asset forfeiture to reflect current laws and practices. The proposed revisions are shown in redline as Attachment A, and, among other things:

Define forfeited assets;

State that takings such as forfeitures must comply with the US Constitution's 5th Amendment;

Note SB 443's passage, and refer to the new law;

Deem that the City cannot accept forfeited assets – without regard to value or type – unless all laws have been followed;

Direct the PD to provide persons from whom assets were seized with appropriate documentation to dispute any seizure; and

Clarify quarterly and annual reporting from the PD and City Manager as to the NAFF.

This item, if approved, would adopt a revised Policy F-10.

ENVIRONMENTAL REVIEW:

This action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Redline of the Proposed Revisions to Council Policy F-10

Attachment B – Resolution No. 2017-18 Adopting Amendments to Policy F-10, Including a "Clean" Version of Proposed Policy F-10

ATTACHMENT A**CIVIL ASSET FORFEITURE AND SEIZURE POLICY**

- A. A.—This policy applies to all forfeited or seized assets in the City of Newport Beach in the form of currency, real estate, automobiles, boats, aircraft, or any other items of value (“Forfeited Assets”).
- B. The use of ~~narcotics~~civil asset forfeitures and seizures of items and funds is regulated by all applicable Federal and State laws. At a minimum, the use of Forfeited Assets shall comply with all applicable Federal, state, and local laws, rules, and regulations. Furthermore, any Forfeited Assets converted for Police Department use shall supplement, not supplant, existing departmental equipment and funds.
- ~~B.~~—~~The use of forfeited items and moneys shall comply with all applicable Federal, State, and local laws, rules, and regulations.~~
- C. C.—~~The use of such items and moneys~~Forfeited Assets shall be for law enforcement purposes only.
- ~~D.~~—~~Any items or funds converted for departmental use shall supplement, not supplant, existing departmental equipment and funds.~~
- D. F.—All ~~narcotics asset forfeiture moneys~~Forfeited Assets shall be maintained in a Narcotics Asset Forfeiture ~~account~~Account specifically designed for that purpose.
- E. G.—All funds derived from the sale of any ~~forfeited assets~~Forfeited Assets shall be placed in the Narcotics Asset Forfeiture ~~account~~Account.
- F. H.—The City of Newport Beach recognizes the taking of property due to alleged criminal wrongdoing is entitled to the same legal protection as the taking of a person into custody for alleged criminal wrongdoing. The Fifth Amendment to the

United States Constitution requires due process of law before a person be deprived of “life, liberty, or property.”

G. The City of Newport Beach also recognizes that the California Legislature passed new legislation, which starting January 1, 2017, effectively requires a conviction prior to forfeiture in any state case where the items seized are cash under \$40,000 or other property such as homes and vehicles regardless of value.

H. The City of Newport Beach will not accept any Forfeited Assets – no matter the value or type – unless due process has been afforded and unless all applicable Federal, state, and local laws, rules, and regulations have been followed.

I. All expenditures of ~~Narcotics Asset Forfeiture~~ funds derived from Forfeited Assets shall be processed through the ~~City's~~City of Newport Beach's normal budgeting procedures and shall be subject to normal auditing and accounting reviews.

~~I. All vehicles seized under the Narcotics Asset Forfeiture laws that are forfeited under that process shall be sold or converted and added to the departmental fleet.~~

~~J. All converted vehicles shall be utilized only by police department employees and such use shall be limited to investigative purposes with a priority for undercover use, unless such use is specifically authorized by the City Manager.~~

~~K. Vehicles shall be maintained in the departmental fleet for a period of one (1) year or as determined by the Chief of Police.~~

~~L. All other assets seized under the Narcotics Asset Forfeiture laws that are forfeited under that process shall be sold or converted and added to the departmental inventory.~~

~~M. All other converted assets shall be utilized only by police department employees and shall be limited to appropriate law enforcement uses.~~

~~N. All other assets shall be maintained in the departmental inventory as determined by the Chief of Police.~~

J. O. The Newport Beach Police Department shall ensure that persons from whom the Department seizes assets are provided with appropriate documents that explain a person's ability to dispute the seizure.

K. The Newport Beach Police Department shall comply with this City Council Policy F-10 by adopting an appropriate Asset Forfeiture Policy within its internal policy manual.

L. The Chief of Police shall report to the City Manager quarterly on the status and use of all ~~items and moneys seized and/or converted to departmental use under Narcotics Asset Forfeiture laws.~~ The City Council shall receive annual reports Forfeited Assets. The City Manager shall report to the City Council at least annually on the status, use, and usedisposition of all ~~items and moneys seized and/or converted to department use under Narcotics Asset and Forfeiture laws.~~ Forfeited Assets.

Adopted — January 11, 1993

Amended — January 24, 1994

Amended – _____, 2017

Formerly F-27

ATTACHMENT B

RESOLUTION NO. 2017-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING CITY COUNCIL POLICY F-10 RELATED TO CIVIL ASSET FORFEITURE AND SEIZURE

WHEREAS, the City of Newport Beach (City) is a diverse community committed to the protection of all people and property under Federal, State, and Local law;

WHEREAS, the Fifth Amendment to the United States Constitution provides that no person shall be "deprived of life, liberty, or property, without due process of law;"

WHEREAS, the City understands the need to limit and control the use of civil asset forfeiture to avoid abuses, or even the appearance of abuses, that have occurred in other cities throughout the state and nation;

WHEREAS, the City is committed to strictly following the law and providing persons with the protections afforded by the Fifth Amendment; and

WHEREAS, the City desires to amend City Council Policy F-10 (*Civil Asset Forfeiture and Seizure Policy*) to further strengthen the protections provided to persons and their property.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council of the City of Newport Beach hereby adopts the amended City Council Policy F-10 (*Civil Asset Forfeiture and Seizure Policy*), which is attached hereto and incorporated herein by this reference.

Section 2: The City Council finds the adoption of this resolution and City Council Policy F-10 (*Civil Asset Forfeiture and Seizure Policy*) is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 3: If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or

more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

Section 5: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.


ADOPTED this ____ day of _____, 2017.

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

 (for)

Aaron C. Harp
City Attorney

Attachment: City Council Policy F-10 as Amended

CIVIL ASSET FORFEITURE AND SEIZURE POLICY

- A. This policy applies to all forfeited or seized assets in the City of Newport Beach in the form of currency, real estate, automobiles, boats, aircraft, or any other items of value ("Forfeited Assets").
- B. The use of civil asset forfeitures and seizures of items and funds is regulated by all applicable Federal and State laws. At a minimum, the use of Forfeited Assets shall comply with all applicable Federal, state, and local laws, rules, and regulations. Furthermore, any Forfeited Assets converted for Police Department use shall supplement, not supplant, existing departmental equipment and funds.
- C. The use of Forfeited Assets shall be for law enforcement purposes only.
- D. All Forfeited Assets shall be maintained in a Narcotics Asset Forfeiture Account specifically designed for that purpose.
- E. All funds derived from the sale of any Forfeited Assets shall be placed in the Narcotics Asset Forfeiture Account.
- F. The City of Newport Beach recognizes the taking of property due to alleged criminal wrongdoing is entitled to the same legal protection as the taking of a person into custody for alleged criminal wrongdoing. The Fifth Amendment to the United States Constitution requires due process of law before a person be deprived of "life, liberty, or property."
- G. The City of Newport Beach also recognizes that the California Legislature passed new legislation, which starting January 1, 2017, effectively requires a conviction prior to forfeiture in any state case where the items seized are cash under \$40,000 or other property such as homes and vehicles regardless of value.

- H. The City of Newport Beach will not accept any Forfeited Assets – no matter the value or type – unless due process has been afforded and unless all applicable Federal, state, and local laws, rules, and regulations have been followed.
- I. All expenditures of funds derived from Forfeited Assets shall be processed through the City of Newport Beach's normal budgeting procedures and shall be subject to normal auditing and accounting reviews.
- J. The Newport Beach Police Department shall ensure that persons from whom the Department seizes assets are provided with appropriate documents that explain a person's ability to dispute the seizure.
- K. The Newport Beach Police Department shall comply with this City Council Policy F-10 by adopting an appropriate Asset Forfeiture Policy within its internal policy manual.
- L. The Chief of Police shall report to the City Manager quarterly on the status and use of all Forfeited Assets. The City Manager shall report to the City Council at least annually on the status, use, and disposition of all Forfeited Assets.

Adopted – January 11, 1993

Amended – January 24, 1994

Amended – March 14, 2017

Formerly F-27