



CITY OF HUNTINGTON BEACH

City Council Interoffice Communication

To: Honorable Mayor and City Council Members
From: Mike Posey, City Council Member 
Date: August 21, 2019
Subject: CITY COUNCIL MEMBER ITEM FOR THE SEPTEMBER 3, 2019,
CITY COUNCIL MEETING – ASSET FORFEITURE

STATEMENT OF ISSUE:

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.

Others have expressed concern that asset forfeiture can be done overzealously. In some cases, persons not convicted of a crime but 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 entire family.

Several states have recently reformed asset forfeiture laws. California law 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 would transfer forfeiture prosecutions to Federal officials (with different Federal standards) and, in return, state and local officials would receive a portion of the forfeiture proceeds from the Federal action (so called "equitable sharing").

The enactment of Senate Bill 443 (Mitchell, 2015) effectively prohibits state or local law enforcement from bypassing State restrictions by referring property seized to a Federal agency. The bill 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 2017, Newport Beach amended its policy related to Civil Asset Forfeiture and Seizure. This policy amendment reaffirmed their commitment to strictly following the law and providing persons with the protections afforded by the Fifth Amendment. The Newport Beach Policy clarifies the following:

- Defines forfeited assets;
- States that takings such as forfeitures must comply with the 5th Amendment;
- Notes SB 443's passage, and refer to the new law;
- Deems that Newport Beach cannot accept forfeited assets – without regard to value or type – unless all laws have been followed;
- Directs the Newport Beach Police Department to provide persons from whom assets were seized with appropriate documentation to dispute any seizure; and
- Clarifies quarterly and annual reporting from the City's narcotics asset forfeiture fund.

I would like our City to consider mirroring Newport Beach's policy, as I agree with the concerns that Newport Beach had in enacting it.

RECOMMENDED ACTION:

Direct the City Manager, Police Chief, and City Attorney to review the City's policies and procedures related to Asset Forfeiture and report back to City Council within 90 days on any needed changes to the existing policy; specifically relating to the aforementioned changes that were implemented to the Newport Beach policy. If updates to the policy are required, the City Manager should bring back a Resolution that affirms the revised policy.

xc: Dave Kiff, Interim City Manager
Travis Hopkins, Acting Assistant City Manager
Robin Estanislau, City Clerk
Michael Gates, City Attorney
Rob Handy, Police Chief