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2014 MAY 29 AM 9:53



CITY OF OAKLAND

## AGENDA REPORT

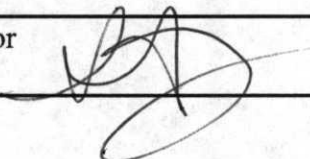
**TO:** FRED GLOVER-BLACKWELL  
CITY ADMINISTRATOR

**FROM:** Chief Sean Whent

**SUBJECT:** Appropriation of Asset Forfeiture Fund Balance

**DATE:** April 28, 2014

City Administrator  
Approval



Date

5-27-14

**COUNCIL DISTRICT:** City-Wide

### RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the City Administrator or his designee to appropriate Federal Asset Forfeiture Fund balance (Fund Nos. 2117, 2910, and 2912,) in the amount of \$649,800 as well as State Asset Forfeiture Fund balance (Fund Nos. 2914 and 2916) in the amount of \$248,100, in accordance with the federal and state asset forfeiture program guidance.

### OUTCOME

Approval of this resolution will authorize the Oakland Police Department to appropriate the fund balance in Federal Asset Forfeiture Funds (2117, 2910, and 2912) as well as State Asset Forfeiture Funds (2914 and 2916) per asset forfeiture program guidelines. The URL to the Guide to Equitable Sharing for State and Local Law Enforcement Agencies is available at: <http://www.justice.gov/usao/ri/projects/esguidelines.pdf>. This funding will be used to supplement the Department's General Purpose Fund spending on law enforcement activities. Supplanting budgeted activities with asset forfeiture funds is prohibited.

### BACKGROUND/LEGISLATIVE HISTORY

The Equitable Sharing Program (i.e., Asset Forfeiture Program) is a nationwide law enforcement initiative that removes the assets of criminals and criminal organizations in order to deprive wrongdoers of the proceeds of their crimes, recover property that may be used to compensate victims, deter crime, and foster cooperation among federal, state, and local law enforcement agencies. Federal law, the Controlled Substances Act, Section 881 (e) (3) of Title 21, United States Code, authorizes the Attorney General to share forfeited property with participating state

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and local law enforcement agencies, though it is not required. Separate forfeiture authorization is provided in federal law to the Department of Treasury under Title 31 United States Code 9703. At the state level, California Health and Safety Code Section 11489 allow for state or local government entities to seize property under California law.

An adoption of federal asset forfeiture occurs when a state or local law enforcement agency seizes property and requests one of the federal seizing agencies to adopt the seizure because the conduct that gave rise to the seizure was in violation of federal law. Similarly, state asset forfeiture occurs when a state or local government entity requests to seize property under California law when said property has been determined to be a vehicle for/or the result of criminal activity.

### **ANALYSIS**

Because asset forfeiture funds are not guaranteed, the Department of Justice and Department of Treasury Equitable Sharing Program guidelines strongly recommends against including asset forfeiture funding in annual or biennial adopted budgets. Therefore, by only appropriating asset forfeiture funds after seized property has been successfully applied for, transferred to OPD, and recorded in the City's financial system, the Department will ensure that its asset forfeiture funds remain financially solvent. This resolution appropriates the existing fund balance, plus a small amount for estimated interest earnings.

### **COORDINATION**

This report was prepared in coordination with the City Attorney's Office and the Budget Office.

### **COST SUMMARY/IMPLICATIONS**

#### **Source of Funding**

The Department of Justice (DOJ) Asset Forfeiture Program includes activity by DOJ components and several components outside the Department. Note: Department of Justice asset forfeiture guidelines allow up to 15% to be used for community-based programs. OPD tracks this 15% by setting aside funds in Fund 2910. The remaining 85% is recorded in Fund 2912. Federal asset forfeiture funds received from the below DOJ Asset Forfeiture Program participants will be recorded and appropriated to Funds 2910 and 2912:

- Asset Forfeiture and Money Laundering Section
- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
- Drug Enforcement Administration (DEA)
- Federal Bureau of Investigation (FBI)
- United States Marshals Service (USMS)

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- United States Attorneys' Offices (USAOs)
- United States Postal Inspection Service (USPIS)
- Food and Drug Administration (FDA)
- United States Department of Agriculture, Office of the Inspector General (USDA, OIG)
- Department of State, Bureau of Diplomatic Security
- Defense Criminal Investigative Service (DCIS)

Federal asset forfeiture funds received from the following Treasury Asset Forfeiture Program participants will be recorded and appropriated to Fund 2117:

- Internal Revenue Service Criminal Investigation Division (IRS-CI), U.S. Department of the Treasury
- U.S. Immigration and Customs Enforcement (U.S. ICE), Department of Homeland Security
- U.S. Customs and Border Protection (U.S.CBP), Department of Homeland Security
- U.S. Secret Service, Department of Homeland Security
- U.S. Coast Guard, Department of Homeland Security

### **Fiscal Impact**

Approval of this resolution will authorize the Oakland Police Department to appropriate available asset forfeiture fund balance in Funds 2117, 2910, 2912, and 2914 in order to supplement its General Purpose Fund operating budget. Funds may be appropriated to any OPD organization (101110-108150) and allocated for any of the following permissible law enforcement activities:

- Law enforcement investigations / Law enforcement training
- Law enforcement facilities / Law enforcement equipment
- Law enforcement travel and transportation / Law enforcement awards and memorials
- Drug and gang education, awareness and prevention programs
- Matching funds for grant opportunities
- Pro rata funding (i.e., OPD's portion of a city or regional capital or operations and maintenance expense)
- Asset accounting and tracking
- Language assistance services
- Transfer to other law enforcement agencies
- Support of community-based programs (Note: Cash transfers are not permitted; must pay for services or supplies)

Impermissible uses: Salaries and benefits; non-law enforcement uses; supplanting

Available fund balances for immediate appropriation and allocation:

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- Department of Treasury Fund 2117 - fund balance: \$413,400
  - Asset Forfeiture (15% set aside) Fund 2910\* - fund balance: \$38,400
  - Asset Forfeiture (City Share) Fund 2912 - fund balance: \$198,000
  - State Asset Forfeiture Fund 2914 - fund balance: \$208,100
  - Vice Crimes Protection Fund 2916 - fund balance: \$40,000
- Total: \$897,900**

\*NOTE: \$95,000 from Fund 2910 was previously appropriated to Child Abuse Listening, Interviewing and Coordination (CALICO) Center via Resolution No. 84494 C.M.S.

Approval of this resolution will authorize the Oakland Police Department to use the available \$897,900 for the following activities (amounts listed below are estimates).

<b>Expenditure</b>	<b>Amount</b>
Buy/Bust Money	\$20,000
Communication Center Repairs	\$8,000
Rental Cars	\$127,450
Helicopter Maintenance and Fuel	\$397,000
Police Administration Building (PAB) 3rd Floor Repairs	\$65,750
PAB Door Security	\$25,000
PAB Fire Alarm System	\$254,700
<b>TOTAL</b>	<b>\$897,900</b>

### **PAST PERFORMANCE, EVALUATION AND FOLLOW-UP**

The majority of OPD's asset forfeiture funding is shared through the Department of Justice Asset Forfeiture program participants.

- In FY 2012-13, OPD received \$143,000 in federal DOJ asset forfeiture funds.
- In FY 2011-12, OPD received \$128,104 in federal DOJ asset forfeiture funds.
- In FY 2010-11, OPD received \$243,074 in federal DOJ asset forfeiture funds.
- In FY 2009-10, OPD received \$706,849 in federal DOJ asset forfeiture funds.

OPD typically used its asset forfeiture funds for the following permissible law enforcement activities: sworn overtime, rental cars and fuel for covert operations, "buy/bust" monies, helicopter maintenance and fuel, technology upgrades and applications, necessary upgrades and repairs to the Police Administration Building or Eastmont substation, CrimeStoppers, and services or supplies for community-based organizations such as the Police Activities League (PAL), Our Kids (OK) Mentoring Program, Child Abuse Listening Interviewing and Coordination (CALICO) Center, etc.

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**SUSTAINABLE OPPORTUNITIES**

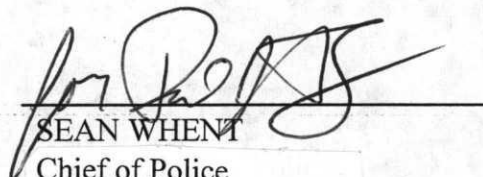
***Economic:*** Annual appropriation of Asset Forfeiture Fund balance will augment the OPD's annual General Purpose Fund budget for law enforcement activities; ensuring OPD is able to use all available resources toward efficient and effective operations. Additionally, only appropriating available fund balance will provide assurance that OPD's asset forfeiture funds will remain solvent.

***Environmental:*** There are no environmental opportunities directly associated with this report.

***Social Equity:*** Asset forfeiture funding will be used to supplement funding for general law enforcement activities that benefit the entire city. In addition, asset forfeiture funding allocated to community-based organizations will enhance crime prevention and intervention opportunities; thereby offering additional opportunities to reduce crime before it occurs.

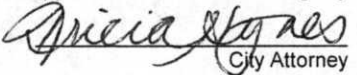
For questions regarding this report, please contact Donneshia Taylor, Fiscal Manager, Bureau of Services, at 238-3288.

Respectfully submitted,

  
SEAN WHENT  
Chief of Police  
Oakland Police Department

--Resolution

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June 10, 2014


  
City Attorney

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# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR DESIGNEE, TO APPROPRIATE FEDERAL ASSET FORFEITURE FUND BALANCE (FUND NOS. 2117, 2910, AND 2912,) IN THE AMOUNT OF \$649,800, AS WELL AS STATE ASSET FORFEITURE FUND BALANCE (FUND NOS. 2914 AND 2916) IN THE AMOUNT OF \$248,100, IN ACCORDANCE WITH THE FEDERAL AND STATE ASSET FORFEITURE PROGRAM GUIDANCE**

**WHEREAS**, The Equitable Sharing Program (i.e., Asset Forfeiture Program) is a nationwide law enforcement initiative that removes the assets of criminals and criminal organizations in order to deprive wrongdoers of the proceeds of their crimes, recover property that may be used to compensate victims, deter crime, and foster cooperation among federal, state, and local law enforcement agencies; and

**WHEREAS**, federal law, the Controlled Substances Act, Section 881 (e) (3) of Title 21, United States Code, authorizes the Attorney General to share forfeited property with participating state and local law enforcement agencies, though it is not required. Separate forfeiture authorization is provided in federal law to the Department of Treasury under Title 31 United States Code 9703. At the State level, California Health and Safety Code Section 11489 allows for state or local government entities to seize property under California law; and

**WHEREAS**, an adoption of federal asset forfeiture occurs when a state or local law enforcement agency seizes property and requests one of the federal seizing agencies to adopt the seizure because the conduct that gave rise to the seizure was in violation of federal law. Similarly, state asset forfeiture occurs when a state or local government entity requests to seize property under California law when said property has been determined to be a vehicle for/or the result of criminal activity; and

**WHEREAS**, the City Council previously adopted Resolution No. 63299 C.M.S. in 1985, Resolution No. 65540 C.M.S. in 1988, and Resolution No. 73683 C.M.S. in 1997, which authorized the Oakland Police Department to apply for and accept federal and state seized property, making OPD an authorized participant in both Federal and State Asset Forfeiture Programs; and

**WHEREAS**, Department of Treasury Federal Asset Forfeiture Program participants share seized assets with OPD that are deposited into Fund 2117 and Department of Justice Federal Asset Forfeiture Program participants share seized assets with OPD that are deposited into Funds 2910 and 2912. California Asset Forfeiture Program participants share seized assets with OPD that are deposited into Funds 2914 and 2916; and



**WHEREAS**, the fund balance in Federal Asset Forfeiture Funds (2117, 2910, and 2912) is \$649,800 and State Asset Forfeiture Funds (2914 and 2916) is \$248,100; and

**WHEREAS**, Federal and State Asset Forfeiture Funds are to be used to supplement OPD's operating budget for the following permissible law enforcement activities, Buy/Bust Money (\$20,000), Communications Center Repairs (\$8,000), Rental Cars (\$127,450), Helicopter Maintenance and Fuel (\$397,000), Police Administration Building (PAB) 3<sup>rd</sup> Floor Repairs (\$65,750), PAB Door Security (\$25,000), and PAB Fire Alarm System (\$254,700); and

**WHEREAS**, Federal and State Asset Forfeiture Funds may not be used to supplant for salaries and benefits, or for non-law enforcement uses; now, therefore, be it

**RESOLVED:** That the City Council hereby authorizes the City Administrator, or designee, to appropriate and allocate current fund balance in funds 2117, 2910, 2912, 2914, and 2916 in the amount of \$897,900 to the Oakland Police Department's budget in accordance with federal and state asset forfeiture guidelines for permissible law enforcement uses; and be it

**FURTHER RESOLVED:** That the City Administrator, or designee, is hereby authorized to complete all requests and negotiations with Alameda County District Attorney's Office for use of OPD's 15% set aside of state asset forfeiture funds for drug and gang prevention and intervention programming.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, GALLO, KALB, KAPLAN, MCELHANEY, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California