



MEMORANDUM

LEGISLATIVE REFERENCE BUREAU

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To: Ald. Milele A. Coggs
From: John Ledvina – Fiscal Planning Specialist
Date: July 7, 2017
Subject: Asset Forfeiture Fund – Federal Permissible Uses

Use of Federal Government Asset Forfeiture funds to provide funding for community-based programs has been a frequent topic of discussion at Common Council Public Safety and Health Committee and Finance and Personnel Committee meetings.

The April 2009 Guide to Equitable Sharing for State and Local Law Enforcement Agencies, published by the United States Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section, states the following in Chapter VIII, “What Are the Uses of Equitably Shared Property?”, on page 18:

1. Permissible uses

m. Support of community-based programs – A state or local law enforcement agency or prosecutor’s office may use up to 15 percent of the total of shared monies received by that agency in the last two fiscal years for the costs associated with drug abuse treatment, drug and crime prevention education, housing and job skills programs, or other non-profit community-based programs or activities that are formally approved by the chief law enforcement officer (e.g., chief, sheriff, prosecutor). All expenditures must be supportive of and consistent with a law enforcement effort, policy, and/or initiative.

Cash transfers to community-based programs are not permitted. State and local law enforcement agencies are prohibited from making cash transfers or donations to support community-based programs. Instead, agencies may directly purchase supplies, equipment, and/or services for eligible community-based programs, or reimburse such programs for eligible expenditures with a valid, itemized receipt. See Appendix C (attached) for guidelines to determine a community-based program’s eligibility.

APPENDIX C:

Guidelines for Determining a Community-Based Program's Eligibility

To ensure that recipient law enforcement agencies administer these guidelines for determining a community-based program's eligibility in accordance with the federal law and Department of Justice policy, an agency's chief law enforcement officer must ensure his or her agency's adherence to the following requirements governing eligibility, background, and compliance of applicants to be eligible to benefit from shared funds. The federal investigating agencies and the United States Attorney's Offices also are tasked with helping to ensure applicants' suitability to receive guidelines for shared funds use expenditures. Once completed, the chief law enforcement officer's certification that an applicant is eligible to benefit from shared funds will remain effective for one year.

I. Eligibility

For an applicant to benefit from permissible use expenditures, the chief law enforcement officer shall determine that the applicant fulfills the following eligibility requirements:

A. Type of Entity

The applicant must be either:

- (1) a state, county, or local governmental department or agency; or
- (2) a private, nonprofit organization, pursuant to 26 U.S.C. § 501(c)(3) or (4).

B. Activity of Entity

The applicant also must be primarily engaged in providing a program that is both:

- (1) community-based; and
- (2) supportive of and consistent with a law enforcement effort, policy, or initiative.

Such programs include, but are not limited to, the following:

- (1) drug abuse treatment;
- (2) drug and crime prevention education;
- (3) providing housing; or
- (4) providing job skills.

In order to assist chief law enforcement officers in determining whether a potential recipient of benefits under the guidelines for supporting community-based programs with shared funds is eligible,

the Department of Justice provides the following non-exclusive list of examples of activities that it has approved in the past as qualifying to benefit from equitable sharing:

- (1) establish a detoxification center;
- (2) fund a Police Athletic League's "Summer Playstreets" program for crime and drug prevention;
- (3) fund a city parks department's anti-gang initiative;
- (4) fund "Law Enforcement Explorer Posts," a Boy Scouts program promoting law enforcement training and community service;
- (5) fund a "Crime Stoppers" program providing reward money and assistance to neighborhood watch groups including training on observance and effective witness skills;
- (6) purchase a computer for teaching job skills and drug and alcohol awareness to probationers;
- (7) fund programs for incarcerated youth, parents of murdered children, and domestic violence victims; and
- (8) fund a methadone clinic.

Considering each of these approved activities, the Department of Justice based its approval on the activity's nexus to a law enforcement interest, whether:

- (1) direct (e.g., paying rewards for key information);
- (2) preventative (e.g., funding a methadone clinic, drug awareness program, anti-gang initiative, and probationer training); or
- (3) developmental in promoting community policing (e.g., incorporating law enforcement awareness in a Boy Scout program).

II. Background and Compliance with Law and Policy

A. Certification by Applicant

An applicant for benefits to support community-based programs with shared funds must certify in writing the following aspects of its background and compliance with federal law and Department of Justice guidelines:

- (1) The applicant fulfills the basic eligibility requirements set forth in parts I.A and B above.
- (2) The applicant agrees:
 - a. to account separately for all guidelines for shared funds use benefits received; and
 - b. to subject such accounting to the standard accounting requirements and practices employed under state or local law for recipients of federal, state, or local funds.

- (3) The applicant is in compliance with the federal civil rights laws.
- (4) The applicant is in compliance with federal laws that apply to the applicant.
- (5) No officer, director, trustee, or fiduciary of the applicant has been:
 - a. convicted of a felony offense under federal or state law; or
 - b. convicted of any drug offense.
- (6) No shared benefits will be used for political or personal purposes.
- (7) No shared benefits will be used for any purpose that would constitute an improper or illegal use under the laws, rules, regulations, or orders of the state or local jurisdiction in which the applicant is located or operates.

The applicant's certification must be signed by the head of the applicant entity and must be submitted to the chief law enforcement officer who will approve expenditures on the applicant's behalf. The chief law enforcement officer shall maintain this certification as a record as long as the applicant may benefit from shared funds, and thereafter, for as long as the chief law enforcement officer is required to maintain records under applicable state or local laws or regulations.

Any applicant that cannot certify its compliance with number 5 above (criminal record of principals) should provide the chief law enforcement officer with a detailed explanation of the aspects in which, and the reasons why, certification is not possible. A chief law enforcement officer who wishes to provide support to an applicant that cannot certify compliance with number 5 above shall provide an explanation for his or her position, along with a copy of the applicant's explanation, as an attachment to the law enforcement agency's Form DAG-71 (Application of Transfer of Federally Forfeited Property) to the Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, Department of Justice. AFMLS will make the final decision on whether the provision of guidelines for shared funds use benefits is appropriate.

An applicant for benefits under these guidelines that cannot certify the other aspects of its background and compliance with federal law and Department of Justice guidelines (numbers 1–4, 6 and 7 above) will be denied guidelines for shared funds use benefits.

B. Statement by Chief Law Enforcement Officer

The chief law enforcement officer shall explain in writing why the applicant's receipt of permissible use benefits for the particular activity or use is supportive of and consistent with a law enforcement effort, policy, and/or initiative within the guidelines to support community-based programs. The chief law enforcement officer also shall maintain this written statement as a record as specified in section II.A above.

C. Inquiry by the Chief Law Enforcement Officer

A chief law enforcement officer is also responsible for determining whether an applicant for benefits under these guidelines or its principals (e.g., officer, director, trustee, or fiduciary) currently is the subject of federal, state, or local criminal investigation. Accordingly, a chief law enforcement officer shall:

- (1) utilize all investigative resources available (e.g., National Crime Information Computer) to determine the applicant's status and provide the findings to the federal investigative agency on the Form DAG-71; and
- (2) fully identify the applicant and its principals on the Form DAG-71.

D. Inquiry by the Federal Investigating Agency

The federal investigative agency that receives the Form DAG-71 shall use the information identifying the applicant and its principals to conduct further checks of whether the applicant or its principals currently are the subject of a federal, state, or local criminal investigation. The federal investigative agency also shall provide this identifying information to the United States Attorney in the district where the applicant is located, and where the applicant is operating, and to the chief law enforcement officer involved (unless non-disclosure is required to safeguard a federal investigation in progress).

E. Inquiry by the United States Attorney

The United States Attorney in the district where an applicant or one of its principals is located, or where it or one of its principals is operating, shall determine whether the applicant or principal currently is the subject of grand jury proceedings or other prosecutorial scrutiny in that district, and the United States Attorney shall notify the federal investigative agency of the findings, and also shall notify the chief law enforcement officer involved (unless non-disclosure is required by federal law or to safeguard a federal investigation in progress).