

**AN ORDINANCE 2006-01-05-35**

**AUTHORIZING THE EXECUTION OF A CONTRABAND FORFEITURE AGREEMENT, WITH A TERM COMMENCING OCTOBER 1, 2003, AND ENDING SEPTEMBER 30, 2006, AND A CONTRABAND FORFEITURE AGREEMENT FOR GAMBLING PROPERTY AND PROCEEDS, WITH A TERM COMMENCING SEPTEMBER 1, 2003, AND ENDING SEPTEMBER 30, 2006, WITH THE BEXAR COUNTY CRIMINAL DISTRICT ATTORNEY'S OFFICE TO SHARE PROCEEDS FROM ASSET FORFEITURE CASES, AND PROVIDING FOR ANNUAL RENEWALS.**

**\* \* \* \* \***

**WHEREAS**, the City of San Antonio (COSA) and the Bexar County District Attorney's Office (BCDAO) are authorized to enter into interlocal agreements for the division of the proceeds of assets forfeited pursuant to Chapters 18 and 59 of the Texas Code of Criminal Procedure; and

**WHEREAS**, the COSA and the BCDAO wish to enter into two interlocal agreements, one addressing asset forfeiture cases involving other than gambling, the Contraband Forfeiture Agreement, and the other addressing asset forfeiture cases involving gambling, the Contraband Forfeiture Agreement for Gambling Property and Proceeds; and

**WHEREAS**, the Contraband Forfeiture Agreement will commence October 1, 2003, and end September 30, 2006, and the Contraband Forfeiture Agreement for Gambling Property and Proceeds will commence September 1, 2003, and end September 30, 2006; and

**WHEREAS**, the agreements will automatically renew on a yearly basis after the initial terms, unless they are terminated by either party; and

**WHEREAS**, because gambling assets forfeited since September 1, 2003, were divided in a manner different from that set out in the Contraband Forfeiture Agreement for Gambling Property and Proceeds and the COSA and the BCDAO desire that those proceeds be divided in the same manner as that set out in the Contraband Forfeiture Agreement for Gambling Property and Proceeds, the BCDAO is to be paid the sum of \$25,529.98 from future proceeds due to be received by the COSA; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager, or her designated representative, is hereby authorized to execute a Contraband Forfeiture Agreement, with a term commencing October 1, 2003, and ending September 30, 2006, and a Contraband Forfeiture Agreement for Gambling Property and Proceeds, with a term commencing September 1, 2003, and ending September 30, 2006, with the BCDAO to provide for the division of the proceeds of assets forfeited pursuant to Chapters 18 and 59 of the Texas Code of Criminal Procedure. Said agreements are attached hereto and incorporated herein for all purposes.

**SECTION 2.** The portion of the revenues due to the City pursuant to the Interlocal Agreements, respectively, are to be deposited into General Ledger 4903158 (Sales--Confiscated Property) and the appropriate internal order selected from those listed below:

217000000015	HIDTA TASK FORCE SEIZURES
217000000022	HIDTA--DPS SEIZURES
217000000033	SALVAGE THEFT REDUCTION PROGRAM SEIZURES
217000000046	CONFISCATED PROPERTY--VICE SEIZURES

**SECTION 3.** The portion of the proceeds due to the Bexar County Criminal District Attorney's Office pursuant to the Interlocal Agreements, respectively, are to be deposited into Fund 29040000 (CNFSTD PROP VICE), Account 2160120 (Due to Other Government Agencies) and should be paid as soon as practical from this account.

**SECTION 4.** The financial allocations in this ordinance are subject to approval by the Director of Finance for the COSA. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purposes of this ordinance.

**SECTION 5.** This ordinance shall take effect January 15, 2006.

**PASSED AND APPROVED on January 5, 2006.**



M A Y O R

**PHIL HARDBERGER**

**ATTEST:**



City Clerk

**APPROVED AS TO FORM:**



for City Attorney

# Agenda Voting Results

Name: 10A. & 10B

*Main motion*

Date: 01/05/06

Time: 01:55:31 PM

Vote Type: Multiple selection

**Description:** An Ordinance authorizing the execution of a Contraband Forfeiture Agreement, with a term commencing October 1, 2003 and ending September 30, 2006, and a Contraband Forfeiture Agreement for Gambling Property and Proceeds, with a term commencing September 1, 2003 and ending September 30, 2006, with the Bexar County Criminal District Attorney's Office to share proceeds from asset forfeiture cases, and providing for annual renewals. [Presented by Albert A. Ortiz, Police Chief; Erik J. Walsh, Assistant to the City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2	Not present			
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

# Agenda Voting Results

**Name:** 10A & B Amendment as presented by CM Perez

**Date:** 01/05/06

**Time:** 01:55:08 PM

**Vote Type:** Multiple selection

**Description:**

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2	Not present			
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		



yearly basis after the initial three-year term.

- 2.02 This Agreement covers all seizures of money and property seized by SAPD and submitted to PROSECUTOR for forfeiture action in accordance with Chapter 59 C.C.P. including that, which is:

currently in the possession of SAPD and already forfeited to SAPD or the State;  
currently in the possession of SAPD for which forfeiture proceedings are  
currently pending or anticipated to be filed; and  
those seized by SAPD and subject to forfeiture during the term of this agreement.

- 2.03 This Agreement covers all SAPD seizures currently pending, as well as, all other SAPD cases submitted to PROSECUTOR during the term of this agreement regardless of whether the forfeiture case has been resolved prior to the date on which the agreement terminates.

- 2.04 This Agreement specifically excludes any money or property seized by SAPD dealing with the forfeiture of proceeds derived from items believed to be gambling paraphernalia, devices, equipment, and other property, whether, personal, mixed, or real (Gambling Property) and Proceeds and cash (Proceeds), submitted to PROSECUTOR for forfeiture proceedings. A separate Interlocal Agreement between SAPD and PROSECUTOR covers those forfeiture actions.

- 2.05 Either party may terminate this Agreement by giving 30 days advance written notice to the other party.

### ARTICLE III

#### DISPOSITION OF FORFEITURE SEIZURES

- 3.01 PROSECUTOR agrees to use its best efforts in the use of its personnel to forfeit money and property seized by SAPD.
- 3.02 SAPD shall endeavor to have all money seized by SAPD deposited in the Prosecutor's Forfeiture Trust Fund as soon as possible, but in no event later than 15 days after seizure.
- 3.03 All property other than money seized by SAPD, including vehicles, shall be held, maintained, and preserved by SAPD until final disposition. Upon final determination that the property is subject to forfeiture, and provided that the court order or judgment reflect that the forfeited property be distributed to SAPD or the State of Texas, SAPD shall use its best efforts to dispose of said property, which may be by sale or other means. As the filing agency, SAPD will be the only agency to divide the seizure with PROSECUTOR, regardless of whether another agency assisted SAPD. Should SAPD choose to divide its share of the seizure with another agency, it shall be SAPD's responsibility to do so, and the division shall come out of SAPD's share.

3.04 Forfeited money (i.e., cash, securities, negotiable instruments, stocks or bonds) shall be divided as follows:

- Seventy (70) per cent to SAPD
- Thirty (30) per cent to PROSECUTOR.

Where, however, the forfeited money was seized by SAPD prior to October 1, 2003, it shall be divided as follows:

- Seventy-five (75) per cent to SAPD
- Twenty-five (25) per cent to PROSECUTOR

3.05 Gross proceeds from the disposition of forfeited property, other than money, shall be divided as follows:

- Seventy (70) per cent to SAPD
- Thirty (30) per cent to PROSECUTOR.

Where, however, the forfeited property was seized by SAPD prior to October 1, 2003, any net proceeds shall be distributed as follows:

- One Hundred (100) per cent to SAPD

For all forfeitures of money (3.04) and property, (3.05) each party shall bear its own costs. All divisions shall be of gross proceeds.

3.06 On property seized other than money, PROSECUTOR may endeavor to negotiate a cash settlement in lieu of forfeiture of the property. Any money received in this manner shall be divided between SAPD and PROSECUTOR as provided in Section 3.05 above. If SAPD desires to have seized property, other than money forfeited to SAPD for their official use, SAPD shall notify PROSECUTOR of this fact when the case is first filed with PROSECUTOR. If SAPD fails to use the forfeited property, namely vehicles, more than two years from the date of the final determination of forfeiture, and the property is subsequently sold, the net proceeds shall be distributed as provided in Section 3.05 above.

3.07 In negotiated settlements of forfeiture cases, PROSECUTOR will endeavor to have Respondent pay court costs. If that is not feasible, court costs, as well as any other expenses associated with the forfeiture actions, shall be deducted from any cash proceeds forfeited to the State, prior to distribution to SAPD or PROSECUTOR.

3.08 Notwithstanding the provisions of Sections 3.04 and 3.05 above, PROSECUTOR may have an interest in converting certain seized property, other than money, for PROSECUTOR'S own official use. If PROSECUTOR desires to have any such property forfeited to PROSECUTOR'S office, PROSECUTOR shall make such request to SAPD prior to the forfeiture of the property. SAPD shall endeavor to comply with said requests

when feasible if SAPD does not intend to use said property for its own official purposes. If PROSECUTOR fails to use the forfeited property, namely vehicles, more than two years from the date of the final determination of forfeiture, and the property is subsequently sold, the net proceeds shall be distributed as provided in Section 3.05 above.

- 3.09 No provisions of this Agreement shall be construed to prohibit SAPD from submitting seized property for forfeiture through the offices of the U.S. Attorney, when and only when, the case giving rise to the seizure is one in which a Federal agency actively participated in the planning and seizure of property subject to forfeiture. In the event that PROSECUTOR performs any services in an effort to prosecute any criminal case related to a seizure that SAPD has submitted to the U.S. Attorney and SAPD is awarded money and property from the resolution of the federal seizure, the awarded money and property will be distributed pursuant to 3.04 and 3.05. Notwithstanding Section 3.03 above, this provision shall be construed to mean that only the percentages actually received by SAPD shall be divided with PROSECUTOR in accordance with this provision.

#### ARTICLE IV

##### BUSINESS RECORDS

- 4.01 The parties hereto agree that during the term of this Agreement and for a three (3) year period thereafter, the parties shall keep and maintain accurate and current records supported by case number, offense, and the date of incident to provide verification of seized funds and equipment, and permit inspection of same by the other party.
- 4.02 SAPD and PROSECUTOR further agree that all expenditures of forfeited property shall comply with Chapter 59 C.C.P., for seizures made on or after October 18, 1989.

#### ARTICLE V

##### TEXAS LAW TO APPLY

- 5.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

#### ARTICLE VI

##### LEGAL CONSTRUCTION

- 6.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE VII

AMENDMENT

7.01 No amendment, modification, or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto. The Chief of Police for SAPD shall be the party with the authority to amend this Agreement on behalf of SAPD and the City of San Antonio.

ARTICLE VIII

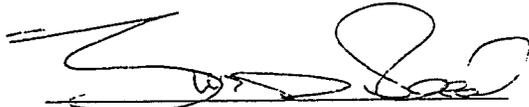
ENTIRE AGREEMENT

8.01 This Agreement is intended as a full and complete expression of and constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof and all prior and contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written, are merged and incorporated into this Agreement, and no such oral or written understandings, agreements, promises, representations, terms or conditions not specifically set forth in this Agreement shall be binding upon the parties.

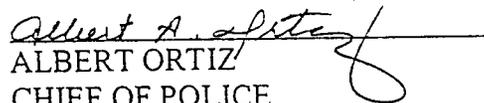
EXECUTED IN DUPLICATE COPIES, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, TO BE EFFECTIVE AS STATED HEREIN, BUT MINISTERIALLY SIGNED ON THE DATES INDICATED BELOW.

BEXAR COUNTY  
CRIMINAL DISTRICT ATTORNEY

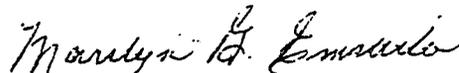
CITY OF SAN ANTONIO



SUSAN D. REED  
CRIMINAL DISTRICT ATTORNEY  
CADENA-REEVES JUSTICE CENTER  
300 DOLOROSA, FIFTH FLOOR  
SAN ANTONIO, TEXAS 78205-3030



ALBERT ORTIZ  
CHIEF OF POLICE  
SAN ANTONIO POLICE DEPARTMENT  
214 W. NUEVA  
SAN ANTONIO, TX 78207

ATTEST:   
MARILYN B. EMSWILER

ATTEST:

Date: 16 NOVEMBER 2005

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY