

FILED

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OF TILLAMOOK COUNTY, OREGON

JOSEPHINE VELTRI
COUNTY CLERK

An Ordinance Providing for the Civil)
Forfeiture of Real, Personal and)
Intangible Property which Facilitates)
the Commission of Certain Crimes; and)
Authorizes Civil Action to Enforce)
Such Forfeiture.)

ORDINANCE NO. 37

The Board of County Commissioners of Tillamook County,
Oregon, ordains as follows:

Section I. Title

This Ordinance shall be known as the "Forfeiture Ordinance
of Tillamook County" and may be so pleaded and referred to.

Section II. Policy and Purpose.

A. The Board of County Commissioners finds that:

1. Property that is seized from arrested persons which
constitutes the proceeds or instrumentalities of a crime must
generally be returned to the criminal upon disposition of the
charge.

2. These instrumentalities and proceeds are often used
to again commit the same or another crime and the return of the
property thus serves to encourage and perpetuate the commission
of crime in Tillamook County.

B. The Board of County Commissioners therefore declares
that to protect the safety and welfare of Tillamook County
residents it is in the best interest of Tillamook County to:

1. Cripple illegal drug trafficking and narcotics

activities within Clatsop County by depriving Narcotics dealers, and those persons dealing with them, of the instrumentalities and proceeds of their trade; and

2. Otherwise deter illegal activity and remove the operating instrumentalities, profits and proceeds of certain crimes from criminals.

Section III. Definitions.

As used in this ordinance, unless the context requires otherwise:

A. "Controlled substances" are those defined in ORS 475.005(6) [1985 ed.] except that this shall not include less than one avoirdupois ounce of marijuana.

B. "Deliver or delivery" is that defined in ORS 475.005(8) [1985 ed.].

C. "Facilitate" means that the property must have some substantial connection to, or be instrumental in, the commission of the underlying illegal activity which this ordinance seeks to prevent.

D. "Illegal Activity" means:

1. The manufacture or delivery of controlled substances;

2. The possession of controlled substances with the intent to distribute; or

3. Any attempt to engage in D.1 and D.2 above.

E. "Manufacture" is that defined at ORS 475.005(14) [1985 ed.].

F. "Marijuana" is that defined at ORS 475.005(15)

[1985 ed.].

G. "Possession of controlled substances with the intent to distribute" is that defined at 21 USC 841(a)(1) [1976 ed., published 1981].

H. "Production" is that defined at ORS 475.005(19) [1985 ed.].

Section IV. Forfeiture

A. Any person who engages in illegal activity within Tillamook County, shall forfeit to Tillamook County the following property, and no property right shall exist in them:

1. All controlled substances which are intended for or have been manufactured or delivered as defined in Section III above.

2. All raw materials, products, containers, equipment, books, records, research materials (including formulas, microfilms, tapes and data) of any kind which are used, or are intended to use, to manufacture, compound, store, process or deliver any controlled substances.

3. All conveyances, including aircraft, vehicles or vessels which are used to manufacture or deliver or in any manner to facilitate the manufacture or delivery of any controlled substance.

4. All moneys, negotiable instruments, securities or other things of value furnished or exchanged or intended to be furnished or exchanged by or to any person to facilitate any

illegal activity, and all proceeds and profits traceable to such furnishment, exchange or illegal activity.

5. All proceeds, profits and things of value, including residential property traceable to any illegal activity.

6. All real property including residential property which is used to manufacture or deliver any controlled substance.

7. Number 6. above shall not apply to residential real property which is used to facilitate the manufacture of less than one pound of marijuana when dried.

B. This ordinance shall not apply to those unlawful acts defined in ORS 166.720(1) and (2) [1985 ed.].

Section V. Seizure.

Any property subject to forfeiture to Tillamook County under this ordinance may be seized by any police officer on behalf of Tillamook County without issuance of court process when:

A. The seizure is incident to an arrest or search under a search warrant or an inspection under an administrative search;

B. The property subject to seizure has been the subject of a prior judgment in favor of Tillamook County in a forfeiture proceeding under this ordinance; or

C. A police officer lawfully seizes the property and has probable cause to believe that the property has been used or is intended for use in or to facilitate illegal activity as defined by this ordinance.

Section VI. Institution of Legal Proceedings.

A. In the event of a seizure under this ordinance, the County Counsel, acting in the name of the County, may institute a forfeiture proceeding to obtain a judgment of forfeiture against the seized property.

B. The proceedings shall be instituted promptly and in accordance with the Oregon Rules of Civil Procedure and the Oregon Rules of Evidence relating to civil actions. The defendant or the owner of the property may demand a trial by jury in any civil action brought pursuant to this section.

Section VII. Disposition of Property

A. Prior to obtaining any forfeiture judgment, any money, securities and negotiable instruments that are not retained by the Sheriff for evidentiary purposes shall be deposited with the Tillamook County Treasurer pending the outcome of the forfeiture proceedings.

B. The seized property shall be kept in the custody of Tillamook County. The County Counsel may hold the property for Tillamook County or deliver it to the Sheriff of Tillamook County for safekeeping until a forfeiture judgment is obtained.

C. When a judgment of forfeiture is obtained under this ordinance, the property shall be disposed of as follows:

1. At the discretion of the Sheriff, the forfeited property may be retained for official use in law enforcement activities. When the Sheriff determines that the property will no longer be used for law enforcement purposes, it shall be sold in accordance with 2. and 3. below.

2. Property (except money, securities and negotiable instruments) which is not required by law to be destroyed and which is not harmful to the public, shall be sold at a public auction by the Sheriff.

3. The proceeds of any sale, and any money, securities or negotiable instruments shall be paid into the Tillamook County General Fund.

D. Provided that the governing body or the electors of a city consent, this ordinance shall apply inside an incorporated city and property seized pursuant to such agreement between Tillamook County and an incorporated city, shall be disposed of as follows:

1. The law enforcement agency making the seizure in accordance with Section V above, subject only to the order of the court and pending outcome of the forfeiture proceeding, may require the county to take custody of the property in the manner provided by Section VII., A and B above. The seizing law enforcement agency may elect, and so notify the Sheriff of its intent to maintain custody of the property pending outcome of the forfeiture proceeding. In the event a law enforcement agency makes such an election, it shall agree to indemnify and hold harmless County and Sheriff for any damage or injury to property while in its custody.

2. Institution of legal proceedings for forfeiture of property seized by a consenting law enforcement city agency shall be in the manner provided by Section VI above.

3. Upon conclusion of forfeiture proceedings, County

shall first be entitled to recover from the proceeds any costs and expenses, including attorney fees, reasonably incurred in the forfeiture proceedings.

4. The seizing law enforcement agency, in a timely fashion and prior to public auction of any subject property, may claim a property to be used for official use. On receipt of notice of such claim, the Sheriff shall determine the expense of keeping the subject property and all liens. The seizing agency may then pay the total of the expenses and liens to the Sheriff. The sheriff shall pay all the liens, according to priorities, and all other expenses incurred in the forfeiture and keeping of the subject property. Upon payment of the liens and expenses, the subject property shall be delivered to the possession of, and title to the property shall rest in the seizing agency. The seizing agency then shall put the property to official law enforcement use.

5. Upon conclusion of the public auction of any property seized in accordance with this ordinance by a city law enforcement agency, costs and expenses, as provided by Section VII (D)(3), shall first be paid. In addition the County shall be entitled to its reasonable costs and expenses in maintaining the seized property pending conclusion of forfeiture proceedings. The remaining proceeds shall then be divided equally between the County General Fund and the city.

Section VIII. Non-Consensual Use of Property for Illegal Activity.

No property shall be forfeited under this ordinance to the

extent of the interest of an owner who did not consent to or was not aware of the use of the property in the illegal activity.

Section IX. Separability.

If any section, clause or phrase of this ordinance, or its application to any statute, is determined by any court of competent jurisdiction to be invalid or unenforceable for any reason, such determination shall not affect the validity of the remainder of the ordinance or its application to any other statute, but shall continue to be in effect.


Section X. Emergency.

This ordinance being deemed necessary by the Board of Commissioners for the immediate preservation of the public peace, health, safety and general welfare of the citizens of Tillamook County, an emergency is declared to exist and this ordinance shall take effect immediately upon its passage.

DATE OF FIRST READING: April 22, 1987

DATE OF SECOND READING AND ADOPTION: April 28, 1987

APPROVED AS TO FORM:


Fred G. Young, County Counsel


RECORDING SECRETARY:


Dorene Sheldon

BOARD OF COUNTY COMMISSIONERS FOR TILLAMOOK COUNTY, OREGON

 ✓
Dean J. Kinkade, Chairman Aye Nay

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Gerald A. Woodward, Commissioner Aye Nay

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Gerald J. Creasy, Commissioner Aye Nay