

BEFORE THE BOARD OF COMMISSIONERS

FOR THE COUNTY OF MULTNOMAH

ORDINANCE NO. 422

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.

Multnomah County ordains as follows:

SECTION I. TITLE

This chapter shall be known as the forfeiture ordinance of Multnomah 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 Multnomah County.

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

1. Cripple illegal drug trafficking and narcotics activities within this County by depriving narcotics dealers, and those persons dealing with them, of the instrumentalities and proceeds of their trade; and
2. Seize gambling equipment, records and the proceeds of illegal gambling activity; and
3. Otherwise deter illegal activity and remove the operating instrumentalities, profits and proceeds of certain crimes from criminals; and
4. Use the forfeited property to further fund law enforcement and criminal prosecution functions.

SECTION III. DEFINITIONS

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

- A. "Controlled substances" are those defined in ORS 475.005(6) [1983 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) [1983 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. "Gambling" is that defined at ORS 167.117(4) [1983 ed.].
- E. "Illegal activity" means:
 - 1. Gambling or promotion of gambling; or
 - 2. The manufacture or delivery of controlled substances; or
 - 3. The possession of controlled substances with the intent to deliver.
- F. "Manufacture" is that defined at ORS 475.005(14) [1983 ed.].
- G. "Marijuana" is that defined at ORS 475.005(15) [1983 ed.].
- H. "Possession of controlled substances with the intent to distribute" is that defined at 21 USC § 841(a)(1) [1976 ed.; published 1981].
- I. "Production" is that defined at ORS 475.005(19) [1983 ed.].
- J. "Promotion of gambling" is that defined at ORS 167.117(10) [1983 ed.].

SECTION IV. FORFEITURE.

- A. Any person who engages in illegal activity within Multnomah County, shall forfeit to Multnomah 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 for 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 or any such conveyance which is used to transport or conceal 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 excepting residential property traceable to any illegal activity.
 6. All equipment, materials or records of any sort that are used, or intended for use to facilitate any illegal gambling activity; and
 7. a. All real property other than residential property which is:
 - used to manufacture any controlled substance, or
 - used to facilitate the promotion of gambling as defined in ORS 167.127 [1983 ed.]
 - b. This section 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) [1983 Ed.].

SECTION V. SEIZURE.

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

1. The seizure is incident to an arrest or search under a search warrant or an inspection under an administrative search; or
2. The property subject to seizure has been the subject of a prior judgment in favor of Multnomah County in a forfeiture proceeding under this ordinance; or
3. A police officer lawfully seizes the property under ORS 133.525 to 133.703 [1983 ed.] 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, and upon recommendation of the District Attorney, 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. Within three judicial days after the seizure, County Counsel shall file the complaint and initiate an application for a temporary restraining order restraining the return of the seized property to the defendant or property owner. The defendant or the owner of the property may demand a trial by jury in any civil action brought pursuant to this section.
- C. County Counsel shall be entitled to deduct from the proceeds any attorney fees, costs and expenses incurred in the litigation.

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 Comptroller of Multnomah County pending the outcome of the forfeiture proceedings.

- B. The seized property shall be kept in the custody of Multnomah County. The District Attorney may hold the property for Multnomah County or deliver it to the Sheriff of Multnomah County for safe keeping 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. The Sheriff shall deduct from the proceeds the expense of keeping the property and the cost of the sale.
 - 3. The proceeds of any sale, and any money, securities or negotiable instruments shall be divided equally between the county general fund, the Multnomah County District Attorney and the Multnomah County Sheriff's office for law enforcement purposes.

SECTION VIII. NON-CONSENSUAL USE OF PROPERTY FOR ILLEGAL

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 unenforcable 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.

ADOPTED this 28th day of June, 1984, upon passage following its 2nd reading.

(SEAL)
6/29/84

BOARD OF COUNTY COMMISSIONERS

By Arnold Biskarug
Arnold Biskar
Presiding Officer

AUTHENTICATED this 29th day of June, 1984.

By Dennis Buchanan
Dennis Buchanan
County Executive

APPROVED AS TO FORM:

JOHN B. LEAHY, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Noelle Mair
Noelle Mair
Assistant County Counsel