

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 1-87))))))))	IN THE MATTER OF AMENDING LANE CODE TO ENACT CHAPTER 7 TO PROVIDE FOR THE CIVIL FORFEITURE OF PROPERTY WHICH FACILITATES THE COMMISSION OF CERTAIN CRIMES, AUTHORIZE A CIVIL ACTION TO ENFORCE THE FORFEITURE, AND ADOPT A SEVERABILITY CLAUSE
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The Board of County Commissioners of Lane County ordains as follows:

Chapter 7 of Lane Code is hereby enacted by adding the following pages:

REMOVE THESE PAGES

INSERT THESE PAGES

7.005 - 7.020(11) to
7.040(2) - 7.050,
i.e. 7-1 to 7-4
(a total of four new pages)

Said pages are attached hereto and incorporated herein by reference. The purpose of these additions is to provide for the civil forfeiture of property which facilitates the commission of certain crimes, authorize a civil action to enforce the forfeiture and adopt a severability clause.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Enacted this 1 day of April, 1987.

Bill Rogers

 Chair, Lane County Board of
 Commissioners

Judy Haldeman

 Recording Secretary for this
 Meeting of the Board

APPROVED AS TO FORM
 DATE 2/23/87 *[Signature]*

 OFFICE OF LEGAL COUNSEL

- 1 - IN THE MATTER OF AMENDING LANE CODE TO ENACT CHAPTER 7 TO PROVIDE FOR THE CIVIL FORFEITURE OF PROPERTY WHICH FACILITATES THE COMMISSION OF CERTAIN CRIMES, AUTHORIZE A CIVIL ACTION TO ENFORCE THE FORFEITURE, AND ADOPT A SEVERABILITY CLAUSE

Chapter 7

FORFEITURES

7.005 General. This Chapter provides for the civil forfeiture of personal and intangible property used to promote illegal activity and authorizes civil action to enforce such forfeiture.

7.010 Title. This Chapter shall be known as the Forfeiture Chapter of Lane County.

7.020 Definitions. As used in this Chapter, unless the context requires otherwise, the following words or phrases shall mean:

(1) Controlled Substances. Those substances as defined in ORS 475.005(6) (1985 ed.), except that this shall not include less than one avoirdupois ounce of marijuana.

(2) Criminal Conspiracy. That defined in ORS 161.450 (1985 ed.).

(3) Deliver or Delivery. That defined in ORS 475.005(8) (1985 ed.).

(4) Illegal Activity:

(a) The manufacture or delivery of controlled substances; or

(b) The possession of controlled substances with intent to deliver; or

(c) Theft activity; and

(d) Criminal conspiracy to commit one of the crimes mentioned in LC 7.020(4)(a)-(c) above.

(5) Manufacture. That defined at ORS 475.005(14) (1985 ed.).

(6) Marijuana. That defined at ORS 475.005(15) (1985 ed.).

(7) Possession of Controlled Substances With the Intent to Distribute. That defined at 21 USC 841(a)(1) (1976 ed.; published 1981).

(8) Production. That defined at ORS 475.005(19) (1985 ed.).

(9) Property. Property used to promote illegal activity is property that has a substantial connection to, or is instrumental in, the commission of illegal activity as proscribed by and defined in this Chapter.

(10) Substantial Connection. There is a substantial connection to an illegal activity when property is used, or intended to be used in any manner, in the course of, in furtherance of, derived from, or realized through an illegal activity.

(11) Theft Activity. Includes all forms of attempted theft and theft contained in ORS 164.005 to ORS 164.140 (1985 ed.).

7.025 **Forfeiture.** Property used to promote illegal activity is hereby declared to be a public nuisance and is subject to forfeiture by Lane County, except as provided in LC 7.045 below. The following property is subject to forfeiture under this Chapter:

(1) All controlled substances which are intended for or have been manufactured or delivered as defined in LC 7.020 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 in illegal activities.

(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 or any other illegal activity.

(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 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 activity; and

(7) (a) All real property which is used to possess, manufacture or deliver any controlled substance.

(b) This subsection shall not apply to residential real property which is used to facilitate the possession, manufacture or delivery of marijuana, or is used for theft activity, unless the County proves beyond a reasonable doubt that the real property or the equity therein was acquired with assets derived from illegal activity as defined in this Chapter.

(8) This Chapter shall not apply to those unlawful acts defined in ORS 166.720(1) and (2) (1985 ed.).

7.030 **Seizure.** Any property subject to forfeiture to Lane County under this Chapter may be seized by any police officer on behalf of Lane County without issuance of court process when:

(1) The seizure is incident to a lawful arrest or search under a search warrant or an inspection under an administrative search; or

(2) A police officer lawfully seizes the property under ORS 133.525 to ORS 133.703 (1985 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 Chapter; or

(3) The property subject to seizure has been the subject of a prior judgment in favor of Lane County in a forfeiture proceeding under this Chapter.

7.035 Institution of Legal Proceedings.

(1) In the event of a seizure under this Chapter, or upon receipt of information which gives the County Counsel probable cause to believe that property could be subject to forfeiture under this Chapter, the County Counsel, acting in the name of the County, may institute a forfeiture proceeding in rem to obtain a judgment of forfeiture against the seized property.

(2) If property has been seized pursuant to LC 7.030(1) or (2) above, within 30 calendar days of the seizure, in the name of the County, the County Counsel may file a complaint and initiate an application for a temporary restraining order restraining the return of the seized property to any person claiming an interest in it. Forfeiture proceedings shall not be initiated against property that was seized after the 30-day period described above has expired.

(3) The proceedings for the forfeiture of the property shall be in accordance with the Oregon Rules of Civil Procedure and any person claiming an ownership interest in the property may file an answer and have the right to a jury trial. The burden of proof is on Lane County by a preponderance of the evidence, except as provided in LC 7.025(7(b)) above.

(4) County Counsel shall be entitled to deduct from the proceeds any attorney fees, costs and expenses incurred in the litigation, but those costs recovered shall not exceed 25% of the value of the seized property.

7.040 Disposition of Property.

(1) Prior to obtaining any forfeiture judgment, any money, securities and negotiable instruments that are not retained by the seizing law enforcement agency for evidentiary purposes shall be deposited with the Director of Finance and Management Services for Lane County pending the outcome of the forfeiture proceedings. Other property shall be kept in the custody of the Sheriff, or his designated agent, until a forfeiture judgment is obtained.

(2) When a judgment of forfeiture is obtained under this Chapter, the property shall be disposed of as follows:

(a) At the discretion of the Sheriff, or his designated agent, the forfeited property, excluding money, securities and negotiable instruments, may be retained for official use in law enforcement activities. When the Sheriff, or his designated agent, determines that the property will no longer be used for law enforcement purposes, it shall be sold in accordance with LC 7.040(b) and (c) below.

(b) 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.

(c) The proceeds of any sale after deduction for County Counsel's costs set forth in LC 7.035(3) above and

any costs incurred by the Sheriff arising from duties under this Chapter, and any money, securities or negotiable instruments shall be divided as follows: 70 percent to the seizing law enforcement agency for law enforcement purposes, 20 percent to the Lane County District Attorney's Office for criminal justice purposes and 10 percent to Lane County to be budgeted for drug intervention and treatment programs.

(d) Property deposited with the Director of Finance and Management Services pursuant to LC 7.040(1) above shall be placed in a segregated account and invested consistent with County policies considering safety, liquidity and yield. The funds earned by the investment shall be deposited and held in the same account. At the time of disposition of the forfeiture proceeding, the interest will be transferred to the General Fund of Lane County, or returned to the owner along with the property if the forfeiture proceeding does not result in an award of that property to Lane County.

7.045 Nonconsensual Use of Property for Illegal Activity. No property shall be forfeited under this Chapter to the extent of the interest of an owner or holder of security interest who did not consent to or was not aware of the use of the property in the illegal activity.

7.050 Separability. If any section, clause or phrase of this Chapter, 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 Chapter.