

FORFEITURES**(1985 Ordinance)****45.010 TITLE.**

Sections 45.010 to 45.110 shall be known as the "Forfeiture Ordinance of Polk County," and may be so pleaded and referred to. [Ord. 85-3, Sec. 1; renumbered by Ord. 08-01]

45.020 POLICY AND PURPOSE.

- (1) The Board of County Commissioners finds that:
 - (a) 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.
 - (b) 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 Polk County.
- (2) The Board of County Commissioners, therefore, declares that to protect the safety and welfare of Polk County residents, it is in the best interest of Polk County to:
 - (a) 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.
 - (b) Seize gambling equipment, records, and the proceeds of illegal gambling activity.
 - (c) Otherwise deter illegal activity and remove the operating instrumentalities, profits, and proceeds of certain crimes from criminals. [Ord. 85-3, Sec. II]

45.030 DEFINITIONS.

As used in Sections 45.010 to 45.110, unless the context requires otherwise:

- (1) "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.
- (2) "Deliver or delivery" is that defined in ORS 475.005(8) (1983 ed.).
- (3) "Facilitate" means that the property must have some substantial connection to, or be instrumental in, the commission of the underlying illegal activity, which seek to prevent. Sections 45.010 to 45.110
- (4) "Gambling" is that defined in ORS 167.117(4)(1983 ed.).

- (5) "Illegal activity" means:
 - (a) Gambling or promotion of gambling.
 - (b) The manufacture or delivery of controlled substances.
 - (c) The possession of controlled substances with the intent to distribute.
 - (d) Any attempt to engage in paragraphs (5)(a) to (5)(c) of this section.
- (6) "Manufacture" is that defined in ORS 475.005(14)(1983 ed.).
- (7) "Marijuana" is that defined in ORS 475.005(15)(1983 ed.).
- (8) "Possession of controlled substances with the intent to distribute" is that defined in 21 USC, Subsection 841(a)(1) (1976 ed., published 1981).
- (9) "Production" is that defined in ORS 475.005(19)(1983 ed.).
- (10) "Promotion of gambling" is that defined in ORS 167.117(10) (1983 ed.). [Ord. 85-3, Sec. III]

45.040 PROPERTY SUBJECT TO FORFEITURE.

- (1) Any person who engages in illegal activity within Polk County shall forfeit to Polk County the following property, and no property right shall exist in them:
 - (a) All controlled substances which are intended for or have been manufactured or delivered as defined in Section 45.030.
 - (b) 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.
 - (c) 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.
 - (d) All monies, 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.
 - (e) All proceeds, profits and things of value, including residential property traceable to any illegal activity.
 - (f) All equipment, materials, or records of any sort that are used, or intended for use, to facilitate any illegal gambling activity.

- (g) All real property including residential property which is:
 - (i) Used to manufacture or deliver any controlled substance.
 - (ii) Used to facilitate the promotion of gambling as defined in ORS 167.127 (1983 ed.).
- (h) Paragraph (1)(g) of 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.

(2) Sections 45.010 to 45.110 shall not apply to those unlawful acts defined in ORS 166.720(1) and (2) (1983 ed.). [Ord. 85-3, Sec. IV]

45.050 SEIZURE.

Any property subject to forfeiture to Polk County under Sections 45.010 to 45.110 may be seized by any police officer on behalf of Polk 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.
- (2) The property subject to seizure has been the subject of a prior judgment in favor of Polk County in forfeiture proceeding under Sections 45.010 to 45.110.
- (3) 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 Sections 45.010 to 45.110. [Ord. 85-3, Sec. V]

45.060 INSTITUTING LEGAL PROCEEDINGS.

- (1) In the event of a seizure under Sections 45.010 to 45.110, the County Counsel, acting in the name of the County, may institute forfeiture proceeding to obtain a judgment of forfeiture against the seized property.
- (2) 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. [Ord. 85-3, Sec. VI]

45.070 CUSTODY OF SEIZED PROPERTY.

- (1) 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 Polk County Treasurer pending the outcome of the forfeiture proceedings.
- (2) The seized property shall be kept in the custody of Polk County. The District Attorney may hold the property for Polk County or deliver it to the Sheriff of Polk County for safekeeping until a forfeiture judgment is obtained. [Ord. 85-3, Sec. VII, A and B]

45.080 DISPOSITION OF FORFEITED PROPERTY.

When a judgment of forfeiture is obtained under Sections 45.010 to 45.110, 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 Subsections (2) and (3) of this section.

(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. Such public auction may be restricted to a certain class of the public who possess valid licenses or qualifications necessary to acquire said property when said restriction is necessary for the public's protection.

(3) The proceeds of any sale, and any money, securities or negotiable instruments shall be paid into the Polk County General Fund. [Ord. 85-3, Sec. VII C]

45.090 AGREEMENTS WITH INCORPORATED CITIES.

Provided that the governing body or the electors of a city consent, Sections 45.010 to 45.110 shall apply inside an incorporated city and property seized pursuant to such agreement between Polk County and an incorporated city shall be disposed of as follows:

(1) The law enforcement agency making the seizure in accordance with Section 45.050, 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 45.070. 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 45.060.

(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 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 Sections 45.010 to 45.110 by a city law enforcement agency, costs and expenses, as provided by Section 45.090(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. [Ord. 85-3, Sec. VII D]

45.100 NON-CONSENSUAL USE.

No property shall be forfeited under Sections 45.010 to 45.110 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. [Ord. 85-3, Sec. VIII]

45.110 SEPARABILITY.

If any section, clause or phrase of Sections 45.010 to 45.110 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 Sections 45.010 to 45.110 or application to any other statute, but shall continue to be in effect. [Ord. 85-3, Sec. IX]

(1989 Ordinance)

45.210 PROHIBITED CONDUCT DEFINED.

As used in Sections 45.210 to 45.240 "prohibited conduct" includes violation of, solicitation to violate, attempt to violate or conspiracy to violate any provisions of ORS chapter 475, except that "prohibited conduct" does not include violation of, solicitation to violate, attempt to violate or conspiracy to violate ORS 475.992(4)(f) and also does not include solicitation, attempt or conspiracy to deliver for no consideration less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. [Ord. 89-11, Sec. 1]

45.220 SUSPENSION OF 1985 ORDINANCE.

The operative effect of Sections 45.010 to 45.110 (Ord. 85-3), to the extent that it pertains to the forfeiture of real and personal property based upon prohibited conduct as defined in Sec. 1 of this Ordinance, is suspended for a period beginning October 3, 1989, and ending December 31, 1993, inclusive. Any actions for forfeiture based on such prohibited conduct shall be initiated during such period in compliance with chapter 791, Oregon Laws 1989. [Ord. 89-11, Sec. 2]

45.230 FORFEITURE COUNSEL.

The Polk County Counsel is designated as Forfeiture Counsel for purposes of representing Polk County in forfeiture actions or proceedings under chapter 791, Oregon Laws 1989. In the absence thereof, the Polk County District Attorney or a Deputy District Attorney may act as Forfeiture Counsel. [Ord. 89-11, Sec. 3]

45.240 DISTRIBUTION OF PROCEEDS.

In accordance with Section 10, Chapter 791, Oregon Laws 1989, the balance of the proceeds from property forfeited, after other distributions, shall be credited to the general fund and used as directed by the Board of Commissioners for criminal justice services, including enforcement and prosecution of the criminal and juvenile laws, corrections facilities and programs and drug treatment and drug education programs. However, such proceeds also may be used as directed by the Board of Commissioners for the payment of expenses associated with the removal of toxic substances being manufactured at sites where prohibited conduct has occurred.

[Ord. 89-11, Sec. 4; renumbered Chapter 45 by Ord. 08-01]