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CHARLES STERN
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IN THE BOARD OF COUNTY COMMISSIONERS OF THE STATE OF OREGON

85-606

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance)
Providing for Civil Forfeiture)
of Real, Personal and Intangible)
Property Which Facilitates or)
Constitutes the Proceeds of Cer-)
tain Crimes; Authorizes Civil)
Action to Enforce Such Forfeiture;)
and Declares an Emergency)

ORDINANCE NO. 419

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) on the 28th day of August, 1985 sat for the transaction of County business in special session, Commissioners Ted Lopuszynski, Donald D. Porter and David E. Bishop being present.

IT IS HEREBY ORDAINED by the Yamhill County Board of Commissioners as follows:

SECTION 1. TITLE

1.01 This ordinance shall be known as the Forfeiture Ordinance of Yamhill County.

SECTION 2. POLICY AND PURPOSE

2.01 The Board of Commissioners finds that:

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

(2) The instrumentalities and proceeds are often used to again commit the same or other crime and the return of said property thus serves to encourage and perpetuate the commission of crimes in Yamhill County.

2.02 The Board of Commissioners therefore declares to protect the safety and welfare of the citizens of Yamhill County and it being in the best interest of Yamhill County to:

(1) Cripple illegal drug trafficking and narcotics activity within this County by depriving narcotics dealers and those persons dealing with them of the instrumentalities and proceeds of their trade;

(2) Discourage illegal gambling by forfeiting seized gambling equipment, records and the proceeds of illegal gambling activity; and

(3) Otherwise deter illegal activity and remove the operating instrumentality, profits and proceeds of certain crimes from criminals; and

(4) Use the forfeited property to further fund law enforcement and criminal prosecution functions.

SECTION 3. DEFINITIONS

3.01. As used in this ordinance, 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 1 avoirdupois ounce of marijuana.

(2) "Dangerous weapon" is that defined in ORS 161.015 [1983 ed.]

(3) "Deadly weapon" is that defined in ORS 161.015 [1983 ed.]

(4) "Deliver or delivery" is that defined in ORS 475.005(8) [1983 ed.]

(5) "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.

(6) "Gambling" is that defined in ORS 167.117(4) [1983 ed.]

(7) "Illegal activity" means:

- (a) gambling or promotion of gambling; or
- (b) the manufacture or delivery of controlled substances; or
- (c) the possession of controlled substances with the intent to delivery; or
- (d) any conduct which constitutes a crime as defined in ORS 161.515 [1983 ed.], under any of the following provisions of Oregon Revised Statutes, 1983 edition:

(i) ORS chapter 162;

(ii) Chapter 163 relating to all crimes against persons;

(iii) Chapter 164 relating to burglary, theft, arson, robbery, criminal mischief, and unlawful sound or videotape recording;

(iv) Chapter 166 relating to possession and use of firearms, possession of destructive device or firearm in a public building or possession of or stabbing weapons.

(8) "Manufacturer" is that defined in ORS 475.005(14) [1983 ed.]

(9) "Marijuana" is that defined in ORS 475.005(15) [1983 ed.]

- (10) "Possession of controlled substances with the intent to distribute" is that defined in 21 U.S.C. § 841 (a)(1) [1976 ed.]; published 1981.
- (11) "Production" is that defined in ORS 475.005(19) [1983 ed.]
- (12) "Promotion of gambling" is that defined in ORS 167.117(10) [1983 ed.]

SECTION 4. FORFEITURE

4.01 Any person who engages in illegal activity within Yamhill County shall forfeit to Yamhill County the following property and no property rights shall exist in them:

- (1) All controlled substances which are intended for or have been manufactured or delivered as defined in Section 3 of this ordinance.
- (2) All raw materials, products, containers, equipment, books, records, research materials (including formulas, microfilm, tapes and data) of any kind which are used or intended for use to manufacture, compound, store, possess or deliver any controlled substance.
- (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 to steal 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 persons 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 real property traceable to any illegal activity. Real property subject to forfeiture as provided in Section 4.01(7) below.
- (6) All equipment, materials or records of any sort that are used or intended for use to facilitate any illegal gambling activity,
- (7) All real property which is used to manufacture any controlled substance or used to facilitate promotion of gambling as defined in ORS 167.127 [1983 ed.] 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.
- (8) Any firearm or other deadly or dangerous weapon used in the commission of a crime.

4.02. In the event that either the District Attorney of this County or the Attorney General of the State of Oregon commence forfeiture proceedings prior to judgment, pursuant to state law, said action by the District Attorney or Attorney General shall supercede any proceedings pursuant to this ordinance.

SECTION 5. SEIZURE

5.01. Any property subject to forfeiture to Yamhill County under this ordinance may be seized by any police officer on behalf of Yamhill 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 Yamhill 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 intended for use in or to facilitate illegal activity as defined by this ordinance.

SECTION 6. INSTITUTION OF LEGAL PROCEEDINGS

6.01. In the event that the District Attorney becomes aware of property subject to forfeiture under this ordinance either through seizure or otherwise, the County Counsel, upon recommendation of the District Attorney, and in the name of the County, may institute a forfeiture proceeding to obtain a judgment of forfeiture against the said property.

6.02. The proceedings provided for in Section 6.01 above shall be instituted promptly and in accordance with the Oregon Rules of Civil Procedures and the Oregon Rules of Evidence Relating to Civil Actions. Within five judicial days after the seizure, County Counsel shall file the complaint and initiate an application for a temporary order restraining either the return of seized property or the dissipation of said property by 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.

SECTION 7. DISPOSITION OF PROPERTY

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

7.02. All other seized or detained property shall be kept in the custody of the Yamhill County Sheriff or the police agency that seized the property.

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

- (1) At the discretion of the investigating agency, the forfeited property may be retained for official use in law enforcement activities. When the investigating agency determines that the property will no longer be used for law law enforcement purposes, it shall be sold by the Sheriff at public sale and the proceeds disbursed in accordance with Section 7.03(2) and (3) below.
- (2) The proceeds of any distribution or sale of any property shall, after reimbursement for the costs of sale and reimbursement for any out-of-pocket costs in securing and keeping the property, be disbursed as follows:
 - (a) Ten percent to an account of the County general fund to be reflected as revenue to the budget of the Office of County Counsel to finance litigation pursuant to the ordinance.
 - (b) Twenty percent to an account of the County general fund to be reflected as a revenue to the budget of the Sheriff to be used for law enforcement purposes.
 - (c) Twenty percent to an account of the County general fund to be reflected as a revenue to the budget of the District Attorney to be used in general criminal prosecution or crime victims assistance.
 - (d) If the seizing agency is from a jurisdiction located within the geographic boundaries of Yamhill County, fifty percent to that agency if said agency has created a budget account for said funds insuring that said funds shall be used for law enforcement purposes. In the event the agency does not have such a fund, this fund shall be divided equally between accounts described in subparagraphs (b) and (c) above.
 - (e) In the case of proceeds based on a violation of ORS chapter 163 or 164, the County may authorize disbursement to the victim or victims of the offense for payment of restitution, as defined in ORS 137.103.

(3) It is the intent of the Board of Commissioners that funds derived from the enforcement of this ordinance be used to supplement and not supplant other law enforcement funds so long as there are not extraordinary circumstances substantially affecting general County revenues. It is the intent of the Board of Commissioners that funds derived from controlled substance offenses be made available for controlled substance investigation.

SECTION 8. NONCONSENSUAL USE OF PROPERTY FOR ILLEGAL ACTIVITY

8.01 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.

8.02 Property subject to a legal interest of a party who did not consent to and was not aware of the illegal use of said property may be forfeited and sold. The Sheriff, however, shall first satisfy said legal interest out of the proceeds of the sale before depositing said proceeds with the County.

SECTION 9. TERRITORY AFFECTED

9.01 This ordinance shall apply to the unincorporated area of Yamhill County and in those incorporated cities of Yamhill County which have consented to this ordinance application pursuant to ORS 203.040.

SECTION 10. SEPARABILITY

10.01 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 effect the validity of the remainder of the ordinance or its application to any other statute, but shall continue to be in full effect.

SECTION 11. EFFECTIVE DATE

11.01 This ordinance being necessary for the preservation of the health, safety and welfare of the citizens of Yamhill County and an emergency having been declared to exist shall be effective immediately upon passage hereof.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES K. STERN
County Clerk

Ted Lopuszynski
Chairman TED LOPUSZYNSKI

By: *Elaine Pearcey*
Deputy ELAINE PEARCEY

Donald D. Porter
Commissioner DONALD D. PORTER

APPROVED AS TO FORM BY:
Daryl S. Garrettson
DARYL S. GARRETTSON
Yamhill County Counsel

David E. Bishop
Commissioner DAVID E. BISHOP