

ORDINANCE NO. 483-0

AN ORDINANCE ESTABLISHING A FORFEITURE SECTION WITHIN THE PUBLIC SAFETY CODE TO BE KNOWN AS SECTION 1.01.004.

WHEREAS, 1.01.004 Title. This ordinance shall be known as the forfeiture ordinance of the City of Troutdale and may be so pleaded and referred to.

1.01.010 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 chapter seeks to prevent.

(C) "Gambling" is that defined in ORS 167.117(4) (1983 ed.).

(E) "Illegal activity" means:

(1) Gambling or promotion of gambling; or

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

(3) The possession of controlled substances with the intent to deliver.

(F) "Manufacture" is that defined in ORS 475.005(14) (1983 ed.).

(G) "Marijuana" is that defined in ORS 475.005(15) (1983 ed.).

(H) "Possession of controlled substances with the intent to distribute" is that defined in 21 USC S 841(a)(1) (1976 ed.; published 1981).

(I) "Production" is that defined in ORS 475.005(19) (1983 ed.).

(J) "Promotion of gambling" is that defined in ORS 167.117(10) (1983 ed.).

1.01.010 Policy and Purpose

(A) The City of Troutdale City Council 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 the City of Troutdale.

(B) The City of Troutdale City Council therefore declares that to protect the safety and welfare of the City of Troutdale residents, it is in the best of the City of Troutdale to:

(1) Cripple illegal drug trafficking and narcotics activities within this city 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.

1.01.025 Forfeiture.

(A) Any person who engages in illegal activity within the City of Troutdale, shall forfeit to the City of Troutdale 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 1.01.010.

(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 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 to use to facilitate any illegal gambling activity; and

(7) (a) All real property other than residential property which is:

(1) used to manufacture any controlled substance, or

(2) used to facilitate the promotion of gambling as defined in ORS 162.127 (1983 ed.).

(b) This section shall not apply to residential real property which is used to facilitate the manufacture of less than one ounce of marijuana when dried.

(B) This chapter shall not apply to those unlawful acts defined in ORS 166.720(1) and (2) (1983 ed.).

1.01.030 Seizure. Any property subject to forfeiture to the City of Troutdale under this chapter may be seized by any police officer on behalf of the City of Troutdale without issuance of court process when:

(A) This seizure is incident to an arrest or search under a search warrant or an inspection under an administrative search; or

(B) The property subject to seizure has been the subject of a prior judgment in favor of the City of Troutdale in a forfeiture proceeding under this chapter; or

(C) 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 chapter.

1.01.035 Institution of legal proceedings.

(A) In the event of a seizure under this chapter, the City

Attorney, acting in the name of the city, 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, City Attorney 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.

#### 1.01.040 Disposition of property.

(A) Prior to obtaining any forfeiture judgment, any money, securities and negotiable instruments that are not retained by the Police for evidentiary purposes shall be deposited with the Finance Director of the City of Troutdale pending the outcome of the forfeiture proceedings.

(B) The seized property shall be kept in the custody of the City of Troutdale. The City Attorney may hold the property for the City of Troutdale or deliver it to the Chief of Police of the City of Troutdale for safekeeping until a forfeiture judgment is obtained.

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

(1) At the discretion of the Chief of Police, with written approval of the City Administrator, the forfeited property, except money, securities and negotiable instruments, may be retained by City Police for official use in law enforcement activities. When the Chief of Police, with written approval of the City Administrator, determines the property is no longer useful for law enforcement purposes, it shall be sold in accordance with C(2).

(2) Property (except money, securities or negotiable instruments) which is not required by law to be destroyed and which is not being used for police purposes, and which is not harmful to the public shall be sold at public auction by the Police.

(3) The proceeds of any sale, and any money, securities, or negotiable instruments shall be deposited with the City of Troutdale general fund.


1.01.045 Non-Consensual use of property for illegal activity. No property shall be forfeited under this chapter 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. 422 s 8 [1984]).

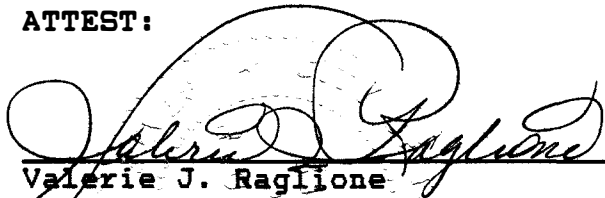
1.01.050 Separability. If any section, clause or phrase of this chapter, or its application to any statute, is determined by any court of competent jurisdiction to be invalid or unenforceable for any reason, such determination shall not affect the validity of the remainder of this chapter or its application to any other statutes, but shall continue to be in effect. (Ord. 422 s 9 [1984]).

PASSED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THIS 27<sup>TH</sup> DAY OF JANUARY, 1987.

YEAS: 5  
NAYS: 0  
ABSTAINED: 0

  
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Sam K. Cox, Mayor  
DATED: JANUARY 28, 1987

ATTEST:

  
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Valerie J. Raglione  
City Recorder  
26:25

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