

TIGARD MUNICIPAL CODE

Chapter 7.78 PROPERTY-FORFEITURE FOR CRIMINAL ACTIVITY.

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7.78.010 Title.

This chapter shall be known as the "forfeiture ordinance of the City of Tigard" and may be so pleaded and referred to. (Ord. 87-60 §1, 1987).

7.78.020 Definitions.

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

(1) "Controlled substances" are those defined in ORS 475.005(6) [1985 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) [1985 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 this chapter seeks to prevent.

(4) "Gambling" is that defined in ORS 167.117(4) [1985 ed.]

(5) "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 distribute.

(6) "Manufacture" is that defined in ORS 475.005(14) [1985 ed.]

(7) "Marijuana" is that defined in ORS 475.005(15) [1985 ed.]

(8) "Possession of controlled substances with the intent to distribute" is that defined in 21 USC 5841(a)(1) [1976 ed., published 1981].

(9) "Production" is that defined in ORS 475.005(19) [1985 ed.].

(10) "Promotion of gambling" is that defined in ORS 167.117(10) [1985 ed.]. (Ord. 87-60 §2, 1987).

7.78.030 Forfeiture--Property Designated.

(a) Any person who engages in illegal activity within the City of Tigard shall forfeit to the City of Tigard the following property, and no property right shall exist in it:

(1) All controlled substances which are intended for manufacture, delivery or distribution, or that have been manufactured, delivered or distributed;

(2) All raw materials, products, containers, equipment, books, records, research materials of any kind which are used, or are intended for use, to manufacture, compound, store, process, distribute or deliver any controlled substances;

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(3) All conveyances, including aircraft, vehicles or vessels which are used to manufacture, deliver, or distribute in any manner to facilitate the manufacture, delivery, or distribution 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 real 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 activity; and

(7) 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 [1985 ed.].

(b) This chapter shall not apply to those acts made unlawful by ORS 166.720. (Ord. 87-60 §3, 1987).

7.78.040 Seizure Process.

Any property subject to forfeiture to the City of Tigard under this chapter may be seized by any police officer on behalf of the City 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 the City of Tigard in a forfeiture proceeding under this chapter; or

(3) A police officer lawfully seizes the property under ORS 133.525 or 133.615 [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. (Ord. 87-60 §4, 1987).

7.78.050 Legal Proceedings.

(a) In the event of a seizure under this tear, 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 and conducted in accordance with the Oregon Rules of Civil Procedure and the Oregon Rules of Evidence relating to civil actions. Upon the filing of the complaint, the City Attorney shall initiate an application for a temporary restraining order restraining the return of the seized property to the defendant or other owner of the property. The defendant or owner of the property may demand a trial by jury in any civil action brought pursuant to this section. (Ord. 87-60 §5, 1987).

7.78.060 Disposition Of Property.

(a) Prior to obtaining any forfeiture judgment, any money, securities and negotiable instruments that are not retained by the Chief of Police for evidentiary purposes shall be deposited with the Financial Officer of the City of Tigard pending the outcome of the forfeiture proceedings. The Financial Officer is authorized to deposit or invest such property under the same conditions that apply to the deposit and investment of City funds.

(b) Seized property other than money, securities and negotiable instruments shall be kept

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in the custody of the Chief of Police or his designee for safe keeping until judgment is rendered in the forfeiture action.

(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, the forfeited property may be retained for official use in law enforcement activities. When the Chief of Police determines that such property will no longer be used for law enforcement purposes, it shall be sold in accordance with subdivisions (2) and (3) of this subsection.

(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 Chief of Police.

A. All forfeiture proceeds obtained pursuant to ORS Chapter 475A shall be used only for purposes which are consistent with the provisions of ORS 475A.120, including but not limited to: the enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances, including but not limited to use of the proceeds for controlled substance crime prevention, drug intervention, drug treatment and drug education programs.

(3) The proceeds of any sale, and any money, securities or negotiable instruments shall be used by the City of Tigard police for law enforcement purposes. (Ord. 99-14; Ord. 87-60 §6, 1987).

7.78.070 Nonconsensual 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 the use of the property in

the illegal activity.
(Ord. 81-60 §7, 1987).

7.78.080 Report To City Council.

The Chief of Police shall provide a report to the City Council whenever property is seized, forfeited or expended pursuant to this chapter. (Ord. 87-60 §8, 1987).•