

ORDINANCE No. 621

AN ORDINANCE RELATING TO THE CIVIL FORFEITURE OF REAL, PERSONAL, AND INTANGIBLE PROPERTY WHICH FACILITATES THE COMMISSION OF CERTAIN PROHIBITED ACTIVITIES:
AUTHORIZING CIVIL ACTION TO ENFORCE SUCH FORFEITURE

WHEREAS, the City recognizes the problems associated with criminal law enforcement regarding certain crimes relating to gambling and drug trafficking; and

WHEREAS, the purpose of this Ordinance is to severely hinder the commission of these prohibited activities by forfeiture of the tools and/or profits of these activities,

NOW THEREFORE,

THE CITY OF STAYTON ORDAINS AS FOLLOWS:

Section 6.1000 is hereby enacted to read as follows:

Section 6.1000 CIVIL FORFEITURE ORDINANCE

6.1010 DEFINITIONS

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

- A. "Conspiracy" is the term as defined in ORS 161.450 (1985 ed.).
- B. "Controlled substances" is the term defined in ORS 475.005(6) (1985 ed.) except that this shall not include less than one avoirdupois ounce of marijuana.
- C. "Deliver or delivery" is the term defined in ORS 475.005(8) (1985 ed.).
- D. "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.
- E. "Gambling" is the term defined in ORS 167.117(4) (1985 ed.).
- F. "Prohibited activity" means:
 - 1. Gambling or promotion of gambling; or
 - 2. The manufacture or delivery of controlled substances, or
 - 3. The possession of controlled substances with the intent to deliver.
- G. "Manufacture" is the term defined in ORS 475.005(14) (1985 ed.).

- H. "Marijuana" is the term defined in ORS 475.005(15) (1985 ed.).
- I. "Possession of controlled substances with the intent to distribute" is the phrase defined in 21 U.S.C. 841(a)(1) (1976 ed.; published 1981).
- J. "Production" is the term defined in ORS 475.005(19) (1985 ed.).
- K. "Promotes gambling" is the term defined in ORS 167.117(10).

6.1020 FORFEITURE

- A. Any person who engages in or enters into a conspiracy to engage in prohibited activity within the City Limits of Stayton shall forfeit to the City of Stayton the following property:
 - 1. All controlled substances which are intended for or have been manufactured for delivery as defined in this Ordinance.
 - 2. All raw materials, products, containers, equipment, books, records, research materials (including formulas, microfilms, tapes, and data) or 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 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 prohibited activity, and all process and profits traceable to such furnishment, exchange, or prohibited activity.
 - 5. All proceeds, profits, and things of value (excepting residential property) traceable to any prohibited activity.
 - 6. All equipment, materials, or records of any sort that are used, or intended for use to facilitate any prohibited gambling activity; and
 - 7. All real property including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used to commit or facilitate the commission of a violation of this Ordinance
- B. This Ordinance shall not apply to those unlawful acts defined in ORS 166.720(1) and (2) (1985 ed.).

6.1030 SEIZURE

Any property subject to forfeiture to the City of Stayton under this Ordinance may be seized by any police officer on behalf of the City of Stayton without issuance of court process when:

- A. The 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 judgement in favor of the City of Stayton in a forfeiture proceeding under this Ordinance; or
- C. A police officer lawfully seizes the property under ORS 133.525 to 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 prohibited activity as defined by this Ordinance.

6.1040 INSTITUTION OF LEGAL PROCEEDINGS

- A. In the event of a seizure under this Ordinance, the City Attorney, acting in the name of the City, shall institute an in rem forfeiture against the seized property.
- B. The proceedings shall be instituted in accordance with the Oregon Rules of Civil Procedure and the Oregon Rules of Evidence relating to civil actions.
- C. An action under this Ordinance shall be commenced within thirty (30) days after the property is seized on behalf of the City of Stayton for purposes of this Ordinance. This section shall operate as a limitation period on the forfeiture action.
- D. The defendant or the owner of the property may demand a trial by jury in any civil action brought pursuant to this section.
- E. The City Attorney shall be entitled to deduct from the process of a successful forfeiture suit any attorney fees, costs, and expenses incurred in the litigation and investigation of the action.

6.1050 DISPOSITION OF PROPERTY

- A. Prior to obtaining any forfeiture judgement, any money, securities, and negotiable instruments that are not retained for evidentiary purposes shall be deposited with the Finance Director pending the outcome of the forfeiture proceedings.
- B. The seized property shall be kept in the custody of the City of Stayton. Except as provided in subsection (A) the Chief of Police shall hold the property for the City of Stayton for safekeeping until a forfeiture judgement is obtained.

C. When a judgement of forfeiture is obtained under this Ordinance the property described in subsection (A) and (B) shall be disposed of as follows:

1. At the discretion of the City Council, the forfeited property may be retained for official use in law enforcement activities.
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 may be sold by the City Administrator.
3. The proceeds of any sale, and any money, securities, or negotiable instruments shall be deposited with the Finance Director in a separate designed fund to be used for law enforcement purposes.

6.1060 AFFIRMATIVE DEFENSE TO NON-CONSENSUAL USE OF PROPERTY FOR PROHIBITED ACTIVITY

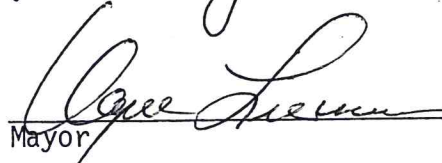
No property shall be forfeited under this Ordinance to the extent of the interest of an owner who did not consent to or was not aware of the use of the property in the prohibited activity.

6.1070 SEPARABILITY

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 in effect.

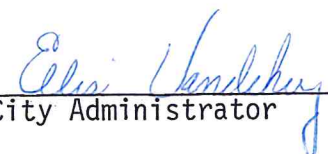
PASSED BY THE COMMON COUNCIL THIS 17th DAY OF February, 1986.

Signed by the Mayor this 21 day of February, 1986.



Mayor

ATTEST:



City Administrator