

RESOLUTION NO. 160

A RESOLUTION CONSENTING TO THE APPLICATION OF MARION COUNTY ORDINANCE NO. 770 (THE CIVIL FORFEITURE ORDINANCE OF MARION COUNTY) WITHIN THE CORPORATE LIMITS OF THE CITY OF AURORA.

WHEREAS, the Marion County Board of Commissioners has recently passed Ordinance 770, the Forfeiture Ordinance of Marion County, and

WHEREAS, a primary purpose of the Forfeiture Ordinance of Marion County is to deter drug trafficking, prostitution and narcotics activities within the County by depriving narcotics dealers, and those persons dealing with them, of the instrumentalities, proceeds, money, vehicles, and other items of their trade, and

WHEREAS, the Aurora City Council agrees with the purpose of the Forfeiture Ordinance of Marion County, and

WHEREAS, there is a need for such an ordinance to apply within the incorporated limits of the City of Aurora, NOW, THEREFORE,

BE IT RESOLVED:

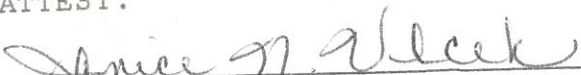
Section 1. Pursuant to ORS 203.040, the Aurora City Council, as the governing body of the City of Aurora, hereby consents to the application of Marion County Ordinance No. 770, known as the Civil Forfeiture Ordinance of Marion County, within the corporate limits of the City of Aurora.

Section 2. A copy of said Marion County Ordinance No. 770 is attached to this Resolution.

ADOPTED by the Aurora City Council at a regular meeting thereof on the 24th day of November, 1987.

  
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Steven E. Starner - Mayor

ATTEST:

  
\_\_\_\_\_  
Janice N. Vlcek - City Recorder

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the Matter of Providing for )  
the Civil Forfeiture of Personal, )  
Tangible and Intangible Property )  
which Facilitates or Proceeds )  
from the Commission of Certain )  
Prohibited Activities; )  
Authorizing civil Action to )  
Enforce such Forfeiture; and )  
Declaring an Emergency. )

SEP 17 3 52 PM '87  
ALAN H. DAVIDSON  
MARION COUNTY CLERK

ORDINANCE NO. 770

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS  
FOLLOWS:

SECTION 1. Title.

This chapter shall be known as the forfeiture ordinance of  
Marion County and may be so pleaded and referred to.

SECTION 2. Policy and Purpose.

A. The Board of Commissioners finds that:

1. Property that is seized from arrested persons which constitutes the proceeds or instrumentalities of a narcotics, gambling or prostitution charge must generally be returned to the criminal upon disposition of the charge.
2. These instrumentalities and proceeds are often used to further narcotics trafficking, gambling or prostitution. The return of the property thus serves to encourage and perpetuate the commission of crime in Marion County.
3. This forfeiture ordinance involves a matter of county concern, to the fullest extent allowed by the Constitu-

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1 tions and laws of the United States and the State of  
2 Oregon, pursuant to ORS 203.035.

3 4. The use of drugs and the profits from gambling and other  
4 prohibited activities as defined under this ordinance,  
5 are the cause of a majority of the crimes against  
6 property and violent crimes committed in Marion County.  
7 This ordinance is specifically designed to inhibit those  
8 persons who engage in prohibited activities as defined  
9 herein from using the proceeds of said prohibited acti-  
10 vities for committing other crimes against property or  
11 violent crimes.

12 B. The Board of Commissioners therefore declares that to pro-  
13 tect the safety and welfare of Marion County residents it is  
14 in the best interest of Marion County to:

- 15 1. Deter drug trafficking, prostitution and narcotics  
16 activities within this County by depriving narcotics  
17 dealers, and those persons dealing with them, of the  
18 instrumentalities, proceeds, money, vehicles, and other  
19 items of their trade; and  
20 2. Seize gambling equipment, records and the proceeds of  
21 gambling activity, and otherwise deter criminal activity  
22 and remove the operating instrumentalities, profits and  
23 proceeds of narcotics, gambling and prostitution trans-  
24 actions.

25 SECTION 3. Definitions.

26 As used in this ordinance, unless the context requires  
Page otherwise:

- 1 A. "Conspiracy" is the term as defined at ORS 161.450 [1985  
2 ed.].
- 3 B. "Controlled substances" is the term defined at ORS 475.005  
4 (6) [1985 ed.] except that this shall not include less than  
5 one avoirdupois ounce of marijuana.
- 6 C. "Deliver or delivery" is the term defined at ORS 475.005(8)  
7 [1985 ed.].
- 8 D. "Facilitate" means that the property must have some substan-  
9 tial connection to, or be instrumental in, the commission of  
10 the underlying illegal activity which this ordinance seeks  
11 to prevent.
- 12 E. "Gambling" is the term defined at ORS 167.117(4) [1985 ed.]
- 13 F. "Prohibited activity" means:
- 14 1. Gambling or promotion of gambling; or  
15 2. The manufacture or delivery of controlled substances; or  
16 3. Prostitution or promotion of prostitution; or  
17 4. The possession of controlled substances with the intent  
18 to deliver; or  
19 5. Any conduct which constitutes a crime as defined by ORS  
20 161.515 [1985 ed], under the provisions of ORS Chapter  
21 164 [1985 ed.] relating to burglary, theft, arson,  
22 robbery, criminal mischief, and unlawful sound or video-  
23 tape recording; or  
24 6. Any attempt to engage in F.1. through F.5. above.
- 25 G. "Manufacture" is the term defined at ORS 475.005(14) [1985  
26 ed.]

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- 1 H. "Marijuana" is the term defined at ORS 475.005(15) [1985
- 2 ed].
- 3 I. "Possession of controlled substances with the intent to
- 4 distribute" is the phrase defined at 21 U.S.C. Section
- 5 841(a)(1) [1976 ed.; published 1981].
- 6 J. "Production" is the term defined at ORS 475.005(19) [1985.
- 7 ed.].
- 8 K. "Promotion of gambling" is the term defined at ORS 167.117
- 9 (10) [1985 ed.].
- 10 L. "Prostitution" is the term defined at ORS 167.002 and
- 11 167.007 [1985 ed.].
- 12 M. "Promotion of Prostitution" is the term defined at ORS
- 13 167.012 [1985 ed.].
- 14 N. "Residential property" is the primary place of residence of
- 15 the property's owner.

16 SECTION 4. Forfeiture.

17 A. Any person who engages in prohibited activity within Marion  
18 County shall forfeit to Marion County the following property  
19 and no property rights shall exist in them:

- 20 1. All controlled substances which are intended for or have
- 21 been manufactured or delivered as defined in Section 3
- 22 of this ordinance.
- 23 2. All raw materials, products, containers, equipment,
- 24 books, records, research materials (including formulas,
- 25 microfilm, tapes and data) of any kind which are used or
- 26 intended for use to manufacture, compound, store,
- possess or deliver any controlled substance.

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- 1 3. All conveyances, including aircraft, vehicles or vessels  
2 which are used to manufacture or deliver or in any  
3 manner to facilitate the manufacture or delivery of any  
4 controlled substance or any such conveyance which is  
5 used to transport or to steal any controlled substance.
- 6 4. All money, negotiable instruments, securities or other  
7 things of value furnished or exchanged or intended to be  
8 furnished or exchanged by or to any persons to facili-  
9 tate any prohibited activity, and all proceeds and  
10 profits traceable to such furnishment, exchange or  
11 prohibited activity.
- 12 5. All equipment, materials or records of any sort that are  
13 used or intended for use to facilitate any prohibited  
14 gambling or prostitution activity.

15 SECTION 5. Seizure.

16 Any property subject to forfeiture to Marion County under  
17 this ordinance may be seized by any police officer on behalf of  
18 Marion County without issuance of court process when:

- 19 A. The seizure is incident to an arrest or search, or an  
20 inspection under an administrative search; or
- 21 B. The property subject to seizure has been the subject of a  
22 prior judgment in favor of Marion County in a forfeiture  
23 proceeding under this ordinance; or
- 24 C. A police officer lawfully seizes the property under ORS  
25 133.525 to 133.703 [1985 ed.] and has probable cause to  
26 believe that the property has been used or is intended for

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1 use in or to facilitate prohibited activity as defined by  
2 this ordinance.

3 **SECTION 6. Institution of Legal Proceedings for Forfeiture.**

4 A. In the event of a seizure under this ordinance, the County  
5 Counsel, acting in the name of the County, may institute a  
6 forfeiture proceeding in Circuit or District Court to obtain  
7 a judgment of forfeiture against the seized property.

8 B. The proceedings shall be instituted within 20 days of the  
9 seizure for purposes of this ordinance, and in accordance  
10 with the Oregon Rules of Civil Procedure and the Oregon  
11 Rules of Evidence relating to civil actions. The defendant  
12 or the owner of the property may demand a trial by jury in  
13 any civil action brought pursuant to this section.

14 C. County Counsel shall cause notice of any forfeiture  
15 proceeding to be served by certified mail to all parties  
16 with a recorded security interest in the property to be  
17 forfeited.

18 D. County Counsel is designated by the Board of Commissioners  
19 to represent Marion County in any action for forfeiture  
20 under this ordinance.

21 E. County Counsel shall be entitled to deduct from the proceeds  
22 any attorney fees, costs and expenses incurred in the liti-  
23 gation.

24 **SECTION 7. Disposition of Property.**

25 A. Prior to obtaining any forfeiture judgment, any money, secu-  
26 rities and negotiable instruments that are not retained for

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1 criminal justice evidentiary purposes shall be deposited  
2 with the Treasurer of Marion County pending the outcome of  
3 the forfeiture proceedings.

4 B. All seized property other than Section 7, A, above, or  
5 property kept as evidence in a criminal case, shall be kept  
6 in the custody of the Marion County Sheriff for safe keeping  
7 until a forfeiture judgment is obtained.

8 C. When a judgment of forfeiture is obtained under this ordin-  
9 ance, the property shall be disposed of as follows:

10 1. Cash and proceeds from securities and proceeds from  
11 negotiable instruments shall be forfeited to Marion  
12 County and placed in a fund designated for criminal  
13 justice purposes.

14 2. When the Marion County District Attorney or Sheriff  
15 determines that the property, other than cash or  
16 proceeds from securities or negotiable instruments, or  
17 other property which is not required by law to be  
18 destroyed and is not harmful to the public, and will no  
19 longer needed for evidentiary or law enforcement pur-  
20 poses, it shall be turned over to the Marion County  
21 Department of General Services for general County pur-  
22 poses. And, when the Marion County Department of General  
23 Services determines that the property is no longer  
24 needed for general County purposes, it shall be sold at  
25 a public auction by the Marion County Department of  
26 General Services, or at the discretion of the Board,

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1 sold on consignment or at a private sale on such terms  
2 as the Board shall declare, and the net proceeds of the  
3 sale placed in the fund as set forth above in Section  
4 7(C)(1).

5 3. The Marion County Department of General Services shall  
6 give notice of the aforementioned public sale by posting  
7 written notice of the sale in three (3) public places  
8 within the county, at least ten (10) days before the  
9 sale. The notice shall describe the property and shall  
10 state the time and place of public sale at which the  
11 property may be purchased by the highest bidder, for  
12 cash. These notice provisions shall not preclude the  
13 Marion County Department of General Services or Board of  
14 Commissioners from giving additional notice through the  
15 various news media.

16 4. The Department of General Services may deduct reasonable  
17 costs incurred in conducting the sale. The Department of  
18 General Services may also cancel the sale if the bids  
19 are deemed inadequate by the Department of General  
20 Services.

21 5. Members of county government, including officials and  
22 employees, shall not be allowed to bid at any of these  
23 sales.

24 SECTION 8. Nonconsensual Use of Property for Illegal Activity.

25 A. No property shall be forfeited under this ordinance to the  
26 extent of the interest of an owner, who did not consent to

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or was not aware of, the use of the property in the prostitution activity.

B. No property subject to a security interest of a party who did not consent to and was not aware of the illegal use of said property may be forfeited and/or sold unless the security interest is satisfied.

SECTION 9. Territory Affected.

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

SECTION 10. 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 to be in full effect.

SECTION 11. Effective Date.

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

DATED this 17 day of September, 1987.

MARION COUNTY BOARD OF COMMISSIONERS

*Randall Franke*  
Chairman

*Lynn Jackson*  
Recording Secretary

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