

TITLE 6
CHAPTER 7

CIVIL FORFEITURE OF PROPERTY

SECTION:

- 6-7-1: Title
- 6-7-2: Policy and Purpose
- 6-7-3: Definitions
- 6-7-4: Forfeiture
- 6-7-5: Seizure
- 6-7-6: Institution of Legal Proceedings
- 6-7-7: Disposition of Property
- 6-7-9: Severability

6-7-1: TITLE This chapter shall be known as the forfeiture ordinance of the City of Florence and may be so pleaded and referred to.

6-7-2: POLICY AND PURPOSE:

A. The City Council finds that:

1. Property that is the instrumentality~~s~~ of or the proceeds from illegal narcotics activity generally either cannot be seized or must be returned to the owner upon disposition of the criminal charge.
2. These instrumentality~~s~~ and proceeds are often used to further narcotics trafficking. The return of the property thus serves to encourage and perpetuate the commission of crime in the City of Florence.

B. The City Council therefore declares that to protect the safety and welfare of the City of Florence residents it is in the best interest of the City of Florence to:

1. Cripple drug trafficking and narcotics activities within this City by depriving narcotics dealers, and those persons dealing with them, of the instrumentality~~s~~ and proceeds of their trade; and
2. Otherwise deter such activity and remove the operating instrumentality~~s~~, profits and proceeds of narcotics transactions from dealers; and
3. Deposit the property or proceeds distributed to the City of Florence into the general fund to be available for all lawful purposes as defined in the Oregon Constitution. The city will use these funds for a local drug treatment program.

6-7-3: DEFINITIONS: As used in this Chapter, unless the context requires otherwise:

CONSPIRACY As defined in ORS 161.450.

CONTROLLED
SUBSTANCES As defined in ORS 475.005(6) except that this shall not include less than one avoirdupois ounce of marijuana.

DELIVER As defined in ORS 475.005(8)

FACILITATE The property had some substantial connection to, was instrumental in, or was made available for use in the underlying prohibited activity.

PROHIBITED
ACTIVITY Means the completed or attempted manufacture, delivery or possession with the intent to deliver of any controlled substance.

MANUFACTURE As defined in ORS 475.005(14)

MARIJUANA	As defined in ORS 475.005(15)
POSSESSION OF CONTROLLED SUBSTANCES WITH INTENT TO DISTRIBUTE	The phrase defined in 21 USC S 841(A)(1).
PRODUCTION	As defined at ORS 475.005(19)
RESIDENTIAL PROPERTY	The primary place of residence of the property's owner.

6-7-4 FORFEITURE:

- A. Any person who engages in or enters into a conspiracy to engage in prohibited activity within the City of Florence shall forfeit to the City of Florence the following property:
1. All controlled substances which are intended for or have been manufactured or delivered as defined in Section III above.
 2. All raw materials, products, containers, equipment, books, records, research materials (including formulas, microfilms, tapes and data) of any kind used, or intended for use, to manufacture, compound, store, process or deliver any controlled substances.
 3. All conveyances, including aircraft, vehicles or vessels 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 prohibited activity, and all proceeds 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 real property other than residential property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, used to commit or facilitate any prohibited activity.
- B. Property shall not be forfeited under this ordinance to the extent of the interest of any owner therein who did not consent to the use of the property in the prohibited activity.
- C. It is not a condition precedent to forfeiture under this ordinance that criminal charges are filed with respect to the underlying prohibited activity, nor is it a defense in any forfeiture enforcement proceeding that criminal charges were not pursued or that the charges were dismissed or resulted in an acquittal.

6-7-5 SEIZURE:

- A. Any property subject to forfeiture to the City of Florence under this Chapter may be seized by any police officer on behalf of the City of Florence when:
1. The property is, or the police officer has probable cause the property is contraband;
 2. The seizure is incident to a lawful search for evidence and the police officer has probable cause to believe that the property is subject to forfeiture under this ordinance;

3. The property was originally seized and held as evidence but is released or no longer detained for such purposes; or
 4. The property is the subject of a prior judgment in favor of the City of Florence in a forfeiture proceeding under this ordinance.
- B. Where property subject to forfeiture under this ordinance is in the possession or control of a person who is not a party to criminal proceedings for the prohibited activity, the City may apply for a temporary restraining order that prevents the transfer of the property during the pendency of the forfeiture proceeding to any persons who engaged in the prohibited activity.

6-7-6 INSTITUTION OF LEGAL PROCEEDINGS:

- A. Upon seizure of any property pursuant to this ordinance, the City Manager, acting in the name of the City of Florence, shall promptly institute a forfeiture proceeding to obtain a judgment of forfeiture against the seized property upon his or her determination that the cost of obtaining a forfeiture judgment is less than the value of the property to be forfeited or that it is otherwise in the public interest to so proceed.
- B. The proceeding shall be conducted pursuant to ORS 30.315 and in accordance with the procedure relating to civil actions.

6-7-7 DISPOSITION OF PROPERTY:

- A. Prior to obtaining any forfeiture judgment, any money, securities and negotiable instruments that are not retained for evidentiary purposes shall be deposited with the Comptroller of the City of Florence pending the outcome of the forfeiture proceedings.
- B. In the event a judgment of forfeiture is obtained pursuant to this ordinance, the property shall be disposed of as follows:
1. At the discretion of the City Manager, the forfeited property may be retained for official use in law enforcement activities. If the Chief of Police determines that property so retained is no longer to be used for law enforcement purposes, the property shall be disposed of in accordance with subsections 2 and 3 below.
 2. Property other than money, securities or negotiable instruments that is not retained by the City Manager, required by law to be destroyed, or harmful to the public shall be sold by the Chief of Police. The sale shall be conducted in a commercially reasonable manner that is likely to result in the greatest net return. City employees and their families shall not be entitled to purchase any forfeited property.
 3. The expenses incurred in seizing, storing and selling any forfeited property shall be deducted from the proceeds of any sale and from any money forfeited. The City of Florence shall deposit the property or proceeds distributed to the city to the general fund to be available for all lawful purposes as defined by the Oregon Constitution. The city will use these funds for a local drug treatment program.

6-7-8: SEVERABILITY: If any section, clause or phrase of this ordinance, or its application with respect to any property, activity or statute is determined by any court of competent jurisdiction to be invalid or unenforceable for any reason, such determination does not affect the validity of the remainder of the ordinance or its application to any other property, activity or statute, but shall continue to be in effect.

Ordinance No. 18 repealed by Ordinance 1, Series 1986
enacting this portion of City Code.
Ordinance 14, Series 2002, effective August 1, 2002