

A LOCAL LAW OF THE COUNTY OF ONONDAGA AUTHORIZING
SEIZURE AND FORFEITURE OF PROPERTY USED IN CONNECTION
WITH MISDEMEANOR CRIMINAL ACTS DEFINED BY ARTICLE 220
AND ARTICLE 221 OF THE PENAL LAW

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ONONDAGA, STATE OF NEW YORK, AS FOLLOWS:

Article I. Purpose

Section 1.1. This Legislature hereby finds and determines that activity associated with misdemeanor drug offenses poses a serious threat to the health, safety and welfare of County residents and imposes an enormous burden upon the County in the provision of personnel to enforce the laws, prosecute violators and deliver services necessary to address the adverse social and health consequences of such activity.

Section 1.2. This Legislature further finds and determines that while criminal sanctions under the Penal Law are a useful weapon to deter misdemeanor drug activity, further local legislation is needed to achieve a reduction of such activity in the County by removing the potential for profit and developing greater resources to enhance treatment and education strategies.

Section 1.3. Therefore, the purpose of this law is to provide for the seizure and forfeiture of property and funds used in connection with or constituting the proceeds of misdemeanor drug activity.

Article II. Conduct

Section 2. Except as otherwise authorized by law, it shall be unlawful to:

- (a) transport, carry, or convey any controlled substance or marijuana in, upon, or by means of any vehicle, or
- (b) conceal or possess any controlled substance or marijuana in or upon any vehicle, or upon the person of anyone in or upon any vehicle, or
- (c) use any vehicle, to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, or sale of any controlled substance or marijuana, or
- (d) possess monies that are proceeds from the sale of any controlled substance or marijuana or used or intended to be used for the purchase of any controlled substance or marijuana.

Article III. Seizure and Deliver

Section 3.1. Any vehicle which has been or is being used in violation of Article II, except a vehicle used by any person as a common carrier in the transaction of business as such common carrier, and any money possessed in violation of Article II shall be seized by any peace officer, acting pursuant to his special duties, or police officer, and forfeited as hereinafter in this local law provided.

Section 3.2. The officer having made the seizure of such property shall promptly deliver a report of all the facts and circumstances of the seizure to the District Attorney.

Article IV. Civil Proceedings

Section 4. It shall be the duty of the District Attorney to inquire into the facts of the seizure so reported to the District Attorney and if it appears probable that a forfeiture has been incurred by reason of a violation of this local law, for the determination of which the institution of proceedings in the Supreme Court is necessary, to cause the proper proceedings to be commenced and prosecuted, not later than ten days after written demand by a person claiming ownership thereof, to declare such forfeiture, unless, upon inquiry and examination, the District Attorney decides that such

proceedings cannot probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case the District Attorney shall cause such seized property to be returned to the owner thereof. The procedure for proceedings instituted under this local law shall conform as much as possible to the procedure for attachment.

Article V. Notice

Section 5. Notice of the institution of the forfeiture proceeding shall be served on the owner of the seized property in accordance with the notice and service provisions of the New York State Civil Practice Law and Rules.

Article VI. Requirements For Forfeiture

Section 6.1 In the event the seized property was used or possessed in violation of Article II by the owner thereof, forfeiture shall not be adjudged in the absence of a misdemeanor conviction under Article 220 or Article 221 of the Penal Law.

Section 6.2. In the event the seized property was used or possessed in violation of Article II by a person other than the owner thereof, forfeiture shall not be adjudged in the absence of a misdemeanor conviction under Article 220 or Article 221 of the Penal Law together with proof established by a preponderance of the evidence that the owner either (A) knew that the property would be used in violation of Article II, or (B) had reason to know that the property would be used in violation of Article II.

Article VII. Distribution

Section 7.1. The District Attorney, after such judicial determination of forfeiture, shall have the discretion, where the property is a vehicle, to either retain such forfeited vehicle for the official use of the District Attorney's Office or the seizing police agency, or, by a public notice of at least five days, sell such forfeited vehicle at public sale; provided, however, that where such vehicle is subject to a perfected lien such vehicle may not be retained for official use unless all such liens on the vehicle to be retained have been or will be satisfied. The net proceeds of any such forfeiture under this local law, after deduction of the lawful expenses incurred, shall be collected by the District Attorney and deposited with the Commissioner of Finance, who shall record them in the appropriate trust account(s) and who shall forthwith distribute directly from this account as follows:

(a) thirty-three and one-third percent (33-1/3%) of all monies realized through forfeiture to the office of the District Attorney in satisfaction of actual costs incurred for the protecting, maintaining and forfeiting the property including that proportion of the salaries of attorneys, clerical and investigative personnel devoted thereto;

(b) thirty-three and one-third percent (33-1/3%) of all monies realized through forfeiture to the seizing police agency in satisfaction of actual costs incurred for protecting, maintaining, and storing the seized property; said monies to be deposited in the agency's general forfeiture account in accordance with said agency's routine accounting procedures;

(c) the remaining thirty-three and one-third percent (33-1/3%) of all monies realized through forfeiture shall be paid into an account to be designated Law Enforcement Against Drugs. Monies paid into this account shall be used to fund Law Enforcement Against Drugs program initiatives of the District Attorney's Office in law enforcement, treatment, diversion, education, increased forfeiture capabilities and Program F.U.T.U.R.E.

Section 7.2. The Division of Management and Budget and the Onondaga County Comptroller shall monitor usage of all monies paid directly to the office of the District Attorney under Section 7.1.(a) of this local law or to the account used to fund LAW ENFORCEMENT AGAINST DRUGS program initiatives under Section 7.1(c) of this local law and these assets will be accounted for and reported through Onondaga County's official accounting records.

Article VIII. Restoration

Section 8. Whenever a person interested in any property which is seized and declared forfeited under the provisions of this local law files with a justice of the Supreme Court a petition for the recovery of such forfeited property, the justice of the Supreme Court may restore said forfeited property upon such terms and conditions as the Supreme Court deems reasonable and just, if the petitioner establishes that the petitioner was without personal or actual knowledge of the forfeiture proceeding and that the District Attorney failed to establish the requirements for forfeiture as set forth in Article 6 of this local law. If the petition be filed after the sale of the forfeited property, any judgment in favor of the petitioner shall be limited to the net proceeds of such sale, after deduction of the lawful expenses and costs incurred by the District Attorney, and police agency.

Article IX. Statute of Limitations

Section 9. No suit or action under this local law for wrongful seizure shall be instituted unless such suit or action is commenced within one year after the time when the property was seized.

Article X. Effective Date

Section 10. This local law shall be effective March 6, 1995, pursuant to Municipal Home Rule Law, and shall expire on March 5, 1996.

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ADOPTED
MAR 06 1995