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**AGENDA COVER MEMO**

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**AGENDA DATE:**  
Memorandum Date: October 5, 2009

**TO:** LANE COUNTY BOARD OF COMMISSIONERS

**DEPARTMENT:** Office of County Counsel

**PRESENTED BY:** Liane Richardson, County Counsel

**AGENDA ITEM TITLE:** REPORT BACK ON DUII FORFEITURE PROGRAMS

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- I. **MOTION** - There is no motion in front of the Board at this time; this is merely a report back to the Board.
- II. **AGENDA ITEM SUMMARY** - The Board of County Commissioners requested that County Counsel research DUII forfeiture programs in Oregon and report back to the Board.

III. **BACKGROUND/IMPLICATIONS OF ACTION**

**A. Board Action and Other History**

The Board of County Commissioners requested that County Counsel research DUII forfeiture programs in Oregon and report back to the Board.

There are multiple reasons for the Board's interest. The impact of drivers driving under the influence of intoxicants in Lane County is significant. There have been several incidents of DUII in the past few years that have taken the lives of Lane County citizens. Another reason the Board was interested in looking into DUII forfeiture programs was to see if there was a financial benefit to the County that could be explored. DUII drivers take significant time for law enforcement to deal with, and there was a question as to whether or not sale of forfeited vehicles could help bolster law enforcement activities on the roads in Lane County.

**B. Policy Issues** -

There are two policies at play here; one is protection of the County's citizens, the other is fiscal responsibility.

**C. Board Goals**

The Board has competing goals in regards to this agenda item; to serve it's citizens, and to be financially prudent.

**D. Financial and/or Resource Considerations**

A DUII Forfeiture program would have a financial cost to the County. It is difficult to determine what that cost would be, although it is clear that such a program would require another attorney in either the D.A.'s Office or County Counsel's office, a part-time staff person, and a covered, if not indoor, storage facility.

**E. Analysis**

There is only one DUII forfeiture program currently in existence in Oregon as far as I have been able to determine. This program is run by Lincoln County. There have been other DUII forfeiture programs run by cities and counties throughout Oregon, but each has ultimately been terminated due to the cost of the program.

Lincoln County's program is not a money maker. The County enacted their forfeiture ordinance in 1994 in order to attempt to curb intoxicated driving in Lincoln County. From 1994 through November of 2008, there were 151 seizures of vehicles, of which 65 were actually forfeited. The program has made approximately \$65,000 over that same period of time, averaging \$1,000 a vehicle, and a little over \$4600 a year. It is unknown how much this program has cost Lincoln County, as they haven't kept track of all of the costs associated with the program. Lincoln County only pursues forfeiture of vehicles driven by persons previously convicted of at least one prior DUII in the past 10 years. Persons with only one prior conviction have the option of paying an enhanced fee to avoid forfeiture of their vehicle.

Lincoln County's forfeiture program, although not a money maker, has had a significant impact on DUII arrests in Lincoln County. DUII arrests decreased significantly within a few years of the program's adoption.

This reduction in DUII arrests was also observed by Reed college students during a five year research project into the City of Portland's Forfeiture program. The results of this study, released in 1996, showed that perpetrators whose vehicles had been seized could reliably be expected to be rearrested on average half as often as those whose vehicles were not seized. The study did not look at whether or not DUII drivers in general were induced to not drink and drive due to the possibility of having their vehicle seized and forfeited.

The City of Portland recently discontinued their forfeiture program, the last remaining program outside of Lincoln County, due to the cost the City was incurring to seize, care for, and forfeit the vehicles. The City of Portland's experience with forfeiture is identical to the experience Lane County prosecutors had when civil forfeiture was utilized on a regular basis. Forfeitures are time-consuming for law enforcement and the attorneys handling the forfeiture. Many vehicles do not belong to the person who was driving them, and must be returned to the owner. Many vehicles have multiple owners, and any one of the other valid owners may reclaim the vehicle. The forfeiture process takes quite a bit of time, and while the process is being followed, the vehicles must be stored in a location that keeps them in the condition they were in when seized by law enforcement. After the vehicles are successfully forfeited, they must be sold. The proceeds are then divided up according to state statute.

#### **F. Alternatives/Options**

The Board can choose to implement a DUII Forfeiture program, to not implement a DUII Forfeiture program, or ask staff to do additional analysis if another option is suggested.

#### **IV. TIMING/IMPLEMENTATION**

Such a program would exist in ordinance form, so a proposed ordinance would need to be written and at least two public readings, held at least 13 days apart must be held. The Ordinance would become effective 30 days after its adoption by the Board.

#### **V. RECOMMENDATION**

Lane County does not have the resources currently to run a successful DUII forfeiture program. The County would need additional attorney resources to handle the actual forfeiture aspect, additional indoor storage facilities to hold the vehicles waiting disposition, and additional staff to track the vehicles, the timing of filing required documents with the owners and the courts, and to coordinate the sale of the vehicles after forfeiture. Additionally, the County would have to have the financial ability to cover inadvertent damage to the vehicles while waiting disposition. Many of the cities and counties spoken to ended up terminating their programs after a particularly expensive vehicle was damaged while being stored, and then was not forfeited. The county/city was responsible for making repairs to the vehicle, which in some cases totaled more than \$30,000. Although such programs have been shown to reduce recidivism, Lane County simply doesn't have the resources to cover the cost of the program. I would recommend not moving further on this item at this time.

## **VI. ATTACHMENTS**