

Chapter 34

POLICE AND FIRE PROTECTION

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Art. VII. Disposal of Certain Abandoned, Unclaimed, or Other Property, §§ 34-171--34-199

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ARTICLE VII. DISPOSAL OF CERTAIN ABANDONED, UNCLAIMED, OR OTHER PROPERTY

Sec. 34-171. Authority, written procedures.

(a) The chief of police shall have the authority to dispose of various classes of property in the possession of the police department, in accordance with applicable state and federal law.

(b) The chief of police shall promulgate written procedures to ensure that disposition of all classes of property held by the police department, including abandoned or unclaimed property, liquor, gambling devices, prohibited weapons, contraband, impounded vehicles not listed as stolen, perishable property that deteriorates rapidly in value and utility (including food or other organic materials), and stolen property is in accordance with state and federal law.

Sec. 34-~~172~~175. Final disposition of abandoned or unclaimed property.

(a) The police department shall dispose of ~~A all abandoned or unclaimed personal property shall be disposed of~~ in a manner consistent with Article 18.17 of the Code of Criminal Procedure.

(b) The chief of police ~~director of the department of administration and regulatory affairs~~ is authorized to act as the person designated by a municipality under Article 18.17 of the Code of Criminal Procedure, to take the actions authorized under that article with respect to the disposition of abandoned and unclaimed property in the possession of the police department.

(c) ~~No property subject to this article shall be disposed of until completion of the notice and hearing procedures authorized by sections 34-173 and 34-174 of this Code unless expressly excepted from the application of such procedures.~~

Sec. 34-~~173~~174. Disposition of stolen property of undetermined ownership.

(a) The municipal courts shall have authority to hold hearings for the disposition of stolen property in a manner consistent with Chapter 47 of the Code of Criminal Procedure of undetermined ownership, consistent with this article and applicable state law.

(b) ~~Petitions for hearings to determine the right of possession of property of undetermined ownership shall be on a form approved by the presiding judge and the city attorney, and shall be signed by an attorney authorized to represent the city.~~

(c) ~~The presiding judge is authorized to promulgate procedures for property disposition hearings consistent with this Code and applicable state law.~~

(d) — The clerk of the municipal courts shall, following receipt of a petition filed with the court, notify all listed potential claimants of the time and place of any hearing under this article.

(e) — There is hereby imposed a fee of \$10.00 for the filing of each petition, other than a petition filed by the city at the request of the chief of police.

(f) — Where disputes arise involving property having a fair market value of \$500.00 or more, the procedures may allow for the holding of physical property by a stakeholder pending litigation to resolve ownership and the filing of interpleader actions where disputes relate to property that consists of money. Additionally, the procedures may allow for the release of property upon surety bonds as security where appropriate. The procedures shall take into account the reliability of the ownership data developed in the investigation conducted under section 34-173 of this Code, the nature, value, and replaceability of the property, and other relevant factors.

Sec. 34-171. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned property means property subject to this article that has been in the possession of the police department for a period of not less than 90 days, as to which, upon completion of the procedures specified in sections 34-173 and 34-174 of this Code, a court of competent jurisdiction has determined that the identity of the actual owner of the property cannot be determined or as to which the owner has been finally determined by a court of competent jurisdiction and notified of the right to reclaim the property and the owner has failed to reclaim the property within 30 days following the date of the notice. Provided, the term "abandoned property" shall not include property that has been ordered destroyed or delivered to a governmental agency by a court of competent jurisdiction pursuant to the provisions of Art. 47.01a(b) of the Code of Criminal Procedure, or property the disposition of which is governed by section 34-172(b) of this Code.

Disposition list means a list or lists, to be printed and maintained by the police department, that shall contain a brief description of each item of stolen property, property of undetermined ownership, and abandoned property. Provided, however, that the disposition list shall not include property whose disposition is controlled by section 34-172(b) of this Code.

Property of undetermined ownership means any property, including stolen property, that comes into the possession of the police department or any officer thereof during the course and scope of the department's or officer's duties, provided that (i) no lawful owner of the property has been finally determined; (ii) the property has not been deemed abandoned; (iii) the property is not being held as evidence for use in any criminal trial or pending case; or (iv) if a claim of right to possession of the property has been asserted, the property has not been ordered returned to the person entitled to possession of the property or otherwise disposed of by a court of competent jurisdiction.

Stolen property means any property alleged to have been stolen that comes into the custody of the police department or any officer thereof during the course and scope of the department's or officer's duties, provided that (i) no criminal action relating to the property is pending; (ii) the property is not being held as evidence for use in trials and pending cases; and (iii) the right to possession of the property has not been determined under the procedures authorized by section 34-174 of this Code and

Article 47.01a of the Code of Criminal Procedure.

Sec. 34-172. Disposition of property held by the police department; authority of chief of police.

~~(a) — The chief of police shall promulgate procedures to investigate ownership of property, to provide notice to potential claimants of, and to request disposition of property of undetermined ownership in a manner consistent with this article, to transfer property determined to be abandoned property under section 34-175 of this Code to the director of the department of administration and regulatory affairs for notice and disposition procedures consistent with Article 18.17 of the Code of Criminal Procedure, to request that any abandoned property originally seized by the police department be converted to the use of the city, and to dispose of property or goods in the manner authorized by subsection (b) of this section.~~

~~(b) — The chief of police shall promulgate written procedures directing the disposition by any reasonable and lawful means of the following classes of property held by the police department, without the necessity of complying with the procedures set forth in this article, including destruction or conversion to city use, in any manner consistent with applicable state and federal law:~~

- ~~(1) — Liquor;~~
- ~~(2) — Gambling devices;~~
- ~~(3) — Prohibited weapons;~~
- ~~(4) — Contraband;~~
- ~~(5) — Impounded vehicles not listed as stolen property;~~
- ~~(6) — Perishable property or goods that deteriorate rapidly in value and utility, including food or other organic materials;~~
- ~~(7) — Property the disposition of which is controlled by state or federal forfeiture statutes or by state or federal law other than Articles 47.01a and 18.17 of the Code of Criminal Procedure;~~
- ~~(8) — Weapons bought or acquired by voluntary donation or gift, provided that reasonable efforts shall be made to ensure that the weapons do not constitute stolen property or evidence in any criminal proceeding; or~~
- ~~(9) — Property with a fair market value of less than \$500.00 that is not alleged to have been stolen or suspected to constitute evidence of a crime and that so lacks indicia of ownership or is in such a state of damage or disrepair or of such a nature that it does not reasonably appear to have any substantial value, so that any investigation to determine ownership would constitute an unwarranted expenditure of police department resources.~~

Sec. 34-173. Effort to identify and locate owner of property of undetermined ownership to be made; notice.

~~(a) — The police department shall conduct a diligent investigation to identify and locate all potential claimants who may have a colorable claim of ownership of any property of undetermined ownership, including any person from whom the property was seized or obtained.~~

~~(b) — The chief of police shall promulgate detailed guidelines setting forth in a comprehensive manner the steps to be taken in each investigation to identify potential claimants. The guidelines shall conform to the requirements of applicable judicial opinions. When the identity of the potential claimants has been determined, notice shall be given in writing by the police department as follows:~~

~~(1) — By personal delivery; or~~

~~(2) — By United States mail to the best available address for each potential claimant.~~

~~If the notice is given by mail, and if the property has a fair market value of \$100.00 or more, then it shall be given by certified mail, return receipt requested.~~

~~(c) — Information provided in the notice shall include the following:~~

~~(1) — That certain property is being held by the police department;~~

~~(2) — The location and address of where such property is being held or stored;~~

~~(3) — That a petition will be filed by the city requesting a hearing before a municipal judge to determine the right of possession or other appropriate disposition of the property;~~

~~(4) — That the potential claimant will be notified by the clerk of the municipal courts in writing of the time and place of the hearing and may appear in person and/or with the representation of an attorney at the hearing; and~~

~~(5) — If the property at issue is stolen property, that the potential claimant may, individually or through an attorney, initiate a hearing on the subject property by petitioning the municipal courts or any other court of competent jurisdiction under the procedures set forth in Article 47.01a of the Code of Criminal Procedure, subject to payment of any required court fees.~~

~~(d) — In any instance in which the potential claimants or their addresses cannot be fully identified through a thorough investigation or in which it is not possible to give actual notice as provided above or in which any letter mailed as provided above is returned for want of a valid address, then the notice shall also be published one time in the major newspaper of daily circulation in the city.~~

~~(e) — Notice shall also be effected by placing a description of the property on the disposition list. The police department shall cause the disposition list to be revised as necessary to reflect additions and deletions of property so that the disposition list, to the extent possible, shall provide an accurate inventory of covered property then currently in the custody of the department. The disposition list shall be open to inspection by any person at a location convenient to the public in the municipal courts building.~~

~~(f) — Upon the expiration of a period of not less than 90 days following the date the property came into the possession of the police department, and upon the completion of the notice procedures provided above, the chief of police or the chief's designee shall file a petition for a property hearing in the municipal courts identifying the property and all potential claimants. However, prior to requesting a hearing, the police chief shall cause the entire file relating to the investigation and notice procedures carried out under this article to be formally reviewed for conformity with this article.~~

Secs. 34-176174--34-199. Reserved.

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~~(f) — Upon the expiration of a period of not less than 90 days following the date the property came into the possession of the police department, and upon the completion of the notice procedures provided above, the chief of police or the chief's designee shall file a petition for a property hearing in the municipal courts identifying the property and all potential claimants. However, prior to requesting a hearing, the police chief shall cause the entire file relating to the investigation and notice procedures carried out under this article to be formally reviewed for conformity with this article.~~

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