

ORDINANCE NO. 064, 2016
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 23-130 OF THE CODE OF THE CITY OF FORT COLLINS AND
ADDING A DIVISION 4 TO ARTICLE IV IN CITY CODE CHAPTER 23 TO PROVIDE
NEW PROCEDURES FOR THE CITY'S DISPOSITION OF UNCLAIMED AND
ABANDONED INTANGIBLE PERSONAL PROPERTY

WHEREAS, the City and its various service areas, utilities, departments and divisions routinely acquire possession of personal property owned by others; and

WHEREAS, this property is both *tangible personal property* (i.e., bicycles, equipment and similar items having a physical existence) and *intangible personal property* (i.e., money owed, utility deposits and similar property having a value unrelated to any physical existence); and

WHEREAS, when both tangible and intangible personal property owned by others comes into the City's possession and remains unclaimed by the owner, the City is currently required to dispose of this property using the same procedures set out in City Code Section 23-130; and

WHEREAS, staff is recommending that Section 23-130 be updated to provide separate disposition procedures for tangible and intangible personal property because of the different natures of these two types of property and the differences in the ways that the City typically acquires possession of these properties; and

WHEREAS, this Ordinance sets forth the new procedures that will be followed for the City's disposition of unclaimed or abandoned intangible personal property; and

WHEREAS, without the current disposition procedures in Section 23-130 or the new procedures in this Ordinance, the City would be required to periodically deliver such unclaimed and abandoned intangible personal property to the Colorado State Treasurer for disposition in accordance with the Colorado Unclaimed Property Act in Article 13 of Title 38 of the Colorado Revised Statutes (the "Act"); and

WHEREAS, the City Council finds that the adoption of this Ordinance is in the City's best interest and will contribute to the fair and efficient administration of the City's disposition of intangible personal property coming into its possession that remains unclaimed or has been abandoned by the owner; and

WHEREAS, the City Council also hereby determines that it intends, in the exercise of the City's home rule authority and as authorized in C.R.S. Section 38-13-134, that the disposition procedures for unclaimed and abandoned intangible personal property set forth in this Ordinance shall supersede and replace in all respects any and all conflicting provisions in the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 23-130 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-130. - Disposition of lost, abandoned or other unclaimed property.

Except as otherwise specifically provided for by law, by Division 4 of this Article, or by other ordinance, any property seized or otherwise obtained by the City and not sold or destroyed as perishable, hazardous or illegal property and which property has not been claimed by or surrendered to the rightful owner may be disposed of in the following manner:

Section 3. That Chapter 23, Article IV is hereby amended by the addition of a new Division 4 which reads in its entirety as follows:

Division 4
Intangible Personal Property

Sec. 23-131 Applicability.

This Division shall only be applicable to property the City acquires in the ordinary course of the City's operations, excluding property seized or otherwise acquired by the City in connection with a criminal investigation conducted by City law enforcement officials that is being held in connection with the investigation or any resulting prosecution except as set forth in this Section. Once such criminal investigation property is no longer needed for the investigation or any resulting prosecution, if the property is not to be disposed of as required by a court order issued in the prosecution or as required by the abatement of public nuisance provisions in Part 3 of Article 13 of Title 16 of the Colorado Revised Statutes, and the property remains unclaimed by the owner, said property shall be deemed abandoned as provided in §23-133(a) and disposed of in accordance with the applicable provisions of this Division.

Sec. 23-132 Definitions.

The following words, terms and phrases when used in this Division shall have the meaning given to them in this Section, unless the context requires otherwise:

Financial Officer shall mean the City's Financial Officer or such person's designee.

Lost property shall mean property that has been lost or abandoned by the owner and found by another person and that person has delivered the property to the City for the owner to claim.

Last-known address shall mean the most recent address in the City's records sufficient for the delivery of mail to the owner.

Owner shall mean the person whose name appears in the City's records as the person entitled to property held, issued, or owing by the City or such other person that may be known to the Financial Officer as potentially entitled to ownership of such property.

Person shall mean an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

Potentially entitled to ownership of property shall mean having a claim to property as the depositor in the case of a deposit or a creditor, claimant, or payee in the case of other intangible property; the owner of lost property; the finder of lost property; or by having demonstrated any other legal or equitable interest in the property.

Property shall mean all moneys, checks, drafts, deposits, account credits, overpayments, unused advance payments, refunds, rebates, uncollected remittances, and any other intangible personal property.

Utilities shall mean the City's electric, water, wastewater, stormwater, and any other utilities established under the Charter or Code.

Sec. 23-133 Property presumed abandoned.

(a) Except as provided by paragraphs (b) and (d) of this Section, all property that is held, issued, or owing in the ordinary course of the City's operations and has remained unclaimed by the owner for more than one (1) year after it became owing, payable, or distributable, less any offsets authorized in §23-136, is presumed abandoned.

(b) Any unused utility deposit, unused advance payment paid to and held by the utilities for utility services to be furnished, and any other unused customer account credit owing by utilities that remains unclaimed by the owner for more than one (1) year after termination of the utility service to which the deposit, advance payment, or account credit pertains, less any offsets authorized in §23-136, is presumed abandoned.

(c) Property is owing, payable, or distributable for the purposes of this Division notwithstanding the owner's failure to make demand or to present to the City any instrument or document required to receive payment from the City.

(d) Lost property shall not be presumed abandoned, but shall be disposed of in accordance with the requirements of §23-138.

Sec. 23-134 Notice of abandoned property.

(a) When the Financial Officer determines that property is presumed abandoned under §23-133, the Financial Officer shall cause the following notices to be provided regarding that property:

(1) There shall be posted on the City's website and easily accessible for public inspection, an alphabetical list of the names of the owners of abandoned property with a general description of the abandoned property corresponding to each name and this posting for the property shall remain on the City's website until the property is disposed of pursuant to this Division; and

(2) There shall be sent by first-class mail to the last-known addresses of the owners a written notice advising them of the property the City holds that is presumed abandoned under this Division. However, a notice need not be mailed to an owner if the value of the property is less than one hundred and twenty five dollars (\$125). In addition, if the City has in its records an email address for the owner, the notice shall be emailed to that address regardless of the value of the property.

(b) The notices required in paragraph (a) of this Section shall include the following additional information:

(1) a statement that information concerning the property may be obtained by any person possessing an interest in the property by sending or making an inquiry to the Financial Officer at a stated mailing address, email address, and telephone number, each established by the Financial Officer for responding to such inquiries;

(2) a statement that any person claiming an interest in the property must timely file a proof of claim with the Financial Officer as required in §23-135 and a statement of the final date by which it will be considered timely filed under §23-135; and

(3) the proof of claim form required to be filed under §23-135, which form shall be printable and downloadable from the City's website.

Sec. 23-135 Filing proof of claim and Financial Officer's decision.

(a) A person claiming an interest as an owner of any property presumed abandoned under this Division shall file with the Financial Officer a completed proof of claim on a form prescribed by the Financial Officer. That form must be filed with the Financial Officer not more than one (1) year after the later of: (i) the date of the initial posting of the notice on the City's website, and (ii) the date of the mailing of the written notice, as both are required under §23-134. If helpful to identify the claimant as the owner of the abandoned proper or if needed for tax purposes, the Financial Officer may require the claimant to include on the proof of claim form his or her social security number or its

federal employer identification number, as applicable. The social security number or federal employer identification number shall be kept confidential by the City to the full extent permitted by law.

(b) The Financial Officer shall consider each claim and give written notice within ninety (90) days after the filing of the claim to the claimant if the claim is denied in whole or part or if the Financial Officer intends to seek a judicial determination as provide in paragraph (d) of this Section. The notice may be given by sending it by first-class mail to the mailing address and to the email address stated in the proof of claim by the claimant as the addresses to which such notice is to be sent. No notice of denial need be sent to claimant if the proof of claim fails to state mailing and email addresses to which such notice is to be sent to the claimant.

(c) If the claim is allowed by the Financial Officer, the City shall pay over or deliver to the claimant the property, but less any offsets authorized in §23-136. The Financial Officer may condition such delivery to the claimant by requiring the claimant to provide the City with such signed written releases and indemnification agreements as the Financial Officer determines are reasonably necessary to protect the City from future claims of other persons claiming ownership to the property.

(d) If the Financial Officer receives more than one conflicting claim to any property or if the Financial Officer determines, after consultation with the City Attorney, that it is in the City's best interest to seek a judicial determination concerning any claim, the City Attorney is authorized to seek that judicial determination by filing an action in either Larimer County District Court or in Municipal Court.

(e) A claimant aggrieved by a decision of the Financial Officer or whose claim has not been acted upon by the Financial Officer within ninety (90) days after the person's filing of a proof of claim under this Section, may bring an action in Larimer County District Court or in Municipal Court to establish the claim, naming the City as a defendant. The action must be brought within one hundred eighty (180) days after the Financial Officer's decision or within one (1) year after the person's filing of the proof of claim if the Financial Officer has failed to act on it.

Sec. 23-136 City offsets and interest.

The Financial Officer may offset from any monetary amount owed and paid to a claimant under §23-135 any fees, charges, taxes, fines, penalties, interest, costs, and any other amounts owed to the City by the claimant under any contract with the City, under this Code, or under any other law. The City shall have no obligation to pay to the owner and the owner shall have no right to receive any interest on any property paid or distributed to the owner pursuant to this Division.

Sec. 23-137 Forfeiture, use and sale of abandoned property.

(a) If a proof of claim for property presumed abandoned under §23-133, and for which the notices required by §23-134 have been provided, is not timely filed with the Financial Officer as required by §23-135(a), the property shall be deemed forfeited to the City and ownership and title to that property shall vest in the City. Such forfeiture and vesting of ownership and title shall occur as of the day immediately following the last day for the filing a proof of claim under §23-135(a). In such event, the City may retain the property for its own use or sale the property as provided in paragraphs (c) and (d) of this Section.

(b) When a proof of claim has been timely filed under §23-135 and the Financial Officer has either not timely issued a decision concerning the claim or issued a decision denying the claim in whole or part, the claimant's failure to file an action in Larimer County District Court or Municipal Court within the applicable time period required in §23-135(e) in order to establish that claim, the property shall be deemed forfeited to the City and ownership and title to that property shall vest in the City. Such forfeiture and vesting of ownership and title shall occur as of the day immediately following the claimant's last day for filing a judicial action to establish the claim not acted on or denied by the Financial Officer under §25-135(e). In such event, the City may retain the property for its own use or sale as provided in paragraphs (c) and (d) of this Section.

(c) If the forfeited property is money or is easily converted to cash, the City may retain and use these monies for the purposes authorized for the City fund within which these monies are deposited and accounted for or for any other purpose authorized by City Council, unless the forfeited property was being held by any of the utilities. The funds from utilities-held property shall be deposited in the account of the Utilities Payment Assistance Program established in §26-722 and used for the purposes authorized in that Section.

(d) If the forfeited property is not money or is not easily converted to cash, the Financial Officer shall sell the property to the highest bidder at a public sale or sell by using a regulated market or exchange, using the method that in the judgment of the Financial Officer is most favorable to the City. The Financial Officer may decline the highest bid and reoffer the property for sale if in the judgment of the Financial Officer the bid is insufficient. If in the judgment of the Financial Officer the probable cost of sale exceeds the value of the property, it need not be offered for sale. If the property is to be sold at a public sale rather than through a regulated market or exchange, that sale must be preceded by a single publication of notice, at least three (3) weeks before sale, in a newspaper of general circulation in the county where the property is to be sold. The proceeds from the sale of property under this paragraph (d) may be used by the City for any purpose authorized by City Council, unless the property sold was being held by any of the utilities. The proceeds from the sale of utilities-held property shall be deposited in the account of the Utilities Payment Assistance Program established in §26-722 and used for the purposes authorized in that Section.

(e) The purchaser of property at any sale conducted by the Financial Officer under this Section takes the property free of all claims of any and all owners of the property and of all persons claiming through or under them. The Financial Officer shall execute all documents necessary to complete the transfer of ownership of the property to the purchaser.

Sec. 23-138 Lost property.

(a) When lost property is delivered to the City, the Financial Officer shall cause to be posted on the City's website in a manner readily accessible by the public a written notice concerning the lost property. The notice shall generally describe the lost property and be posted on the City's website for a period of not less than ninety (90) days. Also posted with the notice shall be a printable and downloadable proof of claim form prescribed by the Financial Officer. The notice shall also state the date by which a proof of claim must be filed with Financial Officer as required in paragraph (b) of this Section.

(b) Any person claiming to be the owner of the lost property, including the person finding and delivering the lost property to the City, must file a completed proof of claim with the Financial Officer on or before the date stated in the notice posted under paragraph (a) of this Section. Within sixty (60) days after that date, the Financial Officer shall consider each proof of claim timely filed and take one of the following actions:

(1) If the Financial Officer determines that any of the claimants is the person who owned the lost property at the time it was found, the Financial Officer may deliver the lost property to that claimant;

(2) If the Financial Officer determines that none of the claimants is the person who owned the lost property at the time it was found, the Financial Officer may deliver the lost property to the claimant who found and delivered the lost property to the City; or

(3) If the Financial Officer determines, after consultation with the City Attorney, that it is in the City's best interest to seek a judicial determination concerning any claim or conflicting claims, the City Attorney is authorized to seek that judicial determination by filing an action either in Larimer County District Court or in Municipal Court.

(c) Before delivering the lost property to a claimant as provide in subparagraphs (1) and (2) of paragraph (b) of this Section, the Financial Officer may require the claimant to provide the City with such signed written releases and indemnification agreements as the Financial Officer may determine are reasonably necessary to protect the City from future claims of other persons claiming ownership to the lost property.

(d) In the event no proof of claim is timely filed with the Financial Officer in accordance with this Section, the lost property shall be deemed forfeited to the City and ownership and title to the lost property shall vest in the City. Such forfeiture and vesting

shall occur as of the day immediately following the last day for the filing of a proof of claim as provide in paragraph (b) of this Section. In such event, the City may retain the lost property for its own use as provided in paragraph (c) of §23-137 or sell the lost property as provided in paragraphs (d) and (e) of §23-137.

(e) Any person who finds lost property while performing his or her duties as a City employee shall not be considered as the finder of lost property under this Section and any legal rights to ownership of that lost property that might accrue to the City employee shall be deemed to be the City's ownership rights as the employee's employer.

Introduced, considered favorably on first reading, and ordered published this 17th day of May, A.D. 2016, and to be presented for final passage on the 7th day of June, A.D. 2016.



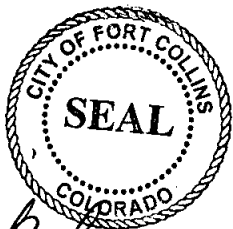
ATTEST:

W Winkelman

City Clerk

[Signature]
Mayor

Passed and adopted on final reading on this 7th day of June, A.D. 2016.



ATTEST:

W Winkelman

City Clerk

[Signature]
Mayor Pro Tem