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AUG 15 2013

ORDINANCE NO. 4478

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING SECTION 10-12; RELATING TO PROPERTY AND FIREARMS OBTAINED BY POLICE DEPARTMENT.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, that Section 10-12, Chapter 10 of the Chandler City Code is amended to read as follows:

10-12. - Property obtained by Police Department.

10-12.1. Personal property (other than firearms and contraband).

A. When the Police Department comes into possession of personal property including items seized as evidence during an investigation, other than firearms, and determines it is not necessary to maintain possession of such property, the Police Department shall dispose of the property in accordance with State law.

B. If property described in A or Subsection 10-12.2 is claimed by more than one (1) person, the Police Department shall send a request to the Municipal Court for a hearing to be conducted to determine ownership of the property. The Police Department shall mail copies of the request to each person who is claiming ownership.

C.The Police Department shall file a petition with the Municipal Court which shall set forth the following:

1. The facts establishing the status of property described in A.

2. The name and address of each person having an interest in the property.

3. An accurate description of the property, any identifying marks or serial numbers, the police identification number(s), and, if applicable, the location where seized, and the person from whom seized.

D. Service of the petition and notice of the hearing shall be made as follows:

1. The petition shall be served by first class mail, postage prepaid, return receipt requested, upon all persons known to have an interest in the property, each person described and named in the petition and from the person from whom the property was obtained if a seizure has been made.

2. A copy of this Subsection shall be served with each petition.

3. There shall be served with the petition and copy of this Subsection a notice of hearing setting forth the date, time and place for the hearing to determine the right of possession of the property, which hearing date shall not be sooner than twenty-five (25) nor more than sixty (60)

calendar days after the date of service of the petition and notice.

4. Service shall be made to the last known address of all persons included in Subsection A of Section 10.12.1.

5. Service shall be complete upon receipt by the respondent, if return receipt is returned to the City; if no receipt is made, service will be complete upon mailing.

6. Proof of service upon each potential respondent shall be delivered to the hearing officer.

E. Any person claiming any interest in the property shall be known as a Respondent.

F. HEARING PROCESS

1. A respondent shall have the right to appear at the hearing and to present any and all evidence in support of such person's claim to the property. The failure of any person to appear at such hearing or respond in writing by affidavit, shall constitute a waiver of any claim to the property by such person against the City, and shall authorize the court to enter a ruling consistent therewith.

2. All respondents are required to provide the court with an original and one (1) copy of all documentary evidence, and all correspondence and other documents exchanged with any insurance carrier or other person regarding reimbursement for the property.

3. The hearing shall be recorded electronically or by other means.

4. The hearing shall be open to the public.

5. The hearing shall be informal. The technical rules of evidence shall not apply; decisions shall be based upon the preponderance of the evidence. The Municipal Court shall allow testimony to be given orally or through sworn written affidavits.

6. The decision of the court shall be issued within ten (10) calendar days of the close of the record. The decision shall be in writing, and shall be mailed postage prepaid to each respondent.

7. The decision of the court shall be final upon issuance of the court's written decision.

8. Final decisions of the Municipal Court are subject to appeal to Superior Court pursuant to A.R.S. Title 12, Chapter 6, Article 6. When the time for appeal has expired, or if the decision of the Municipal Court is appealed when a final order is issued by the Superior Court, the Municipal Court shall notify the party awarded the property that they may obtain the property from the Police Department. The Municipal Court shall provide a copy of this notification to the Police Department.

G. Any respondent prevailing in a hearing or uncontested proceeding convened pursuant to this article shall be entitled to receive the property described in the petition subject to the following:

1. The respondent shall produce a copy of the decision in the respondent's favor, and appropriate identification to the property's custodian.

2. No property may be released pursuant to this section until the expiration of twenty (20) calendar days from the date of the court's decision.

3. Any property not claimed within fifty (50) days of the court's decision will be processed as unclaimed property in accordance with State law.

10-12.2. Firearms.

A. Legal firearms and other legal weapons in the possession of the Police Department by virtue of being evidence (when authorized to be released upon final disposition of the case), found property, stolen property, property under order of a court of competent jurisdiction and property held for safekeeping, shall be returned to the lawful owner as provided in Subsection 10-12.1 of this section, except as follows:

1. When return is prohibited by court order;

2. When the owner has criminal charges pending or under review by a prosecution agency, that involve a crime of violence, domestic violence or has an outstanding warrant for his arrest;

3. When the owner is a prohibited possessor pursuant to State or Federal law;

4. When the owner has been declared incompetent by a court with authority to make such determination, or:

5. When a Police Officer has facts that provide a reasonable belief that the owner would be a danger to himself or others if in possession of a firearm or other weapon and such facts are documented in a police department report.

B. Notwithstanding Sections (A)(1) through (A)(5), the Police Department may release the firearms to the owner upon receipt of documentation providing sufficient evidence that the reason for denial of return of the firearms is no longer applicable. If the Police Department determines that the documentation is insufficient to authorize release, the owner may seek return of the firearms by way of the petition process as listed in this Subsection.

C. When a firearm or other weapon is seized by the Police Department pursuant to an investigation of a felony, domestic violence or misconduct with weapons, the Police Department shall not release the firearm or other weapon to a third party who claims to have had ownership transferred to that third party by the owner since the seizure of the firearm or other weapon. Upon conclusion of the criminal matter, including any appeal, the owner may authorize a third party to take possession of the firearms, if:

1. The firearms were not ordered forfeited by the court.

2. The third party is not a prohibited possessor,

3. The third party does not reside with the owner of the firearms.

D. A person, other than the person from whom a firearm was seized, who claims ownership of the firearm, must present documentary proof of ownership to the Police Department Property and Evidence Section before the firearm will be released to that person.

E. Any person claiming any interest in the firearm as set forth in Subsection 10.12.2 shall be known as a Claimant.

F. If the Police Department declines to return a firearm to a person claiming ownership of such firearm, that person may file a petition for return of firearms with the Municipal Court setting forth the following:

1. Claimant's name and address.

2. Description of the firearm including manufacturer, model and serial number.

3. Date firearm was seized by the Chandler Police Department and the department report number, if known.

4. Date claimant became the owner of the firearm. Claimant must attach documentary evidence of his or her ownership.

5. A brief statement explaining why the claimant believes the firearm should legally be returned to him or her.

6. A statement that the claimant is not a prohibited possessor under State or Federal law and has no pending criminal charges or domestic violence actions in any state where the claimant is a defendant.

7. The petition must be verified.

G. The claimant shall serve a copy of the petition on the Police Department either by personal service or certified mail. The Police Department shall file a verified response to the petition within twenty (20) days of being served. The response shall be served by first class mail sent to the address listed in the claimant's petition.

H. The court shall review the pleadings filed by the parties. If the court finds enough evidence in the pleadings to make a decision, then the court shall issue a written decision on the matter. If the court requires more evidence, the court may set a time for a hearing and give the parties at least ten (10) days' notice of the hearing date, time and location.

I. Any hearing conducted pursuant to this ordinance shall be conducted as set forth in Subsection 10-12.1 of this section.

J. Any claimant filing a petition for return of firearms must do so within the following time limits:

1. Thirty (30) days from the time the owner is mailed notice a hearing is required. Notice shall be sent by first class mail to the owner's last known address; or,

2. If the claimant is charged with a crime arising out of the same incident in which the weapon was seized, the petition must be filed within thirty (30) days of the dismissal of the charges or acquittal, or within one (1) year after the completion of any sentence.

K. Firearms which are unclaimed or which cannot be returned to the owner shall be disposed of in accordance with State laws.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this _____ day of _____, 2013.

ATTEST:

_____ _____

CITY CLERK MAYOR

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this 15th day of August, 2013.

ATTEST:

_____ _____

CITY CLERK MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4478 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 15th day of August 2013, and that a quorum was present there at.

_____

CITY CLERK

APPROVED AS TO FORM:

_____

CITY ATTORNEY

PUBLISHED