

ORDINANCE NO. O2015.17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 26, ARTICLE III, TEMPE CITY CODE RELATING TO ABANDONED OR UNCLAIMED PROPERTY, BY AMENDING SECTION 26-51 RELATING TO DEFINITIONS; BY REPEALING SECTION 26-52, RELATING TO EXEMPTION AND BY ADDING A NEW SECTION 26-52, RELATING TO DISPOSAL OF PROPERTY; BY ADDING A NEW SECTION 26-53, RELATING TO NOTICE; DISPOSITION OF PROPERTY; BY REPEALING SECTION 26-53.1, RELATING TO DISPOSAL OF PROPERTY IN POLICE POSSESSION, NOTICE, PUBLICATION AND BY ADDING A NEW SECTION 26-53.1, RELATING TO DISPOSITION OF PROPERTY IF DISPUTED ; AND BY ADDING A NEW SECTION 26-53.2, RELATING TO FIREARMS; PETITION FOR RETURN .

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

**Section 1.** That Chapter 26, Article III, Section 26-51 of the Tempe City Code is hereby amended to read as follows:

**Sec. 26-51. Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

~~*Abandoned property* means that property to which the owner has relinquished all right, title, claim and possession, with intention of not reclaiming it or resuming its ownership, possession or enjoyment.~~

~~— *Beer* means any beverage obtained by alcoholic fermentation, infusion or decoction of barley, malt, hops or other ingredients or any combination of them.~~

*CONTRABAND* MEANS ANY PROPERTY, ITEM, OR SUBSTANCE WHICH IS UNLAWFUL TO PRODUCE OR POSSESS UNDER FEDERAL, STATE, OR LOCAL LAW INCLUDING ILLEGAL DRUGS AND PARAPHERNALIA.

*DISPOSE* MEANS THE TRANSFER OF PROPERTY BY ITS RETURN TO THE OWNER, SALE, CONVERSION OR DESTRUCTION OR BY ANY OTHER MEANS OF DISPOSAL.

*EVIDENCE* MEANS PROPERTY THAT IS HELD FOR POSSIBLE PRESENTATION IN A JUDICIAL OR ADMINISTRATIVE PROCEEDING TO ESTABLISH THE TRUTH OR FALSITY OF AN ALLEGED MATTER OF FACT.

*FIREARM* MEANS ANY LOADED OR UNLOADED HANDGUN, PISTOL, REVOLVER, RIFLE, SHOTGUN OR OTHER WEAPON THAT WILL, OR IS DESIGNED TO, OR MAY READILY BE CONVERTED TO EXPEL A PROJECTILE BY THE ACTION OF EXPANDING GASES, EXCEPT THAT IT DOES NOT INCLUDE A FIREARM IN PERMANENTLY INOPERABLE CONDITION.

*FOUND PROPERTY* MEANS RECOVERED, LOST OR ABANDONED PROPERTY THAT IS TURNED OVER TO THE CITY OR ANY DEPARTMENT THEREOF WHERE THE OWNER MAY OR MAY NOT BE KNOWN AND THAT IS NOT CLASSIFIED AS EVIDENCE.

*HAZARDOUS MATERIAL* MEANS ANY MATERIAL THAT, BECAUSE OF ITS QUANTITY, CONCENTRATION, OR PHYSICAL AND CHEMICAL CHARACTERISTICS, MAY POSE A PRESENT OR POTENTIAL HAZARD TO HUMAN HEALTH AND SAFETY OR TO THE ENVIRONMENT IF RELEASED INTO THE WORKPLACE OR ENVIRONMENT, OR THE PRESENCE OF WHICH REQUIRES INVESTIGATION, DISPOSAL, REMOVAL AND/OR REMEDIATION UNDER ANY FEDERAL, STATE OR LOCAL LAW, REGULATION, ORDER OR POLICY.

*NOTICE* MEANS ANY ATTEMPT TO CONTACT OR MAKE AWARE THE OWNER AS TO THE PROCEEDINGS.

*Owner* means the person ~~in whom is vested the ownership, dominion, care, control, management or title of property~~ LAWFULLY VESTED WITH, POSSESSION, DOMINION, CARE, CONTROL, MANAGEMENT OR TITLE OF PROPERTY.

~~*Personal property* means property of every kind, except real property.~~

*PROPERTY* MEANS ANY ITEM, INCLUDING BICYCLES OR CURRENCY, THAT IS HELD FOR SAFEKEEPING OR AS EVIDENCE OR FOUND PROPERTY OR THAT HAS BEEN ABANDONED, UNCLAIMED OR AWARDED BY THE COURT, EXCLUDING REAL AND INTANGIBLE PROPERTY.

*PROPERTY VALUE* MEANS THE FAIR MARKET VALUE OF THE PROPERTY IN ITS PRESENT CONDITION.

*SAFEKEEPING* MEANS STORAGE OF PROPERTY BY THE CITY THAT IS NOT CLASSIFIED AS EVIDENCE AND THAT BELONGS TO A KNOWN INDIVIDUAL.

~~*Spirituous liquor* means alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor, malt beverage, absinthe or compound or mixture of any of them, or of any of them with any vegetable or other substance, alcohol, bitters, bitters containing alcohol and any liquid mixture or preparation, whether patented or otherwise, and beverage containing more than one half of one percent (0.5%) of alcohol by volume.~~

~~*Stolen property* means that property to which the owner has been unlawfully deprived of possession of such property and which has been taken into police custody pursuant to a commission of any crime as defined by the laws of the state and the city. *STOLEN PROPERTY* MEANS THAT PROPERTY TO WHICH THE OWNER HAS BEEN UNLAWFULLY DEPRIVED OF POSSESSION, AND WHICH HAS BEEN TAKEN INTO POLICE CUSTODY PURSUANT TO A COMMISSION OF ANY CRIME AS DEFINED BY FEDERAL, STATE OR LOCAL LAW.~~

*TRAILER* MEANS AN UNPOWERED VEHICLE WITH TWO (2) OR MORE AXLES TOWED BY A VEHICLE.

*VEHICLE* MEANS A DEVICE IN, UPON OR BY WHICH ANY PERSON OR PROPERTY IS, MAY BE OR COULD HAVE BEEN TRANSPORTED OR DRAWN UPON A HIGHWAY, WATERWAY OR AIRWAY, EXCEPTING DEVICES MOVED BY HUMAN POWER OR USED EXCLUSIVELY UPON STATIONARY RAILS OR TRACKS. (A.R.S § 13-105(41))

~~*Wine* means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than twenty four percent (24%) of alcohol by volume.~~

**Section 2.** That Chapter 26, Article III, Section 26-52 of the Tempe City Code is hereby repealed, and a new Section 26-52 is added as follows:

**Sec. 26-52. ~~Exemption.~~ DISPOSAL OF PROPERTY.**

~~This article is not applicable to bicycles.~~ ALL PROPERTY COMING INTO THE POSSESSION OF THE POLICE DEPARTMENT SHALL BE DISPOSED OF AS FOLLOWS AND IN ACCORDANCE WITH THE CITY CODE, RULES AND REGULATIONS, UNLESS OTHERWISE PROVIDED IN THIS ARTICLE:

(A) CONTRABAND AND HAZARDOUS MATERIALS. CONTRABAND AND HAZARDOUS MATERIALS SHALL NOT BE RETURNED TO ANY PERSON, AND INSTEAD SHALL BE:

- (1) DESTROYED BY OR RETAINED AND UTILIZED BY THE POLICE DEPARTMENT FOR LAW ENFORCEMENT PURPOSES; OR
- (2) DESTROYED BY OR RETAINED AND UTILIZED BY FEDERAL, STATE AND LOCAL LAW, ORDER OR POLICY.

(B) EVIDENCE. PROPERTY NOT OTHERWISE LISTED IN THIS ARTICLE SEIZED FOR, OR USED AS, EVIDENCE IN ANY CRIMINAL PROCEEDING SHALL BE DISPOSED OF PURSUANT TO ARIZONA RULES OF CRIMINAL PROCEDURE, RULE 28.2. ANY PROPERTY THAT CANNOT BE RETURNED TO A LEGAL OWNER PURSUANT TO ARIZONA RULES OF CRIMINAL PROCEDURE § 28.2 SHALL BE DISPOSED OF AS PROVIDED IN THIS ARTICLE.

(C) FIREARMS. FIREARMS SHALL BE:

- (1) SOLD TO ANY BUSINESS THAT IS AUTHORIZED TO RECEIVE AND DISPOSE OF THE FIREARM UNDER FEDERAL AND STATE LAW AND THAT SHALL SELL THE FIREARM TO THE PUBLIC ACCORDING TO FEDERAL AND STATE LAW, UNLESS THE FIREARM IS OTHERWISE PROHIBITED FROM BEING SOLD UNDER FEDERAL OR STATE LAW; OR
- (2) TRADED TO A FEDERAL FIREARMS LICENSED BUSINESS FOR AMMUNITION, WEAPONS, EQUIPMENT OR OTHER MATERIALS TO BE EXCLUSIVELY USED FOR LAW ENFORCEMENT PURPOSES.

(D) FORFEITED PROPERTY. PROPERTY SEIZED FOR FORFEITURE SHALL BE DISPOSED OF AS PROVIDED IN ARIZONA REVISED STATUTES TITLE 13, CHAPTER 39.

(E) FOUND PROPERTY. FOUND PROPERTY MAY BE RETURNED TO THE PERSON WHO FOUND THE PROPERTY IF ALL OF THE FOLLOWING APPLY:

- (1) THE PROPERTY IS NOT CONTRABAND.
- (2) IT HAS REMAINED UNCLAIMED FOR THIRTY (30) DAYS AFTER REASONABLE EFFORTS HAVE BEEN MADE TO LOCATE AND NOTIFY THE OWNER.
- (3) THE PERSON WHO FOUND THE PROPERTY IS NOT A PUBLIC EMPLOYEE OF A FEDERAL, STATE OR LOCAL GOVERNMENT AND THE PROPERTY WAS NOT FOUND DURING THE COURSE OF THE DUTIES OF OFFICE OR EMPLOYMENT.

(F) PERISHABLE PROPERTY. PERISHABLE ITEMS NOT OTHERWISE DISPOSED OF AS PROVIDED HEREIN, OR RECLAIMED BY THE OWNER, MAY BE DESTROYED WITHIN 24 HOURS OF ITS ACQUISITION BY THE POLICE DEPARTMENT.

(G) SAFEKEEPING. PROPERTY WHICH IS HELD FOR SAFEKEEPING BY THE POLICE DEPARTMENT, OR ENTRUSTED TO THE POLICE DEPARTMENT FOR SAFEKEEPING, SHALL BE DISPOSED OF AFTER THE DEPARTMENT PROVIDES NOTICE TO THE PERSON ENTRUSTING THE PROPERTY OR THE PROPERTY OWNER. THE NOTICE SHALL ADVISE THE OWNER TO CLAIM THE PROPERTY NO LATER

THAN THIRTY (30) DAYS FOLLOWING THE DATE OF THE NOTICE OR ELSE THE PROPERTY WILL BE DISPOSED OF BY THE DEPARTMENT AS PROVIDED IN THIS ARTICLE.

**Section 3.** That Chapter 26, Article III, Section 26-53 of the Tempe City Code is hereby added to read as follows:

**Sec. 26-53. Repealed. NOTICE; DISPOSITION OF PROPERTY.**

(A) OWNER KNOWN. IF THE PROPERTY IS AVAILABLE FOR RELEASE, AND THE OWNER OF THE PROPERTY IS KNOWN, THE POLICE DEPARTMENT SHALL MAKE A REASONABLE ATTEMPT TO PROVIDE NOTICE TO THE OWNER. THE NOTICE SHALL ADVISE THE OWNER THAT THEY MUST CLAIM THE PROPERTY (PROVIDING PROOF OF OWNERSHIP) AND TAKE AWAY THE PROPERTY NO LATER THAN THIRTY (30) DAYS FOLLOWING THE DATE ON THE NOTICE. FAILURE TO COMPLY WITH ALL OF THE ABOVE WILL RESULT IN DISPOSAL OF PROPERTY BY THE POLICE DEPARTMENT AS PROVIDED IN THIS ARTICLE.

(B) SERVICE OF NOTICE. SERVICE OF NOTICE TO KNOWN OWNER.

(1) SERVICE OF NOTICE MAY BE ACCOMPLISHED BY ANY OF THE FOLLOWING METHODS:

(A) FIRST CLASS MAIL, POSTAGE PREPAID, TO THE LAST KNOWN ADDRESS PROVIDED BY THE OWNER TO THE POLICE DEPARTMENT. SERVICE OF NOTICE BY MAIL SHALL BE CONSIDERED COMPLETE UPON MAILING; OR

(B) POSTING THE NOTICE ON THE POLICE DEPARTMENT PROPERTY DISPOSITION WEBPAGE, OR ITS EQUIVALENT, NOT LESS THAN THIRTY (30) DAYS PRIOR TO DISPOSITION BY THE CITY. IF THE OWNER FAILS TO CLAIM (PROVIDING PROOF OF OWNERSHIP) AND TAKE AWAY THE PROPERTY WITHIN THIRTY (30) DAYS OF INITIAL POSTING OF THE NOTICE, THE CITY MAY DISPOSE OF THE PROPERTY AS IT DEEMS APPROPRIATE AND IN COMPLIANCE WITH SUBSECTION (D) OF THIS SECTION.

(C) UNKNOWN OWNER. IF THE OWNER OF THE PROPERTY IS NOT KNOWN, THE PROPERTY MAY BE DISPOSED OF AS FOLLOWS:

(1) IF THE ESTIMATED PROPERTY VALUE OF THE ITEM IS \$150 OR LESS, IT MAY BE DISPOSED OF BY THE CITY AS IT DEEMS APPROPRIATE AND IN COMPLIANCE WITH SUBSECTION (D) OF THIS SECTION.

(2) IF THE ESTIMATED PROPERTY VALUE OF THE ITEM EXCEEDS \$150, NOTICE CONTAINING A DESCRIPTION OF THE PROPERTY SHALL BE POSTED ON THE POLICE DEPARTMENT PROPERTY DISPOSITION

WEBPAGE, OR ITS EQUIVALENT, NOT LESS THAN THIRTY (30) DAYS PRIOR TO DISPOSITION BY THE CITY. IF THE OWNER FAILS TO CLAIM (BY PROVIDING PROOF OF OWNERSHIP) AND TAKE AWAY THE PROPERTY WITHIN THIRTY (30) DAYS FROM THE DATE OF POSTING, THE CITY MAY DISPOSE OF THE PROPERTY AS IT DEEMS APPROPRIATE AND IN COMPLIANCE WITH SUBSECTION (D) OF THIS SECTION.

(D) DISPOSITION OF PROPERTY. UNLESS OTHERWISE PROVIDED IN THIS ARTICLE AND IN COMPLIANCE WITH SUBSECTIONS (A), (B) AND (C) OF THIS SECTION, IF APPLICABLE, THE CITY MAY DISPOSE OF THE PROPERTY AS PROVIDED BELOW WITHOUT FURTHER NOTICE OR COURT ORDER. ALL PROPERTY DISPOSITIONS SHALL BE CONSISTENT WITH THE NATURE AND TYPE OF ITEM TO BE DISPOSED.

- (1) RETURNED TO THE OWNER, AS PROVIDED BY THIS ARTICLE;
- (2) DESTROYED, IF AUTHORIZED BY THIS ARTICLE;
- (3) RETAINED AND UTILIZED BY THE POLICE DEPARTMENT OR OTHER CITY DEPARTMENT, TO THE EXTENT ALLOWED BY LAW;
- (4) SOLD, LOANED OR TRANSFERRED TO ANY LOCAL, STATE, FEDERAL OR OTHER GOVERNMENTAL ENTITY, NONPROFIT OR CHARITABLE ORGANIZATION, TO THE EXTENT ALLOWED BY LAW. EXPENSES FOR KEEPING AND TRANSFERRING SUCH PROPERTY ARE TO BE PAID BY THE RECIPIENT;
- (5) DONATED TO A MUSEUM, EDUCATIONAL INSTITUTION OR OTHER SIMILAR ENTITY FOR DISPLAY OR EDUCATIONAL PURPOSES, TO THE EXTENT ALLOWED BY LAW. EXPENSES FOR KEEPING AND TRANSFERRING SUCH PROPERTY ARE TO BE PAID BY THE RECIPIENT; OR
- (6) DONATED TO A NON-PROFIT, CHARITABLE ORGANIZATION, AS APPROVED BY THE CHIEF OF POLICE.
- (7) TREATED AS SURPLUS AND DISPOSED OF IN ACCORDANCE WITH THIS ARTICLE AND THE CITY'S PROCUREMENT CODE.

**Section 4.** That Chapter 26, Article III, Section 26-53.1 of the Tempe City Code is hereby repealed, and a new Section 26-53.1 is added as follows:

**Sec. 26-53.1. ~~Disposal of property in police possession, notice, publication.~~ DISPOSITION OF PROPERTY IF OWNERSHIP IS DISPUTED.**

(a) ~~Money or property coming into the hands of the police department as abandoned, stolen, found, seized, contraband, safekeeping or as evidence, shall be disposed of as follows: IF THERE IS A DISPUTE REGARDING THE OWNERSHIP OR RELEASE OF PROPERTY, THE CITY OR CLAIMANT/RESPONDENT SHALL FILE A REQUEST WITH THE MUNICIPAL COURT FOR A HEARING TO BE CONDUCTED TO DETERMINE OWNERSHIP OR APPROPRIATE RELEASE OF THE PROPERTY AS PROVIDED IN THIS SECTION.~~

~~(1) Property used as evidence in any criminal proceeding shall be disposed of as provided in the State Rules of Criminal Procedure, Rule 28.2; items which cannot be returned to a legal owner shall be disposed of as provided in paragraph (10) below;~~

~~(2) Property seized as a forfeiture shall be disposed of as forfeitures under A.R.S. §13-4301 et seq.;~~

~~(3) Illegal drugs not used for evidence or as forfeitures shall be disposed of as provided in A.R.S. § 13-3413;~~

~~(4) Confiscated spirituous liquors not used as evidence shall be destroyed unless otherwise provided herein;~~

~~(5) Stolen property not used as evidence or falling under another provision herein shall be disposed of as property held for safekeeping under paragraph (9) thereof;~~

~~(6) Contraband not otherwise disposed of as provided herein shall be destroyed;~~

~~(7) Explosives and hazardous materials shall be destroyed, disposed of or retained for use by the police department unless otherwise provided for in this section;~~

~~(8) Perishable items not otherwise disposed of as provided herein or reclaimed by the owner may be destroyed after twenty four (24) hours of its acquisition by the department;~~

~~(9) Property which is being held for safekeeping by the police, or entrusted to the police for safekeeping, shall be disposed of after the department provides notice to the person entrusting the property or the owner. The notice shall be sent to such person within thirty (30) days after the entrustment notifying that person to claim the property no later than thirty (30) days following the date of the notice, or else the property will be disposed of by the department as provided in paragraph (10); or~~

~~(10) Property whose disposition is not otherwise provided for in this section shall be disposed of pursuant to state law;~~

~~(b) If there is a dispute as to the ownership of money or property coming into the possession of the police department, the department shall request an administrative hearing to determine who has the greater right to the possession of the property. All parties claiming an ownership interest in the property shall be given notice of the hearing and an opportunity to be heard. The hearing officer shall establish rules of administration and procedure to ensure the fair and orderly conduct of hearings held pursuant to this section. ALL PARTIES KNOWN TO BE CLAIMING AN OWNERSHIP INTEREST IN THE PROPERTY SHALL BE GIVEN NOTICE BY THE COURT OF THE HEARING DATE BY FIRST CLASS MAIL POSTAGE PREPAID. SERVICE SHALL BE CONSIDERED COMPLETE UPON MAILING TO THE ADDRESS PROVIDED BY THE CLAIMANTS OR THE LAST KNOWN ADDRESS ON FILE WITH THE POLICE DEPARTMENT.~~

~~(c) Money or property coming into the hands of the police department as abandoned, stolen, found, seized, contraband, safekeeping or as evidence, shall pursuant to statute, require the city to post a notice containing a description of the property before the final disposition of the property. THE PERSON OR ENTITY FILING THE INTERPLEADER SHALL BE KNOWN AS THE PETITIONER AND ANY PERSON CLAIMING AN INTEREST IN THE PROPERTY SHALL BE KNOWN AS A RESPONDENT.~~

(D) ALL RESPONDENTS ARE REQUIRED TO BRING OR FILE WITH THE COURT AN ORIGINAL AND ONE COPY OF ALL DOCUMENTARY EVIDENCE, AND ALL CORRESPONDENCE AND OTHER DOCUMENTS EXCHANGED WITH ANY INSURANCE CARRIER OR OTHER PERSON REGARDING REIMBURSEMENT FOR THE PROPERTY.

(E) BOTH THE PETITIONER AND RESPONDENT SHALL HAVE THE RIGHT TO APPEAR AT THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THEIR CLAIM TO THE PROPERTY OR BASIS TO DECLINE RELEASE.

(F) THE FAILURE OF A RESPONDENT TO APPEAR AT THE HEARING SHALL CONSTITUTE A WAIVER OF ANY AND ALL CLAIMS TO THE PROPERTY BY SUCH PERSON AGAINST THE CITY, AND SHALL CAUSE AND AUTHORIZE THE COURT TO ENTER A RULING CONSISTENT THEREWITH.

(G) THE HEARING SHALL BE INFORMAL. THE RULES OF EVIDENCE SHALL NOT APPLY TO THE HEARING AND DECISIONS SHALL BE BASED UPON THE PREPONDERANCE OF THE EVIDENCE. THE MUNICIPAL COURT MAY ALLOW TESTIMONY TO BE GIVEN ORALLY OR THROUGH SWORN WRITTEN AFFIDAVITS.

(H) THE COURT'S DECISION SHALL BE ISSUED WITHIN 10 CALENDAR DAYS OF THE CLOSE OF THE RECORD. THE DECISION SHALL BE IN WRITING, AND SHALL BE MAILED FIRST CLASS MAIL, POSTAGE PREPAID, TO EACH RESPONDENT OR CLAIMANT APPEARING. THE DECISION OF THE COURT SHALL BE FINAL UPON ISSUANCE.

(I) PRIOR TO RECEIVING POSSESSION OF THE SUBJECT PROPERTY, THE PREVAILING CLAIMANT SHALL BE REQUIRED TO PROVIDE A COPY OF THE DECISION AND APPROPRIATE IDENTIFICATION TO THE POLICE DEPARTMENT CASE AGENT. THE CASE AGENT SHALL NOTIFY THE PROPERTY OWNER OF DISPOSITION.

(J) ANY PROPERTY NOT CLAIMED BY THE PREVAILING PARTY WITHIN 30 DAYS FROM THE DATE THE COURT ISSUED ITS DECISION SHALL BECOME THE PROPERTY OF THE CITY, WITHOUT THE NECESSITY OF FURTHER NOTICE OR COURT PROCEEDINGS.

**Section 5.** That Chapter 26, Article III, Section 26-53.2 of the Tempe City Code is hereby added to read as follows:

**Sec. 26-53.2. Repealed. WEAPONS; PETITION FOR RETURN.**

(A) FIREARMS WILL BE RETURNED TO THE OWNER AS PROVIDED BY A.R.S. § 13-3601 AND THIS ARTICLE, EXCEPT AS FOLLOWS:

- (1) WHEN THE FIREARM IS ILLEGAL, AS PROVIDED BY FEDERAL OR STATE LAW;
- (2) WHEN THE RETURN OF THE FIREARM IS PROHIBITED, OR THE FIREARM IS FORFEITED BY FEDERAL OR STATE LAW OR COURT ORDER;
- (3) WHEN THE OWNER HAS KNOWN CRIMINAL CHARGES PENDING WHICH INVOLVE A FELONY, DOMESTIC VIOLENCE, OR MISCONDUCT INVOLVING WEAPONS IN ANY JURISDICTION;
- (4) WHEN THE WEAPON MUST BE RETAINED FOR EVIDENTIARY PURPOSES, REGARDLESS OF THE NATURE OF THE PROCEEDING;
- (5) WHEN THE OWNER IS A PROHIBITED POSSESSOR PURSUANT TO LAW;
- (6) WHEN RELEASE OF THE FIREARM TO THE OWNER IS OTHERWISE PRECLUDED BY THIS ARTICLE, STATE OR FEDERAL LAW 18 U.S.C. § 922; OR

(7) WHEN THE TEMPE PROPERTY AND EVIDENCE SUPERVISOR HAS REASONABLE SUSPICION AS TO THE APPROPRIATENESS OF THE RETURN. IN SUCH CASES, THE TEMPE PROPERTY SUPERVISOR SHALL CONTACT THE CRIMINAL INVESTIGATIONS COMMANDER. IF THE COMMANDER HAS REASONABLE SUSPICION AS TO THE APPROPRIATENESS OF THE RETURN, THE CITY SHALL IN NO LESS THAN FIVE (5) WORKING DAYS FROM THE DENIAL OF THE REQUEST FOR RELEASE FILE A PETITION WITH THE COURT AS PROVIDED IN SECTION 26-53.1 ABOVE.

(B) WHEN A WEAPON IS SEIZED BY THE POLICE DEPARTMENT PURSUANT TO AN INVESTIGATION OF A FELONY, DOMESTIC VIOLENCE OR MISCONDUCT INVOLVING WEAPONS, THE POLICE DEPARTMENT SHALL NOT RELEASE THE WEAPON TO A THIRD PARTY WHO CLAIMS TO HAVE HAD OWNERSHIP OF THE WEAPON TRANSFERRED TO THAT THIRD PARTY BY THE OWNER SINCE THE SEIZURE OF THE WEAPON.

(C) A PERSON, OTHER THAN THE PERSON FROM WHOM A WEAPON WAS SEIZED, WHO CLAIMS OWNERSHIP OF THE WEAPON MUST PRESENT DOCUMENTARY PROOF OF OWNERSHIP TO THE POLICE DEPARTMENT BEFORE THE WEAPON WILL BE RELEASED TO THAT PERSON.

(D) WHEN THE POLICE DEPARTMENT DECLINES TO RETURN A WEAPON TO ANY PERSON FOR ANY REASON IDENTIFIED IN SECTION 26-53.2 (A), THE CITY OR CLAIMANT REQUESTING THE RETURN OF THE PROPERTY MAY FILE A PETITION WITH THE CITY MUNICIPAL COURT AND REQUEST THAT A HEARING BE CONDUCTED TO DETERMINE OWNERSHIP OR APPROPRIATE RELEASE OF THE PROPERTY, SETTING FORTH ALL OF THE FOLLOWING:

- (1) CLAIMANT'S NAME AND ADDRESS;
- (2) DESCRIPTION OF THE WEAPON, INCLUDING MANUFACTURER, MODEL AND SERIAL NUMBER;
- (3) DATE THE WEAPON WAS SEIZED BY THE POLICE DEPARTMENT AND THE DEPARTMENT REPORT NUMBER, IF KNOWN;
- (4) DATE CLAIMANT BECAME THE OWNER OF THE WEAPON. CLAIMANT MUST ATTACH DOCUMENTARY EVIDENCE OF THEIR OWNERSHIP;
- (5) A BRIEF STATEMENT EXPLAINING WHY THE CLAIMANT BELIEVES THE WEAPON SHOULD LEGALLY BE RETURNED TO THEM; AND
- (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.

(E) ALL PARTIES SHALL BE GIVEN NOTICE BY THE COURT OF THE HEARING DATE BY FIRST CLASS MAIL POSTAGE PREPAID. SERVICE TO CLAIMANTS SHALL BE CONSIDERED COMPLETE UPON MAILING TO THE ADDRESS PROVIDED BY THE CLAIMANT IN THE PETITION.

(F) THE HEARING AND RELATED PROCEDURES SHALL BE CONDUCTED BY THE CITY MUNICIPAL COURT AS PROVIDED IN SECTION 26-53.1.

(G) PRIOR TO RECEIVING POSSESSION OF THE SUBJECT PROPERTY, THE PREVAILING CLAIMANT SHALL BE REQUIRED TO PROVIDE A COPY OF THE DECISION AND APPROPRIATE IDENTIFICATION TO THE POLICE DEPARTMENT.

(H) ANY PROPERTY NOT CLAIMED BY THE PREVAILING PARTY WITHIN 30 DAYS FROM THE DATE THE COURT ISSUED ITS DECISION SHALL BECOME THE PROPERTY OF THE CITY, WITHOUT THE NECESSITY OF ADDITIONAL NOTICE OR FURTHER COURT PROCEEDINGS.

(I) FIREARMS WILL BE RETURNED TO THE PREVAILING CLAIMANT ONLY AFTER FIRST BEING RENDERED SAFE BY THE POLICE DEPARTMENT. IF AMMUNITION IS TO BE RETURNED, THE POLICE DEPARTMENT RESERVES THE OPTION OF RETURNING THE AMMUNITION ON A DAY DIFFERENT FROM WHICH THE FIREARM IS RETURNED.

**Section 6.** Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption or at any later date specified therein.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Mark W. Mitchell, Mayor

ATTEST:

\_\_\_\_\_  
Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

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Judith R. Baumann, City Attorney