

CHAPTER 22A

Property; Lost, Stolen or Abandoned

Sec. 22A-1	Definitions
Sec. 22A-2	Custodian of property
Sec. 22A-3	Property held as evidence
Sec. 22A-4	Disposition generally
Sec. 22A-5	Notification of owner
Sec. 22A-6	Disposal of unclaimed property
Sec. 22A-7	Reclaiming property
Sec. 22A-8	Failure to claim property
Sec. 22A-9	Proceeds from sale
Sec. 22A-10	Exceptions
Sec. 22A-11	Firearms
Sec. 22A-12	Destruction of certain property
Sec. 22A-13	Specific exceptions
Sec. 22A-14	Conduct of sale
Sec. 22A-15	Rights of finder
Sec. 22A-16	Intangible property defined
Sec. 22A-17	Unclaimed intangible property presumed abandoned, custodian
Sec. 22A-18	Notice and publication
Sec. 22A-19	Notice mailed
Sec. 22A-20	Filing proof of claim
Sec. 22A-21	Separate fund not required
Sec. 22A-22	Disposition of City-owned real property

Sec. 22A-1. Definitions.

As used in this Chapter, the following terms shall have the meanings herein set forth:

Custodian means the Chief of Police or his or her successor in office, or his or her designee and his or her successor in office. (Ord. 547, §1)

Sec. 22A-2. Custodian of property.

Except as is provided in Section 22A-17 with respect to the custody of unclaimed intangible property, as intangible property is defined in Section 22A-16, the Chief of Police is designated as the official custodian of each and every article or object of personal property lost, stolen, confiscated or abandoned, which property is not in the lawful custody of any other person or court, and which property has been acquired by or delivered to the Chief of Police or one (1) of his or her subordinates for care, custody and control. (Ord. 766, §1)

Sec. 22A-3. Property held as evidence.

The custodian shall keep in his or her custody all articles of personal property seized or held as evidence, which property has been delivered to the custodian or one (1) of his or her subordinates, for care, custody and control, for use in any pending or prospective trial, until the final disposition of any prospective or pending charges, including appeals or the lapse of time for filing an appeal. Thereafter, unless ordered to the contrary by the City Council or a court having jurisdiction, the custodian or his or her designee shall make disposition of such property in accordance with the provisions of this Chapter. (Ord. 547, §1)

Sec. 22A-4. Disposition generally.

All lost, stolen, confiscated or abandoned property, which property has been delivered to the custodian for care, custody and control, not being held pending the disposition of charges or civil litigation pursuant to Section 22A-3, shall be subject to disposition according to the provisions of Sections 22A-4 to 22A-8 unless otherwise provided in this Chapter or ordered to the contrary by the City Council or by any court. (Ord. 547, §1)

Sec. 22A-5. Notification of owner.

The custodian shall examine any such property, and if the identity of the owner is readily available to the custodian from public records known to and used by him or her, the custodian shall notify the apparent owner by telephone or if unable to contact by telephone, by United States first class mail, postage prepaid, to the last known address of such apparent owner, mailed within a reasonable time after identification of the apparent owner, describing the property and stating that the same is held by the custodian and may be sold or otherwise disposed of unless claimed within thirty (30) days of the giving or mailing of such notice. (Ord. 547, §1)

Sec. 22A-6. Disposal of unclaimed property.

If any such property remains unclaimed sixty (60) days after the same is no longer required to be held in evidence, pursuant to Section 22A-3 or sixty (60) days after the mailing of any letter of notice

provided for in Section 22A-5, whichever is the longer time, such property may be retained by the custodian and kept for use by the City for training programs or otherwise disposed of from time to time by the custodian or his or her designee as hereinafter set forth:

(1) Bicycles, tricycles or other articles made for use by children may be sold as hereinafter provided or may, as an alternative, be given either directly or by making the same available for distribution through religious, charitable, civic or other organizations or institutions; provided, however, that at least ten (10) days prior to any such disposition, one (1) public notice of intention to dispose of any such articles shall be published in a newspaper of general circulation in the City, together with a description thereof, and including a statement that the rightful owner may claim any such article within the period between the date of the publication and the time of actual donation, upon satisfactory proof of identity and ownership.

(2) Any such property may be sold at public sale; provided that the custodian shall cause to be published once in a newspaper of general circulation in the City not less than ten (10) days before such sale, a notice setting forth a description of each article to be sold, the time, date and place of sale and a statement that any person who claims to be the owner of or claims any interest in any article so described may appear at the Police Department before the time and date set for the commencement of the public sale to reclaim the same upon presentation of satisfactory proof of identity and ownership of such article.

(3) Such property which consists of jewelry, gems, watches, precious metals or other property having a unique value, including firearms or which in the judgment of the custodian may bring a higher price if sold on sealed bids, may, at the discretion of the custodian, be sold either at public sale as heretofore provided or to the highest bidder, after the solicitation of sealed bids from at least three (3) regular dealers in the particular type of property. No such sale shall be conducted until there shall have been published in a newspaper of general circulation in the City a notice setting forth a description of each article to be sold, the time, date and place of bid opening and that any person who claims to be the owner of or claims any interest in any article so described may appear at the Police Department before the time and date set for opening of such bids to reclaim the same upon presentation of satisfactory proof of identity and ownership. Any person desiring to submit a sealed bid may do so, and such bids shall be opened and the property shall be sold to the highest bidder at the time and place specified in such notice; provided, however, that the right to reject any and all bids shall be reserved and any and all bids may be rejected if deemed too low or for any other reason. Sales of firearms shall be made only to properly licensed dealers, except that hunting and sporting rifles and shotguns may be sold to any qualified adult. (Ord. 547, §1)

Sec. 22A-7. Reclaiming property.

All such property may be reclaimed by the lawful owner upon proof of identity and ownership satisfactory to the custodian or his or her designee, if claimed before the donation or sale thereof. (Ord. 547, §1)

Sec. 22A-8. Failure to claim property.

Failure to make a claim of ownership within the time limits prescribed in this Chapter and before the sale or donation of any article shall forever bar the owner or any person claiming ownership by,

through or under the owner from making any subsequent claim of ownership. Further, if any property has been advertised for sale and for any reason not sold, the same may be donated, destroyed, kept, or used by the City without further notice if a claim of ownership is not made within the time limit prescribed in such notice, and the owner or any person claiming ownership by, through or under the owner shall thereafter be barred from making any claim of ownership to such property. (Ord. 547, §1)

Sec. 22A-9. Proceeds from sale.

All proceeds of a sale shall be paid to the City Treasurer, who shall deposit the same in the general fund of the City. (Ord. 547, §1)

Sec. 22A-10. Exceptions.

Notwithstanding the foregoing provisions, objects and articles of property as described in Sections 22A-11 and 22A-12 may be kept, held or disposed of as hereinafter provided without compliance with the provisions of Sections 22A-4 to 22A-9 relating to donation or sale. (Ord. 547, §1)

Sec. 22A-11. Firearms.

Unless ordered to the contrary by a court of competent jurisdiction or otherwise required by state or national law, firearms and other weapons which may not lawfully be kept, possessed or retained by the owner or person otherwise entitled to the possession thereof or which may not otherwise lawfully be returned to the owner thereof or which are unclaimed after notice to the owner pursuant to Section 22A-5 or the owner of which is not know, may be kept and retained by the Police Department for use in its training programs, or otherwise, or may be donated to museums or historical societies as the Chief may order for purposes of historical preservation. If such firearms are declared surplus by the Police Department, disposition of the same may be made as otherwise provided in this Chapter. (Ord. 547, §1)

Sec. 22A-12. Destruction of certain property.

If the property consists of burglar tools of any description, unlawful firearms, cartridges or explosives, armored or bulletproof clothing, other dangerous weapons, gambling apparatus, instruments or articles, narcotics or controlled drugs, medicines for the purpose of inducing abortion or preventing conception, beer, wine, spirituous liquors or fermented malt beverages, soiled, bloody or unsanitary clothing, solids or liquids of unknown or uncertain composition, drugs, hallucinogenic substances, hypodermic syringes and needles, obscene pictures, prints, effigies, statues, or any other property which reasonably might result in injury to the health or safety of the public or which might be subject to unlawful use, the Chief or his or her designee may destroy each and every article of any such nature. (Ord. 547, §1)

Sec. 22A-13. Specific exceptions.

Motor vehicles, lost or stray animals and other property which is required to be disposed of otherwise than as provided in this Chapter, by the terms of any law or ordinance, shall not be disposed of according to the terms of this Chapter. (Ord. 547, §1)

Sec. 22A-14. Conduct of sale.

The Chief of Police or his or her designee shall conduct all sales made pursuant to the terms of this Chapter. (Ord. 547, §1)

Sec. 22A-15. Rights of finder.

Notwithstanding any other provision of this Chapter, whenever any item of lost or abandoned property has been found and delivered to the custodian or one (1) of his or her subordinates, for care, custody and control, such item shall be returned to the original finder whenever claim has been made by the finder and the following conditions have been met:

- (1) The claimant is the person who originally found the lost or abandoned property;
- (2) The claimant, after surrendering the property to the custodian, has served written notice of his or her intention to make a claim on that item within sixty (60) days of the surrender of the item;
- (3) The lost or abandoned property has remained unclaimed by the owner or person having a right to such property for sixty (60) days after the surrender of the same to the custodian;
- (4) The lost or abandoned property is not stolen or confiscated property, nor is it property held under the exceptions outlined in Sections 22A-11 to 22A-13 of this Chapter, nor is it property held as evidence pursuant to Section 22A-3 of this Chapter. (Ord. 547, §1)

Sec. 22A-16. Intangible property defined.

For the purpose of this Section *intangible property* means and includes:

- (1) Any utility deposit, including any interest thereon, made by a user or customer of a municipal utility to secure payment, or any sum paid in advance, which has remained unclaimed for more than one (1) year after termination of the service for which the deposit or advance payment was made;
- (2) Any other money, check, draft, deposit, interest and income, prepayment, credit balance, or customer overpayment, gift certificate, refund, credit memo or other unidentified remittance;
- (3) Unpaid wages, including wages represented by a payroll check not presented for payment. (Ord. 766, §2)

Sec. 22A-17. Unclaimed intangible property presumed abandoned, custodian.

(a) All unclaimed intangible property as defined in Section 22A-16, including any income or increment derived therefrom (less any lawful charges that are held, issued or owing in the ordinary course of the municipal business) which has remained unclaimed for a period of one (1) year after it has become payable or distributable, is presumed abandoned.

(b) Property is payable or distributable for the purpose of this Chapter, notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(c) The City Treasurer shall be the custodian of all abandoned intangible property as defined by the preceding Section. (Ord. 766, §2)

Sec. 22A-18. Notice and publication.

Commencing with the year 1993, the City Treasurer shall cause a notice to be published twice, for two (2) successive weeks, not later than July 1st of each year, in a newspaper of general circulation in the City. The notice shall be entitled *Notice of Persons Appearing to be Owners of Abandoned Property* and must contain:

(1) The names, in alphabetical order and any last known address of persons to whom, according to the records of the City, abandoned property is apparently distributable;

(2) A statement that any person claiming an interest in the property must file a proof of claim with the City Treasurer, pursuant to Section 22A-20 of this Code.

(3) The City Treasurer shall not be required to publish notice if no distributable intangible property shall become abandoned during the preceding year. Neither shall the City Treasurer be required to publish notice regarding any item of abandoned intangible property with a value of less than twenty-five dollars (\$25.00), unless the City Treasurer considers such publication to be in the public interest. (Ord. 766, §2)

Sec. 22A-19. Notice mailed.

Not later than October 1st of each year beginning October 1, 1993, the City Treasurer shall mail a notice to persons to whom, according to the records of the City, abandoned property with a value of twenty-five dollars (\$25.00) or more is apparently distributable. Such notice shall contain a statement that:

(1) Property is held by the City to which the addressee appears to be entitled; and

(2) A statement that any person claiming an interest in the property must file a proof of claim with the City Treasurer, pursuant to Section 22A-20 of this Code. (Ord. 766, §2)

Sec. 22A-20. Filing proof of claim.

(a) A person claiming an interest in any abandoned intangible property in the custody of the City Treasurer may file with the City Treasurer a claim, verified by the claimant's oath, on a form prescribed by the City Treasurer.

(b) The City Treasurer shall consider each claim and give written notice to the claimant, within sixty (60) days after the filing of the claim, if the claim is denied in whole or in part. The notice may be given by mailing it to the last known address of the claimant as set forth in the claim. No notice of denial need be given if the claim fails to state the claimant's mailing address.

(c) If the claim is allowed, the City Treasurer shall pay over or deliver to the claimant the intangible property held for the claimant by the City Treasurer, without interest, except that interest prescribed by municipal ordinance or by utility rules and regulations. (Ord. 766, §2)

Sec. 22A-21. Separate fund not required.

The City Treasurer may, but shall not be required to, maintain a separate fund to include abandoned intangible property but may deposit and retain said property in one (1) or more of the general fund accounts of the City. (Ord. 766, §2)

Sec. 22A-22. Disposition of City-owned real property.

(a) Purpose. The purpose of this Section is to set forth the rules and regulations to enable the Mayor and members of City Council to establish a uniform procedure for the disposition of City-owned surplus or unused real property, including such land located in the Fort Morgan Industrial Park, to ensure that such property will be developed for the most appropriate use for the public.

(b) Objectives. The objectives of this Section are as follows:

(1) To establish a uniform procedure for the disposition and sale of City-owned real property, including land located in the Fort Morgan Industrial Park;

(2) To encourage the development and sale of real property in a manner beneficial to the residents of the City; and

(3) To encourage development that will maximize the public investment in existing and future capital improvements.

(c) Procedure for surplus property. The following procedure shall govern the sale of City-owned surplus or unused real property.

(1) The City Manager shall determine whether the City-owned land is surplus or unused in accordance with the City Charter and, by recommendation to the City Council, request the sale or disposition of such real property.

(2) The City Manager shall prepare a list of surplus property annually and recommend to the City Council the approval of placing the property for sale to the public for no less than the fair market value.

(3) Upon approval of the surplus property list, the City Manager shall have authority to authorize the appraisal and sale of surplus property at, or above, the fair market value without further approval from the City Council. The cost of the appraisal shall be included in the sale price at closing.

(4) The approved list shall be provided to the public, and the City Manager shall consider offers on the property at any time following the appraisal. Upon receipt of an offer, the City Manager shall not accept the offer until thirty (30) days have expired and no higher offers have been received.

(5) When a final offer has been accepted by the City Manager, he or she shall notify the City Attorney who shall memorialize the agreement through a contract for the sale of the property. All requirements associated with the sale of surplus property shall be determined in the sales contract and subsequent deed provided to the purchaser at closing.

(d) Procedure for industrial/business park properties.

(1) The City Council may approve the sale or disposition of such property and direct the City Manager to publish a notice inviting sealed bids.

(2) A notice inviting bids shall be provided to the public not less than thirty (30) days prior to the deadline for closing bids. Such notice shall identify the specific property to be sold, the legal description of the parcel, bid package requirements and the minimum bid price as determined by the City Manager.

(3) The City Manager shall establish the manner in which all bids shall be submitted in response to the notice. All bids shall contain sufficient information to specifically address the items as set forth in this Subsection.

(4) All bids made for the purchase of land under this Subsection shall be accompanied by a statement which includes the following:

a. The demonstrated financial and legal ability of the person making the bid to purchase the property, including the name and contact information of the lender or other financier for the purchase;

b. The significance of the positive economic impact on the City, including the number of jobs (number of full-time, part-time and seasonal), average salary, benefits, etc.;

c. The potential of the development for providing quality employment opportunities;

d. The monetary value offered for the land, as well as the monetary value of the proposed development upon completion. The minimum bid for property under this Subsection shall be the industrial park rates adopted by the City Council. Under no circumstances will the industrial park rates limit the maximum amount that can be offered for the purchase of the property;

e. A preliminary site plan for the property which shall consist of a description of all proposed uses and the type of development proposed for the property, including the preliminary design of all proposed buildings and structures, including a site plan of the proposed buildings or structures and all amenities proposed to be developed therewith;

f. Additional criteria the City Council may wish to consider to make its determination.

(5) No bid shall be accepted for less than the acceptable minimum bid as determined by the City Council and the full amount of the bid must accompany each bid. The City reserves the right to reject any and all bids or to award the bid most advantageous to the City.

(6) In the event a bidder intends to apply for economic incentives provided under City policy, that application will be considered separate from the bid.

(e) Determination of bids. After all bids have been opened and all information reviewed and compiled, City staff shall review all bids for completeness. The City Manager shall then present the information to the City Council within ten (10) business days of the bid opening and make recommendations to the City Council. The City Council shall then consider the following:

(1) The demonstrated financial and legal ability of the person making the bid to implement the proposal;

(2) The significance of the positive impact on the City;

(3) The potential of the development for providing employment opportunities;

(4) The monetary value offered for the land, as well as the monetary value of the proposed development upon completion;

(5) A preliminary development plan for the property which shall consist of a description of all proposed uses and the type of development proposed for the property, including the preliminary design of all proposed buildings and structures, a site plan of the proposed building or structures and all amenities proposed to be developed therewith;

(6) Any other criteria the City Council may wish to consider to make its determination.

(f) Post-bidding procedure.

(1) After City Council review, the City Council shall decide whether to proceed to award the sale of the property by resolution and a disposition contract to the successful bidder pursuant to Subsection (e) above or to reject the bid.

(2) Should the bid originally accepted by the City Council be rejected for any reason, and at the recommendation of the City Manager, the City Council may award the bid to the second highest bidder. This process will be followed until there are no acceptable bids.

(g) Awarding of bid.

(1) Upon selection of the successful bid to purchase property in the Fort Morgan Industrial Park, the City Council shall make an award by resolution and proceed to sell or dispose of the property pursuant to the terms of a disposition contract. The disposition contract for the sale of the property shall contain the requirements of Subsection (h) below and such other specific requirements as determined by the City Council deemed necessary to accomplish the sale under the terms of this Section. As a condition prior to the City's obligation to convey the property, the purchaser shall submit to the City adequate evidence that the purchaser has the equity capital and commitment for mortgage financing necessary for the construction of the improvement to the property. No conveyance of the property shall be made prior to the execution of the disposition contract and the acceptance of such contract by the City Council.

(2) Upon the award of a bid, it shall be the responsibility of the bidder to guarantee payment of the bid amount. The successful bid check shall be deposited within forty-eight (48) hours of the bid approval. The bid check must be in the form of a cashier's or certified check. If the check does not clear for any reason, the bid will be rejected, and the property will be awarded to the second approved bidder or resubmitted to the bid process.

(h) Disposition contract. In addition to the regulations set forth in the *Zoning and Land Use Code of the City of Fort Morgan*, the building code and other applicable codes and ordinances, the following shall be applied in accordance with the provisions contained in the disposition contract:

(1) The purchaser shall devote such parcel to the uses as specified in the site plan which was submitted with the bid. Additionally, if the purchaser has been awarded economic incentives, the purchaser must utilize the property under the requirements of the economic incentive policy.

(2) Within one (1) year of closing, the purchaser shall complete the project as set forth in the approved site plan. Failure to complete the project shall cause the property to revert to the City with any incomplete improvements. This covenant shall be included in the deed. Extensions will be granted upon showing to the Director of Community Development that the purchaser has substantially complied with the site plan review or failure to complete was a result of force majeure.

(3) Closing shall be made within thirty (30) days, with the conveyance of property to be made by warranty deed or by a deed reflecting the City's interest in the property. Such closing date may be by mutual agreement of the parties.

(4) Such deed conveying the property shall expressly provide that the agreements and covenants provided for in the development plan shall be covenants running with the land and shall be binding on the land for the benefit and in favor of the City.

(5) A current commitment for title insurance in an amount equal to the purchase price shall be furnished to the purchaser, and the title shall be merchantable in the seller or made merchantable prior to the date for closing and the conveyance of the property.

(6) The purchaser shall agree that no warranties or representations with regard to the condition of the property have been made. The purchaser acknowledges that an adequate inspection has been made and the purchaser has been informed of the condition of the property and accepts the property "as is" without warranty, either express or implied.

(7) The purchaser agrees that all said final plans for structures, site improvements, landscaping, parking, etc., shall be approved as required by this Code and shall be approved by the City Council, including landscaping requirements that may apply in the Fort Morgan Industrial Park.

(8) The purchaser and the seller shall agree that, in the event either party is in default or in violation of the terms of the disposition contract, the remedies as set forth in the disposition contract shall be applied.

(9) The purchaser shall agree, for himself or herself, his or her successors and assigns and any successor in interest to the property, or any part thereof, and the deed shall contain covenants, that the purchaser and any such successors or assigns shall devote the property to, and only to, and in accordance with, the use specified and approved in the development plan.

(10) None of the provisions of this Section or the disposition contract are intended to merge, or shall be merged, by reason of any deed transferring title to the property to the purchaser or to any successor in interest.

(11) The purchaser shall agree that interest in the property shall not be assignable without the prior written consent of the City.

(12) The disposition contract for sale of the property may be modified, including provisions pertaining to land use, building and site modification, before and after the transfer of property, with prior written consent of the City Council by resolution.

(i) Applicability. The requirements and covenants in the disposition contract and subsequent deed shall be applicable to an entire tract when a purchaser combines the adjacent real property he or she intends to purchase from the City with City-owned surplus or real property for development, subject to waiver or modification by the Mayor and the City Council. (Ord. 1049; Ord. 1058 §2; Ord. 1067)