



	Approved	Denied
Action taken		
Other: <i>See meeting minutes of 7/14/03 for</i>		
Verified by: <i>J. Neuman, Acting Clerk</i>		

direction given.

WASILLA CITY COUNCIL MEMORANDUM

CM No. 03-27

TITLE: Clarification Of Intent Of WMC 5.40.040, Dedication Of Abandoned Stolen Or Found Bicycles.

COUNCIL MEETING DATE: July 14, 2003

ADMINISTRATION INITIAL: *neo.*

REQUESTED BY: Don Savage, Police Chief

PREPARED BY: Don Savage, Police Chief

Date Prepared: June 20, 2003

FISCAL IMPACT:

None

SUMMARY STATEMENT:

The fact that WMC 5.40.040 was created suggests to me the council intended to treat abandoned, stolen or found bicycles as a separate issue from other abandoned, stolen or found property. However, WMC 5.40.040 then directs the reader back to the same processes for disposition as all other property in possession of the police department.

The result then seems to be that all abandoned, stolen or found property is the same and does nothing toward any special "public use or benefit" and a separate section for bicycles is unnecessary.

If, however, the intent of the council was to allow an expedited process for passing bicycles on to "public use or benefit" as stated in 5.40.040, it appears an amended process for disposal of bicycles may be needed within the code.

STAFF RECOMMENDED ACTION:

Clarify the intent of a separate code section for a special kind of property (bicycles). Staff can then make a recommendation on revision of the code.

Attachments:

WMC Chapter 5.40, Disposition of Property In Possession of Police Department.

Chapter 5.40

**DISPOSITION OF PROPERTY IN
POSSESSION OF POLICE
DEPARTMENT**

Sections:

- 5.40.010** Disposable property—
Definitions.
- 5.40.020** Notice of possession.
- 5.40.030** Disposition.
- 5.40.040** Dedication of abandoned,
stolen or found bicycles.
- 5.40.050** Notification and sale costs
fee.
- 5.40.060** Dangerous or perishable
property or property of
minimal value—
Immediate disposal.

5.40.010 Disposable property—
Definitions.

Except as otherwise required by law, the following property in possession of the police department may be disposed of as provided in this chapter.

A. Disposable Property. The term “disposable property,” as defined below, is not intended to include those classes of intangible property within the scope of AS 34.45.110 through 34.45.430, generally providing for certain abandoned commercial paper to be referred to the custody and disposition of the state. Such intangible property within the scope of state law includes checks, money orders, bank deposits, life insurance proceeds, utility deposits, stocks, gift certificates, wages, and items held in a safekeeping repository.

“Disposable property,” as used in this chapter, does not include a vehicle licensed to be driven on the streets. “Disposable property”

is any other personal property in possession of the police department which cannot be identified to an owner, and shall include, but not be limited to:

1. Property collected as evidence and not claimed by the owner within thirty (30) days after final disposition of the criminal case to which it pertains;

2. Property voluntarily tendered to the police department and not claimed by the owner within thirty (30) days thereafter;

3. Property found and delivered to the police department and not claimed by the owner within thirty (30) days thereafter; or

4. Stolen property recovered by the police department and not claimed by the owner within thirty (30) days after such recovery.

B. Lawful Ownership. “Lawful ownership,” as used in this chapter, means the right to possession and use of the property superior to the rights of any other persons and entities who are known to claim lawful ownership. (Prior code § 7.25.010)

5.40.020 Notice of possession.

A. The chief of police shall publish in a local newspaper on two occasions within a thirty (30) day period a notice of possession of disposable property. During the same time period the chief of police shall send copies of the notice by certified mail (return receipt requested) to the last known owner and to the finder, if any, at their respective last known address if any.

B. Every notice of possession mailed or published pursuant to this section shall contain:

1. A general description of the property;
2. The date the police department first obtained possession of the property;

5.40.030

3. The provision that unclaimed property will be sold at public auction and the proceeds will be applied to the crime prevention unit of the police department;

4. The provision that unclaimed property, if money, will be paid into the city treasury;

5. The provision that the property must be claimed by the owner within thirty (30) days after the last date on which the notice is published; and

6. The provision that the finder will forfeit all of his or her right, title, interest and claim in and to found property or money unclaimed by the owner unless the finder files a written request with the chief of police for return of the unclaimed property within thirty (30) days after the last date on which the notice is published.

C. Any claim to lawful ownership, in response to the publication provided for above or otherwise, shall be verified by proof of lawful ownership and the claimant shall bear the burden of proving lawful ownership. (Prior code § 7.25.020)

5.40.030 Disposition.

If the property is unclaimed by the lawful owner after the publication and mailing of the notice of possession and the expiration of the time periods as required by Section 5.40.020, the property shall be disposed of as follows:

A. Found property, including money, shall be returned to the finder, if any, upon condition that a timely request for such has been received by the police department. However in no event shall the return to the finder be understood as a termination of the finder's responsibility pursuant to state, federal, municipal statutory or common law.

B. All property, other than money, which is not addressed by subsection A of this section

shall be subject to a claim by the chief of police that retention of such property for use by the city will serve the public interest. Weapons so claimed by the chief of police may be used for trading or bartering in order to acquire equipment for police use. If the chief of police does not make such a claim the property that is legal for private ownership and not precluded by court order, shall be sold at a public auction. The proceeds from that sale, shall be quantified and reported to the city council for allocation pursuant to the annual budget process and, unless otherwise determined, shall be budgeted for the crime prevention unit of the police department. Unclaimed or unreturned money shall be paid into the city treasury.

C. Sale of Property.

1. An auction under this section must be preceded by a single publication of notice, at least three weeks in advance of the sale, in a newspaper of general circulation in the general area of Wasilla, Alaska.

2. Sale of an item of abandoned property shall be to the highest bidder. However, the city may decline the highest bid and re-offer the property for sale if in the judgment of the city the bid is insufficient. Property unsold shall become the property of the city and may be disposed of in any lawful manner.

3. The purchaser of property at a sale undertaken pursuant to this ordinance takes the property free of all claims of the persons or entities or the previous holder of the property and of all persons claiming through or under them. The city is empowered to execute any documents necessary or desirable to complete the transfer of ownership. (Prior code § 7.25.030)

**5.40.040 Dedication of abandoned,
stolen or found bicycles.**

Any bicycle in the possession of the police department not claimed for ten (10) days, and for which the owner is not known, may be dedicated to public use or benefit in accordance with Section 5.40.030(B) after proper notification as outlined in Section 5.40.020. (Prior code § 7.25.040)

sale value shall be presumed to be property of minimal value pursuant to this section. (Prior code § 7.25.060)

**5.40.050 Notification and sale costs
fee.**

Before returning property to a finder or owner, and before delivering money to the city, the chief of police shall require a reasonable fee from the person receiving the property or money delivered for the costs of notice, publication and sale attributable to the property or money delivered. The proceeds from that fee shall be deposited into the city account. (Prior code § 7.25.050)

**5.40.060 Dangerous or perishable
property or property of
minimal value—Immediate
disposal.**

A. Property in the possession of the police department and determined by the chief of police to be perishable or to constitute an immediate danger to the public may be disposed of immediately in any manner without notice of sale.

B. Property of minimal value insufficient to justify the expense and administrative time associated with the procedure set forth herein may be disposed of in any manner without notice of sale. Proceeds of any such disposition shall be subject to this chapter.

C. Without limitation, property of less than one hundred dollars (\$100.00) fair market re-