

ITEM 4.3

CITY MANAGER'S REPORT SEPTEMBER 12, 2022 CITY COUNCIL REGULAR MEETING

ITEM: **SECOND READING AND ADOPTION OF ORDINANCE 22-439 OF THE CITY OF LATHROP AMENDING TITLE 9 "PUBLIC PEACE AND WELFARE" OF THE LATHROP MUNICIPAL CODE BY ADDING NEW CHAPTER 9.24 TITLED "PROPERTY AND EVIDENCE"**

RECOMMENDATION: **Waive Full Reading and Adopt Ordinance 22-439 by Title Only Amending Title 9 "Public Peace And Welfare" Of The Lathrop Municipal Code By Adding New Chapter 9.24 Titled "Property And Evidence"**

RECOMMENDED ACTION:

The City Council to conduct second reading and adopt Ordinance 22-439 entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LATHROP AMENDING TITLE 9 "PUBLIC PEACE AND WELFARE" OF THE LATHROP MUNICIPAL CODE BY ADDING NEW CHAPTER 9.24 TITLED "PROPERTY AND EVIDENCE"

SUMMARY:

On August 8, 2022, the City Council approved the introduction and first reading of the subject Ordinance by the following vote:

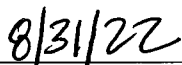
AYES: Akinjo, Diallo, Lazard, Torres-O'Callaghan, and Dhaliwal
NOES: None
ABSTAIN: None
ABSENT: None

The Ordinance will take effect 30 days after adoption.

SUBMITTED BY:



Teresa Vargas, City Clerk



Date

ORDINANCE NO. 22-439

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LATHROP AMENDING TITLE 9 "PUBLIC PEACE AND WELFARE" OF THE LATHROP MUNICIPAL CODE BY ADDING NEW CHAPTER 9.24 TITLED "PROPERTY AND EVIDENCE"

WHEREAS, on June 29, 2022, the City of Lathrop Police Department took over law enforcement services from the San Joaquin County Sheriff's Office for the City of Lathrop; and

WHEREAS, the Lathrop Police Department Property and Evidence Unit (hereinafter "Property and Evidence Unit") is responsible for the possession and storage of personal property; and

WHEREAS, the types of personal property in the possession of the Property and Evidence Unit are identified by the following personal property categories: Safekeeping, Found, and Evidence; and

WHEREAS, Personal Property for Safekeeping is personal property that has a known owner and no evidentiary value, Found personal property does not have an immediately known owner and no evidentiary value, and Evidence is personal property gathered pursuant to a potential criminal investigation; and

WHEREAS, the Property and Evidence Unit has identified the need to codify local authority for the disposition of personal property that goes unclaimed; and

WHEREAS, California Civil Code Section 2080 et. seq. allows for the adoption of local ordinances relating to the disposition of Safekeeping personal property after 60 days and Found personal property after 90 days, including allowing the jurisdiction under charge of the personal property to destroy, auction, or retain after the holding period expires; and

WHEREAS, California Welfare and Institutions Code 217 allows for the adoption of local ordinances relating to the donation of personal property that goes unclaimed, such as toys and bicycles, to any charitable or non-profit organizations whose goal is to prevent juvenile delinquency; and

WHEREAS, California Penal Code Section 34005 allows for the adoption of local ordinances relating to the disposition of firearms within a local jurisdictions custody and subject to destruction, may be destroyed, auctioned, or used for agency purposes; and

WHEREAS, the adoption of this Ordinance would provide the City of Lathrop Police Department with the local authority and guidelines to dispose of personal property that goes unclaimed items; and

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, the City Council has duly considered all written evidence and oral testimony presented during this August 8, 2022 public hearing.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Lathrop, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby approve the Lathrop Municipal Code amendments incorporated herein and does ordain as follows:

Section 1.

Title 9 of the Lathrop Municipal Code titled "Public Peace and Welfare" is hereby amended by adding new Chapter 9.24 titled "Property and Evidence" to read in its entirety as follows:

CHAPTER 9.24 PROPERTY AND EVIDENCE

9.24.010 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this article.

"Found Personal Property" may represent any money, goods, things which can be considered as personal property, which is located by an individual that lacks the rights and obligations of ownership of such item, and relinquishes said item to the Police Department.

"Personal Property", may represent money, goods, or things and is generally any object that can be moved, touched, or felt.

"Safekeeping Personal Property" means the act or process of safely preserving personal property temporarily while such property is in the custody and control of the Police Department.

"Unclaimed Personal Property", means personal property that is in the possession and/or custody of the City of Lathrop Police Department, or left in its possession and/or custody or turned over to it by a person who found or saved the same, that does not belong to the City of Lathrop, which has not been claimed by the property owner within the specified time as set forth in California Civil Code Section 2080, et. seq. and City of Lathrop Municipal Code Section 9.24.040, except:

- A. Property subject to confiscation by law enforcement under the laws of the City of Lathrop, State of California, or of the United States.
- B. Vehicles, the storage, sale or other disposition of which is governed by the provisions of California Vehicle Code.

9.24.020 General Provisions.

A. The Chief of Police shall make provisions for receiving and storage of property delivered to them or coming into their possession as herein provided and consistent with this Chapter and the laws of the State of California.

B. When applicable, a receipt shall be issued to any person(s) delivering or relinquishing Personal Property into the possession of the Police Department.

9.24.030 Holding of Property.

A. Every item of Personal Property in the possession of the Police Department shall be held by the Police Department for no less than the time frame as specified herein:

1. Personal Property obtained by the Police Department from a person(s) for temporary safekeeping shall be held for a period of sixty (60) days.
2. Personal property determined to be found and has no known owner shall be held for a period of ninety (90) days.

B. Each item of Personal Property in the possession of the Police Department shall be entered into a record to be kept by the Police Department. Record of the Personal Property shall include, but is not limited to, the following information:

1. A detailed description of the Personal Property;
2. Name(s) of the person(s) from whom the Personal Property was seized or received;
3. Name(s) of any claimant(s) thereto;
4. Date and Time of possession;
5. Final disposition thereof.

C. Any Personal Property coming into the possession of the Chief of Police which they determine to be dangerous or perishable may be disposed of immediately, without notice, in such a manner as they determine to be in the public interest.

9.24.030 Restitution of Property.

A. The Police Department shall restore any such personal property in its possession to the person(s) submitting proof of legal ownership or right of possession which is satisfactory to the Chief of Police, and upon payment of all reasonably necessary costs incurred in the care and protection thereof, and any cost of publication as may be necessary pursuant to section 9.24.040(A).

B. If legal ownership or right of possession cannot be determined to the satisfaction of the Chief of Police, they may refuse to restore such personal property to anyone until ordered to do so by a court of law.

C. Where any such personal property may be needed or required as evidence in any criminal proceeding, the Chief of Police shall delay the restoration of such personal property to its legal owner until the conclusion of such proceedings.

D. If the legal owner is a person prohibited by law from possessing such personal property, restitution shall not be made.

9.24.040 Return of Lost Property.

A. When lost personal property is found and is relinquished to the Police Department in accordance with the provisions of Section 2080 et. seq. of the California Civil Code or otherwise, and no owner appears or proves legal ownership of such personal property within ninety (90) days thereafter, the Police Department shall, if such property is of a value of Two Hundred Fifty and no/100ths (\$250.00) Dollars or more, cause to be published at least once (1) in a newspaper of general circulation notice of the Found Personal Property.

1. If after seven (7) days following the first (1st) publication of the notice, no legal owner appears and proves ownership, title to the personal property shall be vested in the finder if such person has complied with the requirements of California Civil Code Section 2080 et. seq. governing the duties and obligations of a finder, and on payment of all reasonably necessary costs incurred in the care and protection thereof, including cost of publication.

B. When lost personal property is found and is relinquished to the Police Department in accordance with the provisions of Section 2080 et. seq. of the California Civil Code or otherwise, and no owner appears or proves legal ownership of such personal property within ninety (90) days thereafter and such property is of a value of Two Hundred Forty-Nine and 99/100ths (\$249.99) Dollars or less, title shall vest in the finder without publication of notice and if such person has complied with the requirements of California Civil Code Section 2080 et. seq. governing the duties and obligations of a finder, and on payment of all reasonably necessary costs incurred in the care and protection thereof.

C. Title to the personal property may not be vested in the finder if such person was an employee of the City at the time such personal property was found and the personal property was found in the course of employment.

D. Title to the personal property may not be vested in the finder if such person prohibited by law from possessing such personal property.

9.24.050 Disposition of Unclaimed Property.

A. All U.S. currency so received by the Chief of Police as Personal Property and neither delivered, restored, claimed or otherwise as specified in this Chapter, to any legal owner or finder, upon expiration of the time frame to hold such Personal Property as specified in section 9.24.030(A), shall thereafter be deemed Unclaimed Personal Property and deposited into the City General Fund.

B. Any personal property not governed by statute, after being held pursuant to the provisions of section 9.24.030(A) shall be deemed Unclaimed Personal Property and the Police Department may cause such property to be auctioned, destroyed, or maintained for use by the City in accordance with the provisions of this Chapter and California Civil Code section 2080 et. seq.

C. Notwithstanding any of the foregoing, any toys and bicycles, or both, in the possession of the Police Department which have been deemed Unclaimed Personal Property may, at the discretion of the City Manager upon recommendation of the Chief of Police, be repaired and donated to any charitable or non-profit organization which is authorized under its articles of incorporation to participate in a program or activity designed to prevent juvenile delinquency, for use in any program or activity designed to prevent juvenile delinquency, in accordance with California Welfare and Institutions Code section 217.

9.24.050 Transfer of Unclaimed Property for Public Auction.

All Unclaimed Personal Property in the possession of the Police Department that is not disposed of in accordance with other provisions of the Chapter shall be transferred after expiration of at least the minimum applicable holding period, to an auction company, except as follows:

1. Unclaimed Personal Property having no monetary value shall be destroyed unless it can be disposed of in the public interest or utilized pursuant to the provisions of this Chapter.
2. Unclaimed Personal Property of a type of kind for which a permit of license to sell the same is required by state or federal law shall be destroyed unless it can be disposed of in the public interest or utilized pursuant to the provisions of this Chapter.
3. Unclaimed Personal Property determined by the Purchasing Division to be needed for use by the City or other public use shall be retained.

9.24.060 Sale of Unclaimed Property at Public Auction

A. Before offering any Unclaimed Personal Property for sale, an auction company or the Police Department shall publish at least once (1) in a newspaper of general circulation a notice of intention to sell such property at public auction to the highest bidder, at a specific time and place.

B. All sales of Unclaimed Personal Property, whether by an auction company or the Police Department, shall be held not less than five (5) business days after publication of the notice of intention to sell in a newspaper of general circulation.

C. All Unclaimed Personal Property offered for sale at public auction shall be sold to the highest bidder.

1. Where the particular item offered for sale is one which certain persons are prohibited by law from possessing, using, or consuming, such persons shall not be permitted to participate in the bidding on such items.

2. In no circumstance shall any property be sold or disposed of until the necessity for the use thereof as evidence has ceased.

9.24.070 Unsaleable and Unusable Unclaimed Property

Any Unclaimed Personal Property advertised and offered for sale but not sold and not suitable for appropriation to the use if the City shall be deemed to be of no value and shall be disposed.

9.24.080 Disposition of Proceeds from Public Auction of Unclaimed Property

Proceeds received from the sale of Unclaimed Personal Property shall be delivered to the Director of Finance for deposit into the City General Fund.

9.24.090 Disposition of Unclaimed Firearms

Any pistol, revolver, firearm, weapon or destructive device which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, as may be defined in Federal law 18 U.S.C. 921(a)(3), coming into the possession of the Police Department, shall be disposed of in such a manner that the Chief of Police may determine to be in the public interest in accordance with the provisions of California Penal Code section 34000 et seq.

Section 2.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the city or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. Severability.

If any section, subsequent subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section 4. Effective Date.

This Ordinance shall take legal effect 30 days from and after the date of its passage.

Section 5. Publication.

Within fifteen days of the adoption of this Ordinance, the City Clerk shall cause a copy of this Ordinance to be published in full accordance with Section 36933 of the Government Code.

THIS ORDINANCE was introduced at a regular meeting of the City Council of the City of Lathrop on the 8th day of August 2022, and was PASSED AND ADOPTED at a regular meeting of the City Council of the City of Lathrop on the ____ day of _____ 2022, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

APPROVED AS TO FORM:

Teresa Vargas, City Clerk

Salvador Navarrete, City Attorney