

**STATE OF GEORGIA**

**CITY OF HAPEVILLE**

**ORDINANCE 2016-10**

AN ORDINANCE AMENDING SECTION 23-1-5, DISPOSITION OF UNCLAIMED PROPERTY, OF SECTION 23, LAW ENFORCEMENT, OF SUBPART A – GENERAL ORDINANCES, OF THE CODE OF ORDINANCES OF HAPEVILLE, TO AMEND THE CURRENT PROCEDURES FOR THE DISPOSAL OF LOST, ABANDONED, OR OTHER PERSONAL PROPERTY WHICH THE HAPEVILLE POLICE DEPARTMENT COMES INTO POSSESSION OF; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**WHEREAS**, the governing authority of the City of Hapeville (“City”) is the Mayor and Council thereof; and

**WHEREAS**, O.C.G.A. § 17-5-54 was amended in the 2015 Session of the General Assembly to enact new procedures for local governments and law enforcement agencies to comply with said law and to provide policies and procedures for the disposition of general personal property in the custody of law enforcement agencies; and

**WHEREAS**, the governing authority desires to amend its Code of Ordinances in order to comply with changes to O.C.G.A. § 17-5-54 and Georgia law, in order to provide for the proper disposal of all personal property items retrieved by the Hapeville Police Department; and

**WHEREAS**, upon adoption of this ordinance, the City will provide for public viewing a copy of the same on its website; and

**WHEREAS**, the health, safety, and welfare of the citizens of Hapeville, Georgia, will be positively impacted by the adoption of this Ordinance.

**BE IT AND IT IS HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF  
THE CITY OF HAPEVILLE, GEORGIA, and by the authority thereof:**

**Section 1:** The City's Code of Ordinances is hereby amended by striking through the existing text of Section 23-1-5, Disposition of Unclaimed Property, of Section 23, Law Enforcement, of Subpart A – General Ordinances, and inserting the following text in lieu thereof, to read as follows:

*“(a) Definitions.*

As used in this Code Section, the term:

1. "Civil forfeiture proceeding" shall have the same meaning as set forth in O.C.G.A. § 9-16-2.
2. "Firearm" means any handgun, rifle, shotgun, or similar device or weapon which will, or can be converted to, expel a projectile by the action of an explosive or electrical charge.
3. "Police Department" or "City police department" means the City of Hapeville Police Department.
4. "O.C.G.A." means the Official Code of Georgia Annotated.
5. "Rightful owner" means a person claiming ownership of property which is the subject of a crime or has been abandoned.
6. "U.S.C." means the United States Code.

*(b) Exceptions.*

This Code Section shall not apply to:

1. Personal property which is the subject of any civil forfeiture proceeding;
2. Any property which is the subject of a disposition pursuant to the O.C.G.A. §§ 17-5-50 through 17-5-53; and
3. Any abandoned motor vehicle for which the provisions of Chapter 11 of Title 40 of the O.C.G.A. are applicable.

*(c) Generally.*

When the City police department comes into possession of any personal property which is the subject of a crime or has been abandoned, a disposition of such property shall be made in accordance with the provisions of this Code Section.

*(d) Disposal of Personal Property Used as Evidence In A Criminal Proceeding.*

The police department shall make every reasonable effort to locate the rightful owner of any personal property used as evidence in a criminal proceeding, and in the event the owner can be located, the procedure for disposition shall be as follows:

1. When a final verdict and judgment is entered finding a defendant guilty of the commission of a crime, any personal property used as evidence in the trial shall be returned to the rightful owner of the property within 30 days following the final judgment; provided, however, that if the judgment is appealed or if the

defendant files a motion for a new trial and if photographs, videotapes, or other identification or analysis of the personal property will not be sufficient evidence for the appeal of the case or new trial of the case, such personal property shall be returned to the rightful owner within 30 days of the conclusion of the appeal or new trial, whichever occurs last.

2. In order to recover their property, the rightful property owner must make an application to the City for return of their property. The property owner must provide 1) proof of ownership and 2) picture identification.
3. The owner of the property must sign an oath stating that property belongs to him or her.
4. If after a period of ninety (90) days, the rightful property owner has not claimed the property, the property used as evidence is considered abandoned; and the City police department may dispose of the property per the following procedure:
  - i. After 90 days, the police department shall file an application with the Fulton County Superior Court for an order directing the agency to sell, retain, discard, or destroy the property.
  - ii. The application must categorize, and otherwise state with particularity, each item that is to be sold, retained, discarded, or destroyed.
  - iii. If the property is ordered by the Fulton County Superior Court to be discarded or destroyed, the police department shall dispose of that property in the same manner the police department would dispose of any other equipment that cannot be salvaged and is not serviceable.
  - iv. If the property is ordered by the Fulton County Superior Court to be retained by the seizing agency, then the agency must use the seized property for official, law enforcement purposes only.
  - v. If the property is ordered by the Fulton County Superior Court to be sold, the police department is required to place an advertisement in the legal organ of the City and Fulton County that specifically describes each item up for sale, and also alerts any other potential owners who might claim the property how to contact the agency.
  - vi. If an item is worth \$75.00 or more in value, then the item must be advertised and sold separately from any other item.
  - vii. Any item worth less than \$75.00 can be described and sold with other like-valued items in lots.
  - viii. If such personal property has not been bid upon in two successive sales, the law enforcement agency may retain the property for official use or the property will be considered as salvage and disposed of as other county or municipal salvage or nonserviceable equipment.**
  - ix. With respect to unclaimed perishable personal property or animals or other wildlife, an officer may make application to the superior court for an order authorizing the disposition of such property prior to the expiration of 90 days.**

5. This subsection shall not apply to unclaimed firearms.

*(e) Disposal of Personal Property Used As Evidence Where Owner Unknown.*

If law enforcement comes into possession of any personal property that is evidence in a judicial proceeding, and the owner is unknown, after such property has been in the possession of the police department for a period of ninety (90) days:

1. The City shall dispose of the property as abandoned per the guidelines of subsection **(d)4** of this Code Section.
2. This subsection shall not apply to unclaimed, lost, or abandoned firearms.

*(f) Disposal of Personal Property Not Used As Evidence.*

If the police department comes into possession of any personal property that is not evidence, but was abandoned or lost, the police department shall make every reasonable effort to locate the rightful owner.

1. If the rightful owner can be located, then the personal property shall be returned to the owner per the guidelines in subsections **(d)2-3** of this Code Section.
2. If the rightful property owner is located but does not claim their property, or if the rightful property owner cannot be located, then after the property is in the possession of the police department for ninety (90) days, the police department shall dispose of the property per the guidelines of subsection (d)4 of this Code Section.
3. The provisions of this subsection shall not apply to unclaimed, abandoned, or lost firearms.

*(g) Motor Vehicle Exception:*

If the police department comes into possession of personal property that is a motor vehicle, which is the subject of a crime or has been abandoned (but which is not the subject of any civil forfeiture proceeding), the police department shall contact the Georgia Crime Information Center to determine if such motor vehicle has been stolen and to follow generally the procedures contained in O.C.G.A. § 40-11-2 to ascertain the registered owner of such vehicle.

***(h) Disposal of Unclaimed Firearms.***

- 1. Any property that is a firearm, and the rightful owner can be located, then the firearm shall be returned to the rightful owner per the guidelines in subsections (d)2-3 of this Code Section.**
2. Any property that is a firearm, has been unclaimed, and is in possession of the seizing agency for ninety (90) days (regardless if it used or claimed as evidence), that firearm is subject to disposal per the conditions of this subsection only.
3. With respect to unclaimed firearms, if the City chief of the police department, or the designee of the City chief of police, certifies that a firearm is unsafe because of wear, damage, age, or modification or because any federal or state law prohibits the sale or distribution of such firearm, at the discretion of such City official, the unsafe firearm shall be either 1) transferred to the Division of Forensic Sciences of the Georgia Bureau of Investigation, or 2) transferred to

the City police departments forensic laboratory for training or experimental purposes, or 3) the firearm shall be destroyed.

4. If a seized firearm in the possession of the police department is not unsafe, is unclaimed, and is worth more than \$500.00, then that firearm is to be sold to the highest bidder through either sealed bid or auction according to the following guidelines and restrictions:
  - i. Prior to receiving sealed bids or prior to holding any auction, an advertisement for sale must run in the county organ or a newspaper that has general circulation in the local community.
  - ii. The advertisement must run no sooner than 60 days or no later than 15 days before the last day to receive sealed bids; or 15 days before an auction.
  - iv. The legal notice shall include a general description of the firearm to be sold.
  - v. Neither the City nor the police department has the right to reject any bids or to cancel any sale of firearms under this subsection.
  - vi. Firearms may only be sold to such persons who are licensed firearm collectors, dealers, importers, or manufacturers as defined under 18 U.S.C. § 921.
  - vii. Auctions required by this subparagraph may occur online on a rolling basis or at live events, but in no event shall such auctions occur less frequently than once every 12 months during any time in which the police department has an inventory of five or more saleable firearms
5. If the firearm is worth \$500.00 or less, then the firearm may be sold on the open market without advertisement or acceptance of bids. However, firearms may only be sold to such persons who are licensed firearm collectors, dealers, importers, or manufacturers as defined under 18 U.S.C. § 921.
6. Determining the valuation of any firearm is in the sole discretion of the City or the City's duly appointed agent.
7. The police department is required to include in their records the amount any such firearm(s) is sold for, and details of the distribution of the sale proceeds.. This information is to be retained pursuant to the requirements of subsection (i) of this Code Section and otherwise in accordance with Article 5 of Chapter 18 of Title 50, the "Georgia Records Act."
8. If no bids from eligible recipients are received within six months from when bidding opened on a firearm offered for sale, or if the firearm has not been sold on the open market, pursuant to paragraphs (3) and/or (4) of this subsection, the firearm shall either 1) be transferred to the Division of Forensic Sciences of the Georgia Bureau of Investigation, or 2) transferred to the City police department forensic laboratory for training or experimental purposes, or 3) the firearm shall be destroyed.

*(i) Maintaining of Records.*

Records shall be maintained showing the manner in which each personal property item came into possession of the City police department, a description of the property, all efforts to locate the owner, any case or docket number, the date of publication of any newspaper notices, and the date on which the property was retained by the law enforcement agency, sold, or discarded. The City police department shall keep records of the firearms acquired and disposed of as provided by this Code Section as well as records of the proceeds of the sales thereof and the disbursement of such proceeds in accordance with records retention schedules adopted in accordance with Article 5 of Chapter 18 of Title 50, the "Georgia Records Act."

*(j) Proceeds of Sale of Personal Property Items.*

The proceeds from the sale of personal property by the City police department pursuant to this Code Section shall be paid into the general fund of the City treasury.

*(k) Contraband Items.*

Contraband items which have no foreseeable evidentiary value will be disposed of by the police department in such a manner that will ensure that the items are no longer of value and cannot be recovered by anyone; or the items will be turned over to the proper county, state or federal agency for disposal. Records will be made and maintained of contraband items pursuant to the requirements in subsection (i) of this Code Section and otherwise in accordance with Article 5 of Chapter 18 of Title 50, the "Georgia Records Act."

*(l) City Liability.*

Pursuant to O.C.G.A. § 17-5-54(j), neither the City nor any of its police officers, other officers, agents, or employees shall be liable to any person, including the purchaser of a firearm, for personal injuries or damage to property arising from the sale of a firearm under subsection (h) of this Code Section unless the City acted with "gross negligence or willful or wanton misconduct."

**Section 2.** The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

**Section 3.** This Ordinance shall be codified in a manner consistent with the laws of the State of Georgia and the City.

**Section 4.** (a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this

Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

**Section 5.** All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed.

**Section 6.** The effective date of this Ordinance shall be the date of adoption unless otherwise stated herein.

**ORDAINED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

[SIGNATURES CONTINUED ON NEXT PAGE]

**CITY OF HAPEVILLE, GEORGIA**

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**Alan Hallman**, Mayor

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**Ruth Barr**, Alderman at Large

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**Michael Randman**, Councilman at Large

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**Josh Powell**, Councilman (1st Ward)

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**Diane Dimmick**, Councilman (2nd Ward)

**ATTEST:**

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**Jennifer Elkins**, City Clerk

**APPROVED BY:**

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**Steven M. Fincher**, City Attorney