

CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511

Date: June 3, 2013

MEMORANDUM

TO: Mayor Paul Soglin
All Alders

FROM: Michael P. May, City Attorney
Doran Viste, Assistant City Attorney

RE: Proposed Charter Ordinance on Lost or Abandoned Property, Legistar
Item No. 30388

The Charter Ordinance sponsored by the Mayor and several other alderpersons is the product of several years of internal work and consultation by city staff, which included meetings with homeless advocates. It is intended to balance a number of interests:

1. To make sense out of conflicting state statutes;
2. To provide protection to the public by not allowing unattended packages in public places;
3. To fit within the physical capabilities of the City to store property and the resources of City staff to monitor and dispose of property; and,
4. To provide reasonable protection and notice to the public about lost property.

The balances struck in the ordinance may not suit all persons, but City staff believes they are reasonable.

I. BACKGROUND: THE LEGAL PROBLEM.

The City Attorney has been urging the adoption of some ordinance on lost or abandoned property for several years. The primary reason is that Madison has no general ordinance on the issue, thus leaving the City in the position of trying to follow state law. State law on the topic is confusing, contradictory, and antiquated. Even when attempting to follow the procedures in these two laws, City officials may inadvertently violate one or the other. Several years ago, a charter ordinance was proposed, but City agencies and committees deemed the procedures too onerous, and the proposal was placed on file. See Legistar File No. 19169 (Placed on File Without Prejudice, Feb. 22, 2011).

While a number of statutes govern duties imposed on a person finding another's property, the two statutes most relevant here are sec. 66.0139 and sec. 170.105, Wis. Stats. Full copies of those and related statutes are attached to this memo as an appendix.

This chart summarizes some of the conflicts between the statutes:

	Sec. 66.0139	Sec. 170.105
Property Covered	Abandoned Property of any value	Lost Property > \$25
Time Before City May Dispose of property	30 Days	90 Days
Notice Required	None	Posting in two public places
Method of Disposal	Public Auction, unless ordinance specifies otherwise	None specified
Weapons or Hazardous Materials	Excluded	Covered
Some Form of Law First Enacted	1922	1849
Last Substantive Revision	1980	1996

Perhaps the most difficult aspect of reconciling these laws is determining whether a given piece of property found by a local official is "lost" or "abandoned." Ruling in another context, the Wisconsin Supreme Court stated that property is abandoned when there is "a relinquishment coupled with an intent to part with it permanently." *State v. Murray*, 195 Wis. 657, 659, 291 N.W. 271 (1928). Thus, determining whether property is lost or abandoned depends on the state of mind of the former possessor of the property, something almost impossible for the public official to determine.

Under the City's constitutional home rule powers set out in Art. XI, Sec. 3 of the Wisconsin Constitution and sec. 66.0101, Wis. Stats., the City may opt out of a state law if it is not a matter of statewide concern that the Legislature has applied to all cities uniformly. Although applying this test is often a nuanced proposition, the City Attorney has determined that the existence of these disparate state statutes, and the admitted primacy of local concerns about abandoned or lost property, means the City may enact a charter ordinance to opt out of these laws and adopt its own procedures.

II. BASIC ELEMENTS OF THE ORDINANCE.

The ordinance reconciles the conflicting rules in the following way:

A. Property Covered: Any property lost or abandoned or left on public property without the consent of the public owner is considered Lost Property and covered by the ordinance, with exceptions. The property must have an estimated value of \$50, which

is considered appropriate under current economic conditions. City staff may take possession of property with less value if they think a person might claim it.

B. Time Before Disposal: Thirty days. This is driven primarily by the available space for storage. It is expected that Police, Parks and Engineering will be the main agencies to hold property in this period. A special rule of 14 days is allowed for Metro, which does not have space available for items beyond that time.

C. Weapons, Hazardous Materials: The ordinance excludes any obligation of the City to store materials that may be dangerous or hazardous.

D. Notice Required. The only required notice is to maintain a log of the property for at least 30 days. The log is to be available at a location at the City County Building.

E. Method of Disposal. Public auction, sale on the internet, transfers to non-profit, disposal as trash, or any other reasonable means. After 30 days, the property is the City's to dispose of as it wishes.

F. Method of Implementation. Within the above guidelines, the city agencies are to develop uniform procedures to implement the ordinance within 6 months of adoption. These procedures will flesh out things such as where the property will be stored, where the log will be available for review, and what might be required to prove ownership of lost property. The procedures might, or individual agencies might, adopt additional measures. The Police Department, for example, has been tagging some items and removing them after 48 hours. The agencies might determine to place the log of property on line.

III. CONCLUSION.

The City Attorney and other City staff believe the proposed Charter Ordinance provides a proper balance of the policy issues at stake. The most important element is to provide relief from the conflicting provisions of state law to give guidance to City employees.

**APPENDIX TO MEMO ON CHARTER ORDINANCE ON LOST PROPERTY,
6/02/2013**

66.0139. Disposal of abandoned property.

- (1) In this section, "political subdivision" means a city, village, town or county.
- (2) A political subdivision may dispose of any personal property which has been abandoned, or remained unclaimed for a period of 30 days, after the taking of possession of the property by an officer of the political subdivision by any means determined to be in the best interest of the political subdivision. If the property is not disposed of in a sale open to the public, the political subdivision shall maintain an inventory of the property, a record of the date and method of disposal, including the consideration received for the property, if any, and the name and address of the person taking possession of the property. The inventory shall be kept as a public record for a period of not less than 2 years from the date of disposal of the property. Any means of disposal other than public auction shall be specified by ordinance. If the disposal is in the form of a sale, all receipts from the sale, after deducting the necessary expenses of keeping the property and conducting the sale, shall be paid into the treasury of the political subdivision.
- (3) A political subdivision may safely dispose of abandoned or unclaimed flammable, explosive, or incendiary substances, materials, or devices that pose a danger to life or property in their storage, transportation, or use immediately after taking possession of the substances, materials, or devices without a public auction. The political subdivision, by ordinance or resolution, may establish disposal procedures. Procedures may include provisions authorizing an attempt to return to the rightful owner substances, materials, or devices that have a commercial value in normal business usage and do not pose an immediate threat to life or property. If enacted, a disposal procedure shall include a presumption that if the substance, material, or device appears to be or is reported stolen, an attempt will be made to return the substance, material, or device to the rightful owner.
- (4) Except as provided in s. 968.20 (3), a 1st class city shall dispose of abandoned or unclaimed dangerous weapons or ammunition without a public auction 12 months after taking possession of them if the owner has not requested their return. Disposal procedures shall be established by ordinance or resolution and may include provisions authorizing an attempt to return to the rightful owner any dangerous weapons or ammunition which appear to be stolen or are reported stolen. If enacted, a disposal procedure shall include a presumption that if the dangerous weapons or ammunition appear to be or are reported stolen an attempt will be made to return the dangerous weapons or ammunition to the rightful owner. The dangerous weapons or ammunition are subject to sub. (5)
- (5) A political subdivision may retain or dispose of any abandoned, unclaimed or seized dangerous weapon or ammunition only under s. 968.20.

170.07. Lost chattels, notice.

Except as provided in ss. 170.105 and 170.12, if a person finds 25 or more or any goods having a value of at least 25 but less than 100, and if the owner of the money or goods is unknown, the finder shall, within 5 days after finding the money or goods, give a written notice of the found money or goods to the law enforcement agency of the city, village or town in which the money or goods are found. That law enforcement agency shall post a notice of the found money or goods in 2 public places in the city, village or town.

170.08. Notice and appraisal.

Except as provided in ss. 170.105 and 170.12, the finder of lost goods having a value of 100 or more shall give a written notice of the found goods to the law enforcement agency of the city, village or town in which the goods are found within 15 days after finding the goods and cause a class 2 notice under ch. 985 of the found goods to be published in the county. If no person who is entitled to the goods appears to claim the goods, the finder shall, within 2 months after finding the goods and before using the goods to their injury, procure an appraisal of the goods by the law enforcement agency of the finders city, village or town. The appraisal shall be certified by the head of the law enforcement agency and filed in the office of the law enforcement agency of the city, village or town.

170.09. Restitution.

If the owner of lost money or goods appears within 90 days after notice is given to the law enforcement agency of the city, village or town under s. 170.07 or 170.08 and makes out his or her right to the money or goods, he or she shall have restitution of the money or goods or the value of the money or goods upon his or her paying all the costs and charges on the money or goods, including a reasonable compensation to the finder for the finders trouble.

170.10. Payment to town.

If no owner of lost money or goods appears within 90 days after notice is given to the law enforcement agency of the city, village or town under s. 170.07 or 170.08, the finder of the money or goods shall be the owner of the lost money or goods.

170.105. Chattels found by public officials, employees or agents.

(1) Notwithstanding ss. 170.07 and 170.08, if an official, employee or agent of the state or of a county, city, village or town finds 25 or more or any goods having a value of at least 25 while acting within the scope of his or her official duties, employment or agency, he or she shall transfer custody of the found money or goods to the agency in the city, village or town where the money or goods were found that is designated by the city, village or town governing body to receive found money or goods. That agency shall post a notice of the found money or goods in 2

public places in the city, village or town.

(2) If the owner of lost money or goods appears within 90 days after the notice is posted under sub. (1) and makes out his or her right to the found money or goods, he or she shall have restitution of the money or goods or the value of the money or goods upon paying all of the costs and charges on the money or goods. If no owner of lost money or goods appears within 90 days after the notice is posted under sub. (1), the found money or goods become the property of the state or county, city, village or town whose official, employee or agent found the lost money or goods.

CITY OF MADISON, WISCONSIN

A CHARTER ORDINANCE _____

PRESENTED June 4, 2013
REFERRED PSRC, Board of Park
Commissioners, DCC _____

Creating Section 8.44 of the Madison General Ordinances to establish rules for the treatment of lost or abandoned property found on public property.

DRAFT

Drafted by: Michael P. May

Date: May 17, 2013

SPONSOR: Mayor Soglin

DRAFTER'S ANALYSIS: Recent events such as the Boston Marathon bombing have made citizens much more aware of items left in public places. Madison does not have an ordinance setting forth procedures for taking possession and disposing of abandoned property. This ordinance establishes guidelines for such procedures. At least two state statutes establish procedures for treating lost or abandoned property that comes into the possession of public officials. These laws, Wis. Stat. §§ 66.0139 and 170.105, contain contradictory procedures, use procedures for notice and valuation of property that date from many years ago, and make distinctions based on whether property is "lost" or "abandoned", a distinction that leads public officials into the speculative domain. Nothing in the state statutes suggest they are of statewide concern and uniform application, making them subject to the City's power to opt out of the statutes by a Charter ordinance.

By this charter ordinance, the City opts out of those statutes and establishes a uniform procedure for treatment of property left on public property. The ordinance requires uniform procedures be adopted within 6 months of adoption, and describes the elements required in any such procedures as to notice, storage and disposal of the property. The ordinance allows the covered agencies to adopt their own rules, or to adopt one set of rules to be followed City-wide by all covered agencies.

The Common Council of the City of Madison do hereby ordain as follows:

Section 8.44 entitled "Lost or Abandoned Property" of the Madison General Ordinances is created to read as follows:

"8.44 LOST OR ABANDONED PROPERTY.

- (1) Charter Ordinance. By this ordinance, the City of Madison is exercising its authority under Article XI, sec. 3 of the Wisconsin Constitution, Wis. Stat. § 66.0101, and Wis. Stat. § 62.11(5). The City of Madison hereby determines not to be covered by the provisions of Wis. Stat. §§ 66.0139 and 170.105, with respect to lost or abandoned property. The City adopts this Charter Ordinance to create uniform rules for the treatment of lost or abandoned property that comes into the possession of city employees, officials or agents, and for the safety of the public in identifying and removing packages left in public places.
- (2) Definitions. For the purpose of this ordinance, the following definitions apply:
 - (a) "Lost Property" means personal property, money or chattels that have been lost or abandoned or left on public property without the permission of the public owner. Lost property does not include (i) items left on the terrace or in garbage or recycling containers for the scheduled sanitation pick up, (ii) items seized as

Approved as to form:

evidence in police investigations, or (iii) automobiles or bicycles, which are covered by Secs. 12.128(4) and 12.761, MGO, respectively.

- (b) "Appropriate City Agencies" shall mean the Madison Police Department, Madison Fire Department, and any of the Divisions of the Department of Public Works and Transportation (Parks, Water Utility, Engineering, Streets, Madison Metro, Traffic Engineering and Parking).
- (3) Requirement.
 - (a) Except as provided in Subdivision (b), if any City employees, officials or agents obtain possession of Lost Property within the scope of their public duties, the Lost Property shall be turned over to one of the Appropriate City Agencies.
 - (b) City employees, officials or agents may immediately dispose of Lost Property that either
 - 1. Has an estimated value of fifty dollars (\$50) or less;
 - 2. Consists of contraband or any dangerous materials, including flammable, explosive or incendiary materials, or other materials that pose a danger to persons or property;
 - 3. Is perishable; or
 - 4. Poses a public health risk.
- (4) The Appropriate City Agencies shall develop, within six (6) months of the effective date of this ordinance, uniform procedures for the holding and disposal of Lost Property subject to Subsection (3)(a). The agencies may each develop their own procedures, or may develop procedures to apply City-wide. The procedures shall include the following elements:
 - (a) Preparation and retention of a log of Lost Property obtained and disposed of, to include a description of the property, where it was obtained, and how the property was disposed.
 - (b) Maintaining or posting in one identified place in the City-County Building, for a period of no less than thirty (30) days after acquisition of Lost Property, of a printed copy of the log of Lost Property.
 - (c) A method of ascertaining whether a person claiming Lost Property has reasonably demonstrated a right to the property, and a record of any Lost Property returned to such person.
 - (d) The methods of disposal of Lost Property that has remained unclaimed for a period of thirty (30) days after acquisition of the property, which may include public auction, sale of the property through the Internet, transfer to non-profit entities, disposal as waste, or other reasonable methods of disposal. For purposes of disposal of the property, property that has remained unclaimed for a period of thirty (30) days becomes the property of the City. For purposes of this subparagraph, Madison Metro may dispose of property that remains unclaimed after fourteen (14) days of acquisition.
- (5) Property found by members of the public is subject to Wis. Stat. §§ 170.07-170.10.
- (6) This is a Charter Ordinance and shall be effective upon sixty (60) days from passage and publication subject, however, to the referendum procedures in Wis. Stat. § 66.0101(5)."