

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
2ND CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 2848

By: Lindley of the House

and

Herbert of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to cities and towns; amending 11 O.S. 1991, Section 22-132, which relates to photographing or reproducing records for storage; permitting certain original documents to be destroyed prior to expiration of retention period; amending 11 O.S. 1991, Section 28-102, as last amended by Section 1, Chapter 51, O.S.L. 1997 (11 O.S. Supp. 1997, Section 28-102), which relates to jurisdiction of criminal court of record; deleting limitation on certain penalty; amending 11 O.S. 1991, Section 34-104, as amended by Section 1, Chapter 45, O.S.L. 1995 (11 O.S. Supp. 1997, Section 34-104), which relates to disposition of personal property or money or legal tender by chief of police; deleting requirement of police chief to include serial number of money or legal tender in certain application; amending 11 O.S. 1991, Section 35-107, which relates to public utility deposits; removing requirement to publish certain notice; amending 11 O.S. 1991, Section 47-115, which relates to procedure for approval of plats; requiring certain notice to be sent by first-class mail; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 1991, Section 22-132, is amended to read as follows:

Section 22-132. A. The head of any municipal department, commission, bureau or board may have any or all records kept by the official, department, commission, bureau or board photographed, microphotographed, photostated, reproduced on film or stored on optical disk. Such film or reproducing material shall be of durable material and the device used to reproduce such

records on film or other material shall be such as to accurately reproduce and perpetuate the original records in all details.

B. The photostatic copy, photograph, microphotograph, photographic film or optical disk of the original records shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original.

C. Whenever photostatic copies, photographs, microphotographs, reproductions on films or optical disks shall be placed in conveniently accessible files and provisions made for preserving, examining and using same, the head of any municipal department, commission, bureau or board may certify those facts to the municipal governing body. The Following such certification, the governing body may, by ordinance or resolution, authorize the disposal, archival storage or destruction of such the original records and papers before the expiration of the retention period established pursuant to Section 22-131 of this title.

SECTION 2. AMENDATORY 11 O.S. 1991, Section 28-102, as last amended by Section 1, Chapter 51, O.S.L. 1997 (11 O.S. Supp. 1997, Section 28-102), is amended to read as follows:

A. The municipal criminal courts of record shall have original jurisdiction to hear and determine all prosecutions when a violation of any of the ordinances of the city where the court is established is charged, as provided by Article VII, Section 1 of the Oklahoma Constitution.

B. Except in cases when the penalty provided for the violation of an ordinance does not exceed a fine in the amount of Two Hundred Dollars (\$200.00), excluding court costs, or by imprisonment, or by both such fine and imprisonment, all persons charged before such municipal criminal court of record shall be entitled to a trial by jury, unless waived by the defendant. Judgment and sentence imposed by the judge shall be as effective as if the same had been rendered and imposed by a jury.

C. The maximum punishment that may be levied in any municipal criminal court of record is a fine not exceeding One Thousand Two Hundred Dollars (\$1,200.00) and costs, an imprisonment not to exceed six (6) months, or both such fine and imprisonment. Provided, the maximum punishment that may be levied in any municipal criminal court of record for violations of municipal traffic ordinances not including ordinances relating to driving a motor vehicle under the influence of alcohol or drugs is a fine not exceeding Five Hundred Dollars (\$500.00) and costs, an imprisonment not to exceed ninety (90) days, or both such fine and imprisonment. Provided, further that any municipal criminal court of record may levy a fine not to exceed One Thousand Dollars (\$1,000.00) and costs, an imprisonment not to exceed six (6) months, or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges. ~~A municipal ordinance may not impose a penalty greater than that established by state statute for the same offense.~~

D. When a defendant has been in jeopardy for the same or any lesser included offense in the municipal criminal court of record or district court, he shall not be prosecuted in any other court for the same or a lesser included offense.

SECTION 3. AMENDATORY 11 O.S. 1991, Section 34-104, as amended by Section 1, Chapter 45, O.S.L. 1995 (11 O.S. Supp. 1997, Section 34-104), is amended to read as follows:

Section 34-104. A. Any chief of police is authorized to dispose of personal property or money or legal tender as provided in this section or the charter of the municipality, which has come into ~~his~~ the possession of the chief of police in any manner if:

1. The owner of the personal property or money or legal tender is unknown or has not claimed the property;
2. The property or money or legal tender has been in the custody of the chief of police for at least six (6) months; and
3. The property or money or legal tender or any part thereof is no longer needed to be held as evidence or for any other purpose in connection with any litigation.

B. The chief of police shall file an application in the district court in which the situs of government of the municipality is located requesting the authority of ~~said the~~ court to conduct a sale of such personal property which has a fair market value of more than its face value. ~~Said The~~ chief of police shall attach to ~~his the~~ application a list describing such property including any identifying numbers and marks, the date ~~said the~~ property came into ~~his the~~ possession of the chief of police, and the name of the owner and the person in last possession, if different, and ~~his the~~ address of such person, if known. The court shall set ~~said the~~ application for hearing not less than ten (10) days nor more than twenty (20) days after filing of ~~said the~~ application.

C. In any instance where ~~said the~~ property has an actual or apparent value of more than Twenty-five Dollars (\$25.00), at least ten (10) days prior to the date of ~~said the~~ hearing, notice of ~~said the~~ hearing shall be sent by certified mail to each owner at ~~his the~~ address as listed in ~~said the~~ application. If the owner of any property with an actual or apparent value exceeding Five Hundred Dollars (\$500.00) is unable to be served notice by ~~said~~ certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is in custody. ~~Said The~~ notice shall contain a brief description of the property of ~~said the~~ owner and the place and date of the hearing. ~~Said The~~ notice shall be posted at the assigned place for the posting of municipal notices, and at two other public places in the municipality.

D. If no owner appears and establishes ownership to ~~said the~~ property at the hearing, the court shall enter an order authorizing the chief of police to donate ~~said the~~ property having value of less than Five Hundred Dollars (\$500.00) to a not-for-profit corporation as defined in Title 18 of the Oklahoma Statutes for use by needy families or to sell ~~said the~~ personal property for cash to the highest bidder, after at least five (5) days' notice of ~~said the~~ sale has been published. The chief of police shall make a return of ~~said the~~ donation or sale and the order of

the court confirming ~~said~~ the donation or sale shall vest title to ~~said~~ the property in the recipient or purchaser. After payment of court costs and other expenses, the remainder of money received from the sale of ~~said~~ the personal property shall be deposited in the municipal general fund.

E. All money or legal tender which has come into the possession of the chief of police pursuant to the circumstances provided for in subsection A of this section shall be transferred by the chief of police to the municipal clerk for deposit in the municipal general fund. Prior to any such transfer, the chief of police shall file an application in the district court requesting the court to enter an order authorizing ~~him~~ the chief of police to transfer ~~said~~ the money for deposit in the municipal general fund. The application shall describe the money or legal tender, ~~any serial numbers,~~ the date the same came into ~~his~~ the possession of the chief of police, and the name of the owner and ~~his~~ the address of the owner, if known. Upon filing the application which may be joined with an application as described in subsection B of this section, a hearing shall be set not less than ten (10) days nor more than twenty (20) days from the filing of the application. Notice of ~~said~~ the hearing shall be given as provided for in subsection C of this section. The notice shall state that upon failure of anyone to appear to prove ownership to ~~said~~ the money or legal tender, the court shall order the same to be deposited in the municipal general fund. The notice may be combined with a notice to sell personal property as provided for in subsection B of this section. If no one appears to claim and prove ownership to ~~said~~ the money or legal tender at the hearing, the court shall order the same to be transferred to the municipal general fund as provided in this subsection.

F. The provisions of this section shall not apply to any dangerous or deadly weapons, narcotic or poisonous drugs, explosives, or any property of any kind or character, which the possession of is prohibited by law. By order of the trial court, any such property filed as an exhibit or held by the municipality

shall be destroyed or sold or disposed of, pursuant to the conditions prescribed in such order.

G. The municipality is hereby authorized to establish a procedure for the registration of "lost and found" property. Such procedure shall give the finder of any property the option of relinquishing any future claim to found property at the time its possession is surrendered to the police or other agent of the municipality, or of retaining possession of the property after registering its description and the finders identity with the police department or other agent of the municipality. Only property in which the finder relinquishes any future claim to its ownership will be stored in municipal police property rooms.

H. The municipality may provide by ordinance that a percentage of the money or legal tender deposited in the municipal general fund as provided in subsection D or E of this section may be paid as a finders fee for services rendered to any person who found the unclaimed personal property or money or legal tender and delivered it to, or registered it with, the chief of police or other agent of the municipality.

SECTION 4. AMENDATORY 11 O.S. 1991, Section 35-107, is amended to read as follows:

Section 35-107. Money in the municipal treasury which has been acquired as a utility deposit from a customer of a municipal utility shall be refunded or credited to the customer upon termination of the utility service and payment of all charges due and connected with the service, or at an earlier date as may be allowed by the municipality. If the deposit has not been claimed by or refunded to a customer within one (1) year following termination of the utility service to the customer, the municipality shall send written notice to the customer at ~~his~~ the last-known address of the customer stating that the deposit will be paid over to the municipality unless it is claimed by the customer within ninety (90) days of the date the notice is mailed by the municipality. ~~The municipality shall publish in a newspaper of local circulation a list of names and last-known addresses of customers stating the deposit will be paid over to~~

~~the municipality if not claimed within ninety (90) days.~~ If the money is not claimed or refunded within the ninety (90) days, the amount of the deposit shall be paid into the fund of the municipal utility for which the deposit was collected, or into the general fund as may be determined by the governing body. No municipal utility customer shall have a right to any claim or refund on the deposit after written notice ~~or publication~~ and expiration of the ninety-day period in accordance with this section.

SECTION 5. AMENDATORY 11 O.S. 1991, Section 47-115, is amended to read as follows:

Section 47-115. The commission shall approve or disapprove a plat within thirty (30) days after it has been submitted to the commission; otherwise the plat shall be deemed to have been approved, and a certificate to that effect shall be issued by the commission on demand. The applicant for the commission's approval may waive the thirty-day requirement and consent to an extension of the period. The ground for disapproval of any plat shall be stated upon the records of the commission. Any plat submitted to the commission shall contain the name and address for a person to whom notice of a hearing shall be sent~~+~~l and no plat shall be acted on by the commission without affording a hearing thereon. Notice shall be sent to the person at ~~said~~ the address by registered mail of the time and place of the hearing not less than five (5) days before the date fixed therefor. Similar notice shall be mailed by first-class mail to the owners of land immediately adjoining the platted land, as their names appear upon the plats in the county clerk's office and their addresses appear in the directory of the municipality or on the tax records of the municipality or county. Every plat approved by the commission, by virtue of the approval, shall be deemed to be an amendment of or an addition to or a detail of the municipal plan and a part thereof. Approval of a plat shall not be deemed to constitute or effect an acceptance by the public of any street or other open space shown upon the plat. The commission from time to time may recommend to the council amendments of the zoning ordinance or map or additions thereto to conform to the commission's

recommendations for the zoning regulation of the territory comprised within approved subdivisions. The commission shall have the power to agree with the applicant upon use, height, area or bulk requirements or restrictions governing buildings and premises within the subdivision, provided such requirements or restrictions do not authorize the violation of the then effective zoning ordinance of the municipality. The requirements or restrictions shall be stated upon the plat prior to the approval and recording thereof and shall have the same force of law and be enforceable in the same manner and with the same sanctions and penalties and subject to the same power or amendment or repeal as though set out as a part of the zoning ordinance or map of the municipality.

SECTION 6. This act shall become effective November 1, 1998.

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