City of Las Cruces®

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Council Action and Executive Summary

Item # 11 **Ordinance/Resolution#** 2701

For Meeting of December 2, 2013 (Ordinance First Reading Date) **For Meeting of** December 16, 2013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE TO AMEND THE LCMC 1997, CHAPTER 38, ARTICLE V, SECTION 43, ENTITLED CENTRAL BUSINESS DISTRICT TO ENACT A PROVISION PERMITTING MAIN STREET BUSINESS OWNERS TO OPERATE A SIDEWALK DISPLAY ON PUBLIC PROPERTY.

PURPOSE(S) OF ACTION:

Amend Chapter 38 of the Municipal Code.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Andy Hume	**Department/Section:** Community Development / Planning & Neighborhood Services	**Phone:** 528-3048
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

For many years, some business owners along Main Street have used sidewalk displays to promote their businesses to potential customers. A sidewalk display can be more specifically described as the outdoor display of merchandise for sale to the public during regular business hours. This method of business promotion has continued after the re-opening of Main Street to vehicular traffic. However, placing sidewalk displays on public property that advertise a private business is prohibited under the current code.

This Sidewalk Display Ordinance sets minimum guidelines for a business owner to place sidewalk displays on public property. It also set standards that address obstructing pedestrian travel and aesthetic issues such as overall size. Finally, this Ordinance only applies to businesses that are physically located on Main Street between the roundabout and Bowman. The application of this Ordinance could be used as a pilot project to determine if the use of sidewalk displays could be expanded to the rest of Las Cruces. Such expansion would be subject to Council direction to staff as well as final Ordinance review and approval.

The Planning & Zoning Commission recommended approval (6-0) at their meeting held on August 27, 2013.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Proposed Sidewalk Display Ordinance.
3. Attachment "A", Excerpt from August 27, 2013 Planning & Zoning Commission meeting.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: ____in the amount of $_____for FY__.
N/A	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this action will approve the Ordinance amending Chapter 38-43 of the Las Cruces Municipal Code, entitled Central Business District.
2. Vote "No"; this action will deny the Ordinance amending Chapter 38-43 of the Las Cruces Municipal Code, entitled Central Business District. This will mean that sidewalk displays currently used by business owners will no longer be allowed.
3. Vote to "Amend"; this action could modify the Ordinance and delay business owners from using sidewalk displays.
4. Vote to "Table"; this action would prevent business owners from using sidewalk displays.

REFERENCE INFORMATION:

1. N/A

COUNCIL BILL NO. 14-016
ORDINANCE NO. 2701

AN ORDINANCE TO AMEND THE LCMC 1997, CHAPTER 38, ARTICLE V, SECTION 43, ENTITLED CENTRAL BUSINESS DISTRICT TO ENACT A PROVISION PERMITTING MAIN STREET BUSINESS OWNERS TO OPERATE A SIDEWALK DISPLAY ON PUBLIC PROPERTY.

The City Council is informed that:

WHEREAS, the Las Cruces Zoning Code was amended in 1997 in order to implement the Main Street Plaza Overlay Zone of the Central Business District; and

WHEREAS, Chapter 38, Section 43 of the current Las Cruces Municipal Code, entitled Central Business District, sets out zoning, land use, and design details for Main Street Downtown; and

WHEREAS, Chapter 38, Section 43 of the Las Cruces Municipal Code must be amended to permit business owners to operate a sidewalk display on public property; and

WHEREAS, this Ordinance will only apply to the use of a sidewalk display by business owners whose business is physically located on Main Street between the roundabout and Bowman; and

WHEREAS, the Planning & Zoning Commission recommended approval (6-0) at their meeting held on August 27, 2013; and

WHEREAS, the Las Cruces City Council has the authority to amend the Municipal Code.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT Chapter 38, Section 43 of the current Las Cruces Municipal Code, entitled

Central Business District, as shown in Exhibit "A," attached hereto and made part of this Ordinance, is hereby amended.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2013.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

Proposed Downtown Sidewalk Display Ordinance

38-43.J

13. **Sidewalk Display** means the outdoor display of merchandise for sale to the public during regular business hours by any person, persons or organization when such merchandise is displayed on a portion of, or entirely on a public sidewalk or public place not designed for vehicular traffic.
    a. All agents, employees or representatives conducting a sidewalk display on Main Street between the roundabout and Bowman in Downtown Las Cruces, shall comply with the following provisions:
        (i) All sidewalk displays shall be conducted during regular business hours;
        (ii) All displays shall be installed and removed by the business or property owner;
        (iii) No booths, tables or display merchandise shall be erected in such a manner so as to obstruct ADA access, vehicular traffic, business entrances, or designated fire access points;
        (iv) Sidewalk displays shall be limited to 100 square feet in total size;
        (v) Sidewalk displays shall only be conducted immediately in front of the permanent business located immediately adjacent to Main Street;
        (vi) No person shall leave his or her merchandise, booths, tables or cases on the site of the display after the conclusion of regular business hours.
        (vii) No person shall display merchandise of a type that is not originally sold by the permanent business located immediately adjacent to Main Street
        (viii) Sidewalk displays shall not include vending machines, food or beverage, outdoor lighting, or provide entertainment.
        (ix) All debris and trash created by the sidewalk displays shall be immediately cleaned from the public property.
        (x) No sidewalk displays shall be allowed after the entity with which it is associated is not open to the public.
        (xi) No permanent structure may be affixed to the sidewalk or any building. The business or property owner shall be responsible for any damage caused to the sidewalk or public property by the display;
        (xii) The business or property owner assumes all risks with setting up a sidewalk display and shall not hold the City responsible for any accidents or loss in the installation, removal, or operation of the displays.

IV. POSTPONEMENTS – NONE

V. CONSENT AGENDA

Crane: Now we proceed to the consent agenda. The way this works, for those who are not familiar with it, is that these items and there are five of them, are ones that the City Community Development Department feels are routine and uncontroversial and so they are grouped together here and we usually vote on them without discussion as a block. However, the rule is that if any Commissioner, Community Development person or any member of the public wishes to discuss any of these then we take them off the consent agenda and put them into the new business. Does anybody wish to remove anything from the consent agenda? Yes, sir, which item? Okay. Number 2. That's the Claude Dove property? Okay, sir, we'll take that off and make it the first item of new business. And somebody wants to take off Number 1?

Ochoa: Number one. Yes, sir.

Crane: Okay. That will be the second item of new business.

1. **Case S-13-011/IDP-13-01:** Application of Moy Surveying Inc. on behalf of Terry Lee & Velia Guethe, property owners, for a replat known as Parker Place 2nd Amended Subdivision, Replat No. 2 on a 0.226 ± acre lot located on the southwest corner of Wilson Avenue and Second Street; Parcel ID# 02-01305. Proposed Use: Subdividing one (1) existing residential lot into two (2) residential lots. Accompanying the proposed replat is an Infill Development Process (IDP) variance request to the minimum 5,000 square foot lot size requirement of the subject property's R-1a (Single-Family Medium Density) zoning designation: Lot 1A encompasses 4,910 square feet, 90 square feet less than the minimum lot size requirement and Lot 1B encompasses 4,869 square feet, 131 square feet less than the minimum lot size requirement; Council District 4 (Councillor Small).

2. **Case Z2865:** Application by Claude Dove-Teke LLC to rezone a 0.23-acre portion of the 1.98-acre Parcel 02-14428, located at 2969 Claude Dove Drive, from R-2 (Multi-Dwelling Medium Density Residential) to R-3 (Multi-Dwelling High Density Residential). The property is currently zoned R-3 and R-2 and the rezoning would allow the property to have the single zoning designation of R-3. District 3 (Councillor Pedroza).

3. **Case ZCA-13-2:** A request to amend Section 38-43.J.9 of the 2001 Las Cruces Zoning Code, as amended, by adding subsection (i) including provisions related to the use of A-frame signs on public property within the Central Business District (CBD). Submitted by the City of Las Cruces. Council District 1 (Councillor Silva).

4. **Case ZCA-13-3:** A request to amend Sections 36-3 Definitions and 36-9.b.1 Permits of the 2006 Las Cruces Sign Code, as amended, by adding a definition and provisions related to the use of A-frame signs in the City of Las Cruces (City). Submitted by the City of Las Cruces. All Council Districts.

5. **Case ZCA-13-4:** A request to amend Section 38-43.J of the 2001 Las Cruces Zoning Code, as amended, by adding subsection 13 including provisions related to the use of sidewalk displays on public property on Main Street between the roundabout at 700 N Main Street and Bowman Ave. at 250 S. Main Street, approximately 7 blocks. Submitted by the City of Las Cruces. Council District 1 (Councillor Silva).

Crane: Anything else? In that case we will vote on items 3, 4 and 5, cases ZCA-13-2, 3 and 4 as items of the consent agenda. May I have a motion to that ...?

Shipley: Move to approve consent items 3, 4 and 5.

Crane: Mr. Shipley moves that these items be approved.

Scholz: Second.

Crane: Seconded by Scholz. All in favor, aye.

All: Aye.

Crane: Any opposed? It passes 6 – 0. Thank you.

VI. OLD BUSINESS - NONE

VII. NEW BUSINESS

Crane: Item 1 in the consent agenda now moved to new business. Case Z2865: Application by Claude Dove-Teke LLC to rezone a 0.23-acre portion of the 1.98-acre Parcel 02-14428, located at 2969 Claude Dove Drive. Mr. Ochoa.

Ochoa: Yes, sir, Commissioner Crane. First, just a quick announcement: we have been advised by Legal now. Whenever we do have somebody from the public or the applicant stepping up to ask a question or make a statement or so forth into the minutes, that we take their oath, just a quick, "Do you promise to tell the truth, the whole truth and nothing but the truth under penalty of law?"

Crane: I see; and who administers this oath?

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COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

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For Meeting of December 16, 2013 (Adoption Date)

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Purchasing Manager's Request to Contract (PMRC) {Required?} **Yes** ☐ **No** ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		528-3048	10/17/13
Department Director		528-3067	10-17-13
Other			
Assistant City Manager /CAO Management & Budget Manager		2078 2107	10/18/13 10/18/13
Assistant City Manager/COO		2271	11/5/13
City Attorney		2128	11/6/13
City Clerk		2115	11/21/13

Rev. 8/2011