City of Las Cruces®
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Council Action and Executive Summary

Item # 12 **Ordinance/Resolution#** 2745

For Meeting of January 5, 2015 (Ordinance First Reading Date) **For Meeting of** February 3, 2015 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: **AN ORDINANCE REPEALING LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 16, ARTICLE VI, SECONDHAND DEALERS IN ITS ENTIRETY AND ENACTING A NEW LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 16, ARTICLE VI, PAWNBROKERS AND SECONDHAND DEALERS AND AMENDING LAS CRUCES MUNICIPAL CODE 1997, SECTION 16-171 (8), FOR THE PURPOSE OF CONFORMING WITH THE NEW CHAPTER 16, ARTICLE VI.**

PURPOSE(S) OF ACTION:

Approve revisions to the Las Cruces Municipal Code.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Michael Rickards	**Department/Section:** Police/Detectives	**Phone:** 528-4221
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The existing secondhand dealer ordinance does not contain sections that address issues regarding reporting requirements, disposition of property pledged or purchased, limitations, exclusions or unlawful transactions. The proposed ordinance will clearly define each of these issues and help in more accurate reporting, and tracking of used merchandise. The proposed ordinance will assure better efficiency in reporting to the Las Cruces Police Department and in return, deter crime and solve more crimes. The updated language contained within the proposed ordinance is based on interactions with the community and local businesses.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Proposed new Las Cruces Municipal Code (LCMC) 1997, Chapter 16, Article VI entitled "Pawnbrokers and Secondhand Dealers".
3. Exhibit "B", Proposed new amendment to LCMC 1997, Chapter 16, Section 16-171(8) for the purpose of conforming with the new ordinance.

(Continue on additional sheets as required)

4. Attachment "A", Proposed new Las Cruces Municipal Code (LCMC) 1997, Chapter 16, Article VI in legislative format.
5. Attachment "B", Proposed new amendment to LCMC 1997, Chapter 16, Section 16-171(8) in legislative format.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	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?			
N/A	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____ for FY__.
	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 repealing and replacing LCMC 1997, Chapter 16, Article VI, and amending LCMC 1997, Section 16-171 (8).
2. Vote "No"; this action will keep existing LCMC 1997, Chapter 16, Article VI, and LCMC 1997, Section 16-171 (8), in effect.
3. Vote to "Amend"; this action would allow the City Council to modify provisions of new LCMC 1997, Chapter 16, Article VI.
4. Vote to "Table"; this action would allow the City Council to table or postpone consideration of the ordinance and to direct staff accordingly.

(Continue on additional sheets as required)

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

COUNCIL BILL NO. 15-026
ORDINANCE NO. 2745

AN ORDINANCE REPEALING LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 16, ARTICLE VI, SECONDHAND DEALERS IN ITS ENTIRETY AND ENACTING A NEW LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 16, ARTICLE VI, PAWNBROKERS AND SECONDHAND DEALERS AND AMENDING LAS CRUCES MUNICIPAL CODE 1997, SECTION 16-171 (8), FOR THE PURPOSE OF CONFORMING WITH THE NEW CHAPTER 16, ARTICLE VI.

The City Council is informed that:

WHEREAS, the existing secondhand dealer ordinance does not contain sections that address issues regarding reporting requirements, disposition of property pledged or purchased, limitations, exclusions or unlawful transactions; and

WHEREAS, the proposed ordinance will clearly define each of these issues and help in more accurate reporting, and tracking of used merchandise; and

WHEREAS, based on interactions with residents of the community and local businesses, the proposed ordinance contains the necessary requirements to assure better efficiency in reporting to the Las Cruces Police Department and in return, deter crime and solve more crimes.

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

(I)

THAT Las Cruces Municipal Code (LCMC) 1997 Chapter 16, Article VI, Secondhand Dealers is hereby repealed in its entirety.

(II)

THAT LCMC 1997 Chapter 16, Article VI, Pawnbrokers and Secondhand Dealers as shown in Exhibit "A" attached hereto and made part of this ordinance, is hereby enacted.

(III)

THAT LCMC 1997, Section 16-171 (8), as shown on Exhibit "B" attached hereto, is hereby amended for the purpose of conforming with new Chapter 16, Article VI, Pawnbrokers and Secondhand Dealers.

(IV)

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

DONE AND APPROVED this ____ day of _____, 20___.

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

Exhibit
A

Chapter 16, Article VI

Pawnbrokers and Secondhand Dealers

Sec. 16-326.	**Short title.**
Sec. 16-327.	**Purpose.**
Sec. 16-328.	**Definitions**
Sec. 16-329.	**Licenses Required; Revocation; Provisions; Penalty.**
Sec. 16-330.	**Applicability of other laws.**
Sec. 16-331.	**Bond required.**
Sec. 16-332.	**Reporting requirements; Violation.**
Sec. 16-333.	**Inspection.**
Sec. 16-334.	**Disposition of pawned property and secondhand goods.**
Sec. 16-335.	**Used merchandise tags.**
Sec. 16-336.	**Purchase and receipt limitations.**
Sec. 16-337.	**Exclusions.**
Sec. 16-338.	**Unlawful transactions.**

Sec. 16-326. Short title.

This article shall be known as and may be cited as the "Pawnbrokers and Secondhand Dealers Ordinance."

Sec. 16-327. Purpose.

The purpose of this article is to regulate those businesses which primarily purchase or receive through pawn transaction used merchandise from the general public for the purpose of resale.

Sec. 16-328. Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Firearm as defined in 18 United States Code Section 921.

Item, in addition to meaning an individual item, shall include a coherent unit, such as a tool set with a tool box, for purposes of the reporting requirements of this article, provided that the contents of such units are reasonably described therein.

Pawnbroker shall mean a person who:

(A) Engages in the business of lending money on the deposit or pledge of personal property;
(B) Purchases personal property with the expressed or implied agreement or understanding to sell it back at a stipulated price; or

(C) Engages in the business of purchasing items of gold, silver, platinum or other precious metals or gems and reselling the product.

Secondhand dealer shall mean a person engaged in the business of purchasing, trading, bartering or exchanging secondhand goods.

Secondhand goods shall mean any item of personal property which is not purchased or sold as new. Secondhand goods do not include property purchased by one license, holder in the normal course of business from another license holder. Secondhand goods shall include, but are not limited to the following items:

(A) Jewelry of any kind and of any metal;

(B) Gold, silver and/or other precious metals in whatever form except coins or bullion;

(C) Any precious stone;

(D)Consumer electronics intended for everyday use, most often in the entertainment, communications and office productivity area to include personal computers, telephones, MP3 players, audio equipment, televisions, calculators, GPS automotive electronics, digital cameras and recorders using video media such as DVD's, VCR's or camcorders; and

(E) Hand tools, power tools and gardening tools.

License holder shall mean a person to whom a license has been issued pursuant to this article including such person's agents and employees.

Person shall mean any individual, partnership, corporation, firm or association.

Sec. 16-329. Licenses Required; Revocation; Provisions; Penalty.

The business license requirements, revocations, provisions and penalties shall be as set forth in Chapter 16, Article IV, Business Registration and Licensing.

Sec. 16-330. Applicability of other laws.

The license provided for in this article does not constitute a waiver of any requirement or provision contained in any other city ordinance or state or federal law.

Sec. 16-331. Bond required.

No person shall engage in the business of being a pawnbroker without having executed and delivered a bond to the city, in the sum of $5,000, with a corporate surety qualified to do business in the state. The bond shall be in a form approved by the Community Development Department and shall be conditioned upon the conduct of such pawnbroker's business according to the provisions of this article, and other city ordinances and state and federal law. Such bond shall be for the benefit of each and every person damaged by a breach of any condition set forth in the bond. Every

pawnbroker shall provide the Community Development Department with 30 days' written notice of cancellation of bond.

Sec. 16-332. Reporting requirements; Violation.

(A) Every pawnbroker / secondhand dealer shall each day accurately complete a report of all used property of every kind received or purchased during the preceding business day on a form approved by the Chief of Police. A photo identification card shall be required of each person pawning or selling merchandise to a pawnbroker or secondhand dealer. Each item received shall be listed on a separate report form. The report shall include the following:
  (1) Name of item.
  (2) Descriptions of the item including make and model number, if any.
  (3) Serial number and other identifying mark(s), if any.
  (4) Date, time and type of transaction.
  (5) Name and address of person offering the item.
  (6) Description of the person offering the item including sex, complexion, hair color, approximate height and weight, and date of birth.
  (7) Type of identification used by person offering item and identifying number of the identification. If the person presents a driver's license, the report shall also indicate the state of issuance.

(B) All reports required by this article shall be completed accurately and be made available by 12:00 noon of the day following the day that the property was received or purchased and said reports shall be made available for pickup by the Las Cruces Police Department within three days of the receipt or purchase of the property.

(C) Used personal property purchased directly from another license holder regulated by this article who has already reported the item pursuant to this section is exempt from the requirements of this section.

(D) Persistent or frequent erroneous or incomplete entries in or delays in submitting the above required reports shall constitute a violation of this section.

(E) All persons required to file reports as provided for in this article shall maintain a copy of each report for at least six months from the date the reported transaction occurred.

(F) All required reports shall be submitted daily by the license holder to LeadsOnline, an online investigative system that links law enforcement agencies and businesses through web based electronic reporting.

Sec. 16-333. Inspection.

The reports of the license holder required by this article shall be available for inspection by the Community Development Department, the Chief of Police or any sworn member of the Las Cruces Police Department at all reasonable times.

Sec. 16-334. Disposition of pawned property and secondhand goods.

(A) Pawned property shall not be sold or disposed of, except by redemption, by a pawnbroker within 120 days from the date said personal property was pawned

with the pawnbroker or within 90 days after the indebtedness becomes due, whichever is later.

(B) Secondhand goods shall not be sold or disposed of by a secondhand dealer within 15 days from the date said item was received by the license holder.

Sec. 16-335. Used merchandise tags.

Each item pawned or purchased or received by the license holder for which a report is required shall have attached thereto a tag with an alphabetic and / or numeric identification system matching the item with a corresponding report and record.

Sec. 16-336. Purchase and receipt limitations.

No license holder shall purchase or receive any item from the following:

(A) Any person under the age of 18; or
(B) Any person under the apparent influence of intoxicating liquor or drugs.

Sec. 16-337. Exclusions.

This article does not apply to persons who are exclusively involved in the following businesses or transactions:

(A) Junk dealer who deal in, old metal, glass, paper, cordage, rags, rubber or other waste which may be treated so as to be used again some form; vehicles or machines which are worn out and intended for scrapping; or any item considered to be junk for the purpose of trade. Junk does not include secondhand items or parts of secondhand items which are still usable for the purpose for which they were originally intended and are sold with a view to such further original use.
(B) Used motor vehicle dealers;
(C) Antique dealers who deal in paintings, furniture, china or other item painted or made more than fifty years ago and which are valuable primarily by reason of age, scarcity or the skill and craftsmanship of the artists and artisans. Antiques shall not include family heirlooms made of gold and silver or other precious metals;
(D) Coin and bullion collectors or dealers. This exclusion does not exempt such collectors or dealers from compliance with the regulations as herein provided in relation to any gold, silver, platinum or other precious metal or jewelry which they may purchase, trade, barter or exchange in addition to their coin and bullion operations;
(E) Individuals who sell and purchase items at neighborhood garage sales and who are not in the business of reselling those items;
(F) Nonprofit or charitable, secondhand goods or thrift shops;
(G) Licensed gun dealers. This exclusion does not exempt such dealers from compliance with the regulations as herein provided in relation to any gold, silver, platinum or other precious metal or jewelry which they may purchase, sell, trade, barter or exchange in addition to their gun business; or

(H) Consignment stores where a consignor transfers possession of personal property but not ownership to a consignor for sale with the understanding that the consignee pays the consignor a portion of the sales proceeds.

Sec. 16-338. Unlawful transactions.

No license holder shall purchase or receive any item:

(A) From which the manufacturer's name plate, serial number or distinguishing number or identification mark has been obviously defaced, altered, covered or destroyed; or
(B) Which the license holder knows or should have known is not lawfully owned by the person offering the same.

***State law reference- Used Merchandise Act, NMSA 1978, § 57-9-1 through §57-9-5**

Exhibit B

Sec. 16-171. - Additional regulation of licensed businesses.

All of the following citations are additional regulations listed in this Code, except where noted otherwise, that apply to the licensed businesses:

(1) Alarm systems service and installation, section 4-66 et seq.
(2) Solicitors or peddlers, section 21-1 et seq.
(3) Carnival, circus or menagerie, except kiddy ride carnivals, section 6-31 et seq.
(4) Farmers' and crafts market, section 10-1 et seq.
(5) Fireworks sales, the Uniform Fire Code, section 11-146 et seq.
(6) Shooting galleries, section 6-1.
(7) Flea markets, peddlers' markets, section 16-256 et seq.
(8) Pawnbrokers and Secondhand dealers, section 16-326 et seq.
(9) Private investigators and private patrol operators, section 4-96 et seq.
(10) Tent sales, Zoning Code

(Code 1988, § 18-106; Ord. No. 1648, 12-15-97)

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(Code 1988, § 18-106; Ord. No. 1648, 12-15-97)

Attachment A

~~ARTICLE VI. - SECONDHAND DEALERS~~

~~DIVISION 1. - GENERALLY~~

~~Sec. 16-296. - Reports by secondhand and salvage dealers.~~

~~It shall be unlawful for any secondhand or salvage dealer to fail to record and maintain the following information on purchases made by such dealer: the names and addresses of persons from whom purchases are made, the description of all purchases and the date. A form for this purpose shall be prescribed by the police department.~~

~~(Code 1988, § 18-151)~~

~~Secs. 16-297—16-325. - Reserved.~~

~~DIVISION 2. - PAWNBROKERS~~

~~Sec. 16-326. - Definitions.~~

~~The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Pawnbroker* includes any person who makes more than three loans of money in any calendar year, secured by anything of value, bailed to such lender as security for such loan, and held until such loan is repaid or disposed of in any manner following a failure on the part of the borrower to repay such loan.~~

~~(Code 1988, § 18-161)~~

~~**Cross reference**— Definitions generally, § 1-2.~~

~~Sec. 16-327. - License required; bond; fee.~~

~~(a) It shall be unlawful to conduct the business of pawnbroker within the city limits without having and displaying conspicuously a license to do so.~~

~~(b) Every person desiring to engage in the business of pawnbroking shall, together with the application for the license, file with the city a bond in the penal sum of $5,000.00, with a corporate surety qualified to do business in the state. Such bond shall be conditioned upon the safekeeping and return of all articles held in pawn by such pawnbroker and the faithful observance and performance of all duties specified in this article, which bond shall give to any person damaged or aggrieved by the breach thereof a right of action thereon.~~

~~(c) Every person establishing, carrying on, or conducting the business of pawnbroking shall pay a fee for such annual license of $100.00.~~

~~(Code 1988, § 18-162)~~

~~**Cross reference**— Business licenses, § 16-96 et seq.~~

~~**State law reference**— Bond required for pawnbrokers, NMSA 1978, § 56-12-6.~~

~~Sec. 16-328. - Records of pawn required.~~

~~Every pawnbroker shall keep, on a form approved by the city, maintain, and deliver records of every pawn transaction and purchase transaction as required for pawn transactions by NMSA 1978, § 56-12-9.~~

~~(Code 1988, § 18-163)~~

~~Sec. 16-329. - Prohibited acts.~~

~~It is unlawful for any pawnbroker or any person employed by a pawnbroker to engage in any prohibited practices, as such are specified and enumerated by NMSA 1978, § 56-12-14.~~

~~(Code 1988, § 18-164)~~

~~Secs. 16-330—16-360. - Reserved.~~

Attachment B

Sec. 16-171. - Additional regulation of licensed businesses.

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(1) Alarm systems service and installation, section 4-66 et seq.
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(10) Tent sales, Zoning Code

(Code 1988, § 18-106; Ord. No. 1648, 12-15-97)