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COUNCIL WORK SESSION SUMMARY ROUTING SLIP

Meeting Date February 23, 2015

TITLE: **Vehicle Forfeiture Ordinance.**

Are there attachments to the Council Work Session Summary?	**Yes** ☐	**No** ☒
Will there be a Video Presentation for this item?	**Yes** ☐	**No** ☒
Will there be a PowerPoint Presentation for this item?	**Yes** ☒	**No** ☐
If "yes", will a copy of the PowerPoint Presentation be included on the Council Work Session Agenda?	**Yes** ☐	**No** ☒

DEPARTMENT / ORGANIZATION	SIGNATURE	PHONE NO.	DATE
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City Manager			

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Council Work Session Summary

Meeting Date February 23, 2015

TITLE: VEHICLE FORFEITURE ORDINANCE

PURPOSE(S) OF DISCUSSION:

☒ Inform/Update

☐ Direction/Guidance

☐ Legislative Development/Policy

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

As a result of public concern regarding the constitutionality and legality of the City's Vehicle Forfeiture Ordinance Las Cruces Municipal Code ("LCMC") 1997 Section 27-6, the City Council and the City Manager requested a staff review during a Work Session of the procedure and process of the City of Las Cruces' ("City's") Vehicle Forfeiture Program.

On November 3, 2003, the City Council enacted Ordinance 2509, which adopted the City's Vehicle Forfeiture Ordinance, LCMC 1997 Section 27-6. The purpose of enacting the Vehicle Forfeiture Ordinance was to reduce Driving While Intoxicated ("DWI") related injuries and fatalities by eliminating the vehicles, which are used in repeated DWI offenses. In particular the City Council found that: (1) New Mexico Statutes, NMSA 1978 §3-18-17A and NMSA 1978 §3-17-1 allow the City to establish nuisance ordinances to provide for the safety of the public; (2) law enforcement statistics within the State of New Mexico and the City of Las Cruces reflect that the safety of the public is at an increased risk of harm by persons who repeatedly drive under the influence of alcohol or drugs, despite restrictions imposed upon their driving privileges due to previous DWI convictions, and by persons who have had multiple arrests for DWI; (3) the New Mexico Supreme Court upheld the City of Albuquerque's vehicle forfeiture law, which was created to forfeit vehicles from motorists who drive after the revocation of their licenses for DWI, or who have been arrested for multiple DWI's, to protect the safety of the public; and (4) that information presented to the City Council indicated that persons under twenty-one years of age cause a significant number of the alcohol-related vehicle crashes resulting in death and serious injury.

The New Mexico Supreme Court has held that vehicle forfeiture ordinances in New Mexico, much like the City's, are constitutional. NMSA 1978 §3-17-1 allows the City to establish ordinances that provide for the safety and preserve the health of the public. NMSA 1978 §3-18-17A allows the City to pass ordinances that define and abate a public nuisance. Therefore, the City enacted an ordinance which defines and abates vehicles as public nuisances because they are driven by persons who repeatedly drive under the influence of alcohol or drugs, despite driving restrictions imposed by previous DWI convictions, and by persons who have had multiple

Continue on additional sheets as required)

arrests for DWI. As stated above, the City's Vehicle Forfeiture Ordinance is based on the City of Albuquerque's similar forfeiture ordinance. The New Mexico Supreme Court upheld the City of Albuquerque's DWI-vehicle forfeiture ordinance against challenges under the U.S. and New Mexico Constitutions. See City of Albuquerque, ex rel. Albuquerque Police Department v. One (1) 1984 White Chevy UT., VIN 1G8CS18BXE8176575, NEW MEXICO LICENSE NO. 335 KRH, 2002-NMSC-014.

The program for the City's Vehicle Forfeiture Ordinance is constitutional. Las Cruces Police Department officers only seize vehicles of persons who commit traffic offenses, which allows for forfeiture. The City's Vehicle Forfeiture Ordinance provides the owners of seized vehicles with constitutional due process to challenge the seizure. All owners are provided an administrative hearing with an independent hearing officer. The administrative hearing officer hears evidence to determine if the law enforcement officer had probable cause for the initial traffic stop and to determine if the vehicle was a properly seized. Pursuant to the ordinance, vehicle owners can claim an innocent owner defense if their vehicle was used in a DWI offense without their knowledge. There is also an appeal process to the District Court to challenge the determination of the administrative hearing. Lastly, the City may seek to abate the public nuisance by forfeiture in District Court and the owner or innocent owner is also allowed to contest the City's forfeiture procedure in the civil action.

SUPPORT INFORMATION:

1. Attachment "A", Las Cruces Municipal Code "LCMC" Section 27-6.

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Sec. 27-6. - Vehicle forfeiture.

This section is passed pursuant to the statutory grant of authority contained in state statutes, NMSA 1978, §§ 3-17-1 and 3-18-17A and shall be referred to as the "City of Las Cruces Vehicle Forfeiture Ordinance". This section shall be effective and enforced within the geographical boundaries of the city.

(1) *Purpose.* It is the intent of the city council, by passing this section:

a. To abate motor vehicle nuisances, in order to protect the physical and emotional health, safety, and financial interests of the public placed at risk by persons who repeatedly choose to drive while under the influence of alcohol or drugs in violation of law, or who drive in violation of driver's license restrictions, including any required ignition interlock equipment. Among the dangers created by these types of unlawful activities are the potential for serious bodily injury and loss of life to innocent persons and families, as well as considerable property damage.

b. To remedy the substantial risk of harm the public is faced with when vehicles are driven by persons:

1. Arrested for second or subsequent offense of DWI, after one or more previous convictions for DWI; or

2. Arrested for operating a motor vehicle in violation of restrictions imposed by the state for DWI revoking or suspending the drivers license, or imposing a prerequisite ignition interlock device; or

3. Under the age of 21 arrested for DWI after one or more previous convictions for DWI.

(2) *Vehicle nuisance.* A motor vehicle is hereby declared to be a public nuisance and subject to civil proceedings for its temporary seizure or permanent forfeiture pursuant to the provisions of this section if it is:

a. Operated by a person who has previously been convicted or pled guilty or no contest to one or more prior DWI offenses, in or out of the state, who is arrested for a second or subsequent DWI offense;

b. Operated by a person who has previously been convicted or pled guilty or no contest to a DWI offense, or had his or her driver's license suspended or revoked as a result of driving while intoxicated, in or out of the state, pursuant to New Mexico or other state's law, including that of implied consent, and is subsequently arrested for a DWI offense;

c. Operated by a person subject to mandatory utilization of an ignition interlock device, who is then arrested for a DWI offense;

d. Operated by a person whose license is subject to a current revocation or suspension prohibiting them from driving as a result of a DWI offense, and/or whose license is conditioned upon the use of an ignition interlock device, and the terms and conditions of the state's DWI restrictions are violated;

e. Operated by a person under the age of 21, who has previously been convicted or pled guilty or no contest to DWI, who is arrested for a second or subsequent DWI offense.

(3) *Vehicles subject to forfeiture.* Except as otherwise provided herein, any motor vehicle which has been declared to be a public nuisance as defined by this section shall be subject to civil temporary seizure or permanent forfeiture proceedings.

(4) *Seizure; forfeiture proceeding.*

a. An arresting officer may seize a vehicle, and pursue a civil forfeiture proceeding to permanently remove the vehicle, at the time of arrest under the following circumstances warranting same, in the interest of the public's health and safety:

1. An arrest of the person for driving while intoxicated, who has at least one prior conviction of record (includes no contest and guilty pleas) for DWI;
2. An arrest of the person for driving while intoxicated, who has previously had his or her driver's license suspended or revoked as a result of driving while intoxicated, in or out of the state, pursuant to New Mexico or other state's law, including that of implied consent;
3. An arrest of a person for driving while intoxicated, while subject to restrictions upon his or her drivers license requiring ignition interlock device imposed as a result of driving while intoxicated;
4. An arrest of a person for driving a vehicle subject to a prerequisite ignition interlock device restriction, and the vehicle is not so equipped;
5. An arrest of the person for driving while his or her license is suspended or revoked as a result of driving while intoxicated; or
6. An arrest of a person under the age of 21 for driving while intoxicated, who has at least one prior conviction of record (includes no contest and guilty pleas) for DWI.

b. A vehicle under this section shall not be subject to replevin; rather, it shall be maintained in the custody of the police department, subject only to the orders and decrees of the district court.

c. The arresting officer seizing a vehicle shall make arrangements for its removal from the scene to an appropriate official location within the city limits for disposition in accordance with this section. At the time of seizure, the arresting office shall provide a copy of the notice of seizure to the driver.

d. As soon as practicable after seizure of a vehicle, the arresting officer will also mail by first class U.S. mail a copy of the notice of seizure to all title owners of record, as lawfully registered with the state motor vehicle division. The notice of seizure shall contain the following information:

1. The license plate number.
2. The make, model, and color of the vehicle.
3. The location the vehicle was seized from.
4. A statement that the vehicle has been taken into custody and stored.
5. The reason for seizure.
6. The name, job title, and phone number for the legal department or city employee from whom the owner may obtain further information.
7. A statement that both a towing fee and a daily storage charge will be assessed.
8. A statement that the owner has the right to contest the validity of the seizure by requesting a hearing in writing within ten days of mailing of the notice of seizure.
9. A copy of the ordinance from which this section is derived.

e. Upon timely submittal of request for hearing, the city shall appoint a hearing officer, who shall schedule and conduct same within ten work days (excludes weekends and holidays honored by the city), unless otherwise continued with the agreement of the parties. The hearing officer shall mail notice of the hearing to the person requesting the hearing, and also provide copies of any procedures that will be applied during the hearing process.

f. The hearing shall be informal and not bound by the technical rules of evidence. The hearing officer shall determine only whether the law enforcement officer had sufficient probable cause to seize the vehicle. The hearing officer shall render and mail to the parties a written decision reflecting his findings and conclusions within two work days (excludes weekends

and holidays), from the date the hearing concluded, unless otherwise extended with the agreement of the parties.

g. If the hearing officer finds that the law enforcement officer did not have sufficient probable cause to seize the vehicle in question or that the vehicle should otherwise be released, he or she shall issue and date a certificate of release.

1. A copy of the certificate of release shall be mailed by first class U.S. mail to each title owner of record, as reflected in the state motor vehicles department records.

2. Upon receipt of the owner's copy of such certificate, the city shall release the vehicle to its owner or the owner's agent, and storage fees up through a 24-hour period following the issuance of the certificate shall be waived. Storage fees accruing after the 24-hour period following the owner's receipt of the certificate (excluding days when the storage lot may not be open for business), shall be paid by the owner.

3. Any vehicle not recovered by the owner within 30 days after being notified that such vehicle has been released by the city shall be deemed abandoned and disposed of in accordance with the notice provisions of NMSA 1978 § 29-1-14. Any proceeds from the sale of vehicles seized pursuant to this section in excess of those needed to administer this section shall be used for DWI prevention and education programs.

h. If the hearing officer determines that there was probable cause for seizure of the vehicle, the city shall, pursuant to NMSA 1978 § 30-8-8, petition for a judgment to abate the public nuisance, and forfeit the vehicle, and serve a copy of such petition upon each title owner of record, as reflected in the state motor vehicle division records.

i. When property is forfeited or temporarily seized pursuant to this section, the police department shall arrange for the sale of the motor vehicle by public auction. The proceeds from such sales, as well as the proceeds from payments by owners agreeing voluntarily to immobilization devices in excess of those needed to administer this section shall be used for DWI prevention and education programs.

(5) *Temporary seizure.* In the interest of the public's health and safety, an arresting officer shall also seize a vehicle at time of arrest of a person for driving while intoxicated, if that person has a previous conviction of record (includes guilty and no contest pleas) for DWI, and seek to immobilize the vehicle for 30 days following date of arrest. The 30-day immobilization may be accomplished by an immobilization device at the expense of the owner or by impoundment to a secure facility, in accordance with the procedures established by the legal department. The 30-day immobilization shall be imposed after the opportunity for a hearing relating to probable cause is provided, as outlined in article VI. The temporary immobilization of the vehicle shall also be subject to the rights of innocent third party owners set forth in article VII.

(6) *Property interest protected from temporary seizure and forfeiture.* Notwithstanding the fact that a vehicle may be subject to forfeiture or temporary seizure under this section, such forfeiture or temporary seizure shall be subject to the interest of:

a. Any co-owner who did not have knowledge of, nor consent to, the use of the vehicle by the driver who caused the vehicle to become a nuisance. The burden of establishing a prima facie case of lack of knowledge or consent is upon the co-owner of the driver; once this is proven, the burden of proving knowledge and consent shall be upon the City.

b. Any secured party, to the extent of the security interest, if the secured party proves that the security interest was acquired in good faith with no knowledge or reason to believe that the vehicle would be used by the driver whose license has been suspended or revoked. If the security interest is greater than the value of the vehicle, title shall be transferred to the secured party upon motion of the district court.

c. In order for a co-owner or secured party's interest to be recognized under subsections a. and b. above, the interest claimed in the vehicle must be properly filed with the state motor vehicle department in accordance with NMSA 1978 §§ 66-3-201 and 66-3-202 before the date of

incident leading to the seizure. Any party acquiring an interest in the vehicle after the vehicle has been taken into custody of the city police department shall have the burden of intervening in the forfeiture proceeding to protest such interest.

(7) *Severability.* If any section, paragraph, sentence or clause of this section is held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this section. The city council hereby declares that it would have passed this section irrespective of any provision being declared unconstitutional or otherwise invalid. Additionally, should any provision of this section conflict with a provision of another applicable civil law or regulation relating to forfeiture of vehicles, the stricter provision shall apply, unless more specifically preempted, in which case, the severability provision above will govern.

(8) *Effective date.* This section shall be effective January 1, 2004.

(Ord. No. 2059, § I, 11-3-03; Ord. No. 2121, §§ I—XVI, 7-19-04)