



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 2 Ordinance/Resolution# 16-204

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of May 2, 2016
(Adoption Date)

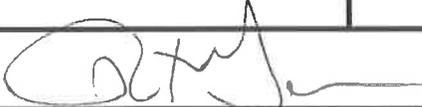
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION AUTHORIZING THE CONTINUED PRACTICE FOR COLLECTING AND USING A PET LICENSE FEE BY THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY FOR PETS WITHIN THE CITY LIMITS.

PURPOSE(S) OF ACTION:

To authorize a continued practice.

COUNCIL DISTRICT: ALL		
<u>Drafter/Staff Contact:</u> Grace Espinosa	<u>Department/Section:</u> Legal/City Attorney	<u>Phone:</u> 541-2128
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Las Cruces Municipal Code ("LCMC") requires that owners of pets within the City limits obtain pet licenses issued by the Animal Services Center of the Mesilla Valley ("ASCMV") and pay the pet licensing fees set by City Council resolution. LCMC Section 7-11(d) provides that "all pet licensing fees collected shall be remitted or reported to the city and shall be used for animal control purposes," and LCMC Section 7-40 provides that all fees "collected pursuant to this chapter shall be remitted to the city, who shall place the monies in the city general fund."

Prior to and since the enactment of the City's current animal control ordinance within the LCMC in November 2014, ASCMV staff has done the work to collect pet licensing fees. They issue the pet licenses, keep the records, buy the tags, deliver the tags, and send out renewal notices. The wording in Section 7-11(d) gives the ASCMV the discretion to remit or report the pet licensing fees. Historically, ASCMV has been reporting and accounting for the fees, but has not been remitting payment of said fees to the City. The ASCMV has been complying with the discretion given to it in Section 7-11(d). However, the language in Section 7-40 does not give the ASCMV the discretion to not remit payment. Instead, Section 7-40 requires the ASCMV, as well as the Codes Enforcement Section, to remit or transfer all collected fees to the City. There is an inconsistency between the two (2) sections that was not recognized when the LCMC was amended in 2014.

(Continue on additional sheets as required)

Rather than amend the LCMC to eliminate the inconsistency, the City should recognize that the specific language in Section 7-11(d), which is limited to just pet licensing fees collected by the ASCMV, controls over the general language in Section 7-40, which applies to all fees collected by both the ASCMV and the Codes Enforcement Section, based on the statutory interpretation principal recognized in New Mexico that the specific statute controls over the general statute. The City Attorney's Office supports this interpretation, thereby allowing the process by which the ASCMV reports, but does remit, pet licensing fees to the City's general fund to continue. Further, should the ASCMV be required to permit licensing fees under Section 7-40, arguably, the City's General Fund would need to increase its contribution of General Fund monies for the ongoing operations of the ASCMV for the pet licensing efforts they undertake for the City; thus creating additional work for City and ASCMV staff and impacting the City's overall budget.

This request for consideration of this proposed Resolution was made by consensus of the ASCMV Board at their meeting of Thursday, March 10, 2016.

SUPPORT INFORMATION:

1. Resolution.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)	
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$_____ for FY_____.
	No	<input type="checkbox"/>	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 will allow the existing practice to continue.
2. Vote "No"; this will require the ASCMV to remit licensing fees and could increase the budget obligation from the City to the ASCMV.
3. Vote to "Amend"; this action would allow the City Council to modify provisions of the Resolution.
4. Vote to "Table"; this action would allow the City Council to table or postpone approving the existing practice.

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)



City of Las Cruces®

PEOPLE HELPING PEOPLE

4

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of May 2, 2016
(Adoption Date)

TITLE: A RESOLUTION AUTHORIZING THE CONTINUED PRACTICE FOR COLLECTING AND USING A PET LICENSE FEE BY THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY FOR PETS WITHIN THE CITY LIMITS.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>Grace Espinoza</i>	541-2128	4/1/16
Department Director	<i>[Signature]</i>	541-2128	1 April 2016
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>[Signature]</i>	541-2100 541-2107	4-4-2016 ²⁷ 4.1.2016
Assistant City Manager/COO	<i>[Signature]</i>	541-2271	4-6-16
City Attorney	<i>[Signature]</i>	541-2128	1 April 2016
City Clerk	<i>[Signature]</i>	541-2115	4-15-16

RESOLUTION NO. 16-204**A RESOLUTION AUTHORIZING THE CONTINUED PRACTICE FOR COLLECTING AND USING A PET LICENSE FEE BY THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY FOR PETS WITHIN THE CITY LIMITS.**

The City Council is informed that:

WHEREAS, the Las Cruces Municipal Code (“LCMC”) requires that owners of pets within the City limits obtain pet licenses issued by the Animal Services Center of the Mesilla Valley (“ASCMV”) and pay the pet licensing fees set by City Council resolution; and

WHEREAS, LCMC Section 7-11(d) provides that “all pet licensing fees collected shall be remitted or reported to the city and shall be used for animal control purposes,” and LCMC Section 7-40 provides that all fees “collected pursuant to this chapter shall be remitted to the city, who shall place the monies in the city general fund”; and

WHEREAS, prior to and since the enactment of the City’s current animal control ordinance in November 2014, ASCMV staff has done the work to collect pet licensing fees and the wording in Section 7-11(d) gives the ASCMV the discretion to remit or report the pet licensing fees; and

WHEREAS, historically, the ASCMV has been reporting and accounting for the fees, but has not been remitting payment of said fees to the City; thus, the ASCMV has been complying with the discretion given to it in Section 7-11(d); and

WHEREAS, the language in Section 7-40 does not give the ASCMV the discretion to not remit payment, but instead, requires the ASCMV, as well as the Codes Enforcement Section, to remit or transfer all collected fees to the City, thus arguably, creating an inconsistency between the two (2) sections that was not recognized when the LCMC was amended in 2014; and

WHEREAS, rather than amend the LCMC to eliminate the inconsistency, the City recognizes that the specific language in Section 7-11(d), which is limited to just pet licensing fees collected by the ASCMV, controls over the general language in Section 7-40, which applies to all fees collected by both the ASCMV and the Codes Enforcement Section, based on the statutory interpretation principal recognized in New Mexico that the specific statute controls over the general statute; and

WHEREAS, the City Attorney's Office supports this interpretation, thereby allowing the process by which the ASCMV reports, but does remit, pet licensing fees to the City's General Fund to continue; and

WHEREAS, further, should the ASCMV be required to permit licensing fees under Section 7-40, arguably, the City's General Fund would need to increase its contribution of General Fund monies for the ongoing operations of the ASCMV for the pet licensing efforts they undertake for the City; thus creating additional work for both City and ASCMV staff and impacting the City's overall budget; and

WHEREAS, this request for consideration of this proposed Resolution was made by consensus of the ASCMV Board at their meeting of Thursday, March 10, 2016.

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

(I)

THAT the City Council authorizes the continued practice for collecting and using a pet license fee by the ASCMV for pets within the City limits.

(II)

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

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

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councillor Gandara:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Eakman:	_____
Councillor Sorg:	_____
Councillor Levatino:	_____

APPROVED AS TO FORM:

Albert _____
City Attorney

Frank Cuzzo