Petitioner: Jeffrey M. Wells, Assistant County Manager

Recommendation:

That the Board of County Commissioners conduct a public hearing; and approve, adopt, and authorize the Chairman to sign an ordinance relating to prohibited uses of the public right-of-way by adding a new chapter to title 16 of the Clark County Code to provide for civil infractions in lieu of criminal violations for certain prohibited uses and by amending section 16.11.070 to clarify that coolers are items that cannot be stored on public sidewalks; and provide for other matters properly relating thereto. (For possible action)

FISCAL IMPACT:

- Fund#: N/A
- Fund Center: N/A
- Description: N/A
- Added Comments: N/A

BACKGROUND:

Clark County Code establishes certain restrictions on the use of the public right-of-way. This proposed ordinance would:

1. Through the adoption of a new chapter in title 16 of the Clark County Code, establish a procedure that allows specified violations of code provisions relating to prohibited uses of the public right-of-way to be handled as civil infractions in lieu of criminal violations; and
2. Amend code section 16.11.070 to clarify that "coolers" are items that cannot be stored on the public sidewalk.

The proposed ordinance amendment was introduced at the April 5, 2016 Board of County Commission meeting and a public hearing is scheduled for April 19, 2016, at 10 a.m.

ACTION: APPROVED (INCLUDING ADOPTION OF ORDINANCE NO. 4384 AS AMENDED) AS RECOMMENDED

Respectfully submitted,

Jeffrey M. Wells, Assistant County Manager
BILL NO. 4-5-16-1 (A)

SUMMARY – An Ordinance pertaining to prohibited uses of the rights-of-way, to amend Title 16 of the Clark County Code by adding a new Chapter 16.10 providing for civil infractions; by amending section 16.11.070 to clarify coolers as prohibited containers; and providing for other matters properly relating thereto.

ORDINANCE NO. 4384
(of Clark County, Nevada)

AN ORDINANCE AMENDING TITLE 16 OF THE CLARK COUNTY CODE, BY ADDING A NEW CHAPTER 16.10 OF THE CLARK COUNTY CODE; BY AMENDING SECTION 16.11.070; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title 16 of the Clark County Code is hereby amended by adding a new Chapter 16.10 as follows:

CHAPTER 16.10 CIVIL INFRACTION IN LIEU OF CRIMINAL VIOLATION

16.10.010 Penalty and procedure for violation and infraction.

(a) As provided in Clark County Code section 6.04.140 for purposes of violations of Clark County Code section 6.04.130, and Clark County Code 16.11.090 for purposes of violations Clark County Code 16.11.070, every person violating such sections shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or imprisonment of not more than six months in the county jail.
or by both such fine and imprisonment. For such violations, a separate offense shall be deemed committed on each day and for each incident within a day during or on which a violation occurs.

(b) Evidence of a violation of Clark County Code 16.11.070 in the form of equipment, materials, parcels, containers, coolers, packages, bundles or other property stored, placed or abandoned in or on the public sidewalk; and Clark County Code 6.04.130 in the form of merchandise, goods, items, wares or services that were sold, peddled, offered for sale or solicited for sale in any portion of a public right-of-way, as provided therein, may be impounded at the time of the citation or arrest. The impounding officer shall maintain a written inventory of any such evidence.

(c) In lieu of the criminal penalty provided in subsection (a) for any violation of Clark County Code 16.11.070 or Clark County Code 6.04.130, unless state law provides a criminal penalty for the same act or omission, a civil penalty, in an amount not to exceed $1,000 for each violation, may be imposed by a hearing officer through the civil diversion program as provided herein. Each day and for each incident within a day during or on which the violation occurs constitutes a new violation. When a police officer has probable cause to believe that a person has violated a law described in subsection (a), the defendant may request that he or she be allowed to enter a civil diversion program by admitting civil liability for the instant offense, for which criminal liability will be waived upon satisfaction in full of the civil liability. The hearing officer shall thereupon determine the amount of the civil penalty as provided below. The hearing officer is given the authority to adopt rules regarding the conduct of the hearings.
All civil penalties imposed by the hearing officer shall be remitted to the department within ten working days of the order.

(d) The hearing officer shall levy such penalty, as provided for in subsection (c) and (d) of this section, subject to the following:

(1) First offense, at least two hundred fifty dollars, but no more than one thousand dollars per violation;

(2) Second offense, at least five hundred dollars, but no more than one thousand dollars per violation;

(3) Third offense, at least seven hundred fifty dollars, but no more than one thousand dollars per violation;

(4) For any subsequent offense, one thousand dollars per violation.

Notwithstanding these specific civil penalties, with the consent of the person alleged to have been in violation of Clark County Code 16.11.070 or Clark County Code 6.04.130, the hearing officer may accept the impounded property as payment in part or whole of the assessed civil penalty. If accepted as payment in part or whole of the assessed civil penalty, the impounded property shall become the property of the department to be disposed of as waste or in any other lawful manner. Unless the hearing officer provides for the retention and/or return to the violator, the property impounded shall be become the property of the department, to be disposed of as waste or in any other lawful manner.

(e) In addition to the penalties that may be imposed by the hearing officer, administration and/or investigation fees to cover actual costs incurred by the department,
LVMPD or other officers may be assessed to the person upon whom the hearing officer has imposed a penalty.

(f) In determining the amount of the penalty imposed pursuant to subsections (c) and (d) of this section, the hearing officer should give careful consideration to certain factors including, but not limited to, the following:

1. The economic impact to the violator.
2. The seriousness of the violation.
3. The impact of the violation on the business community.
4. The impact of the violation on public safety, health and welfare.

and


(g) If payment of any imposed civil penalties is not received by the department within ten working days of the order, a demand for payment notice will be sent by the department requiring payment within five working days of receipt of the notice. If payment is not received by the department after this additional five-day period, the impounded property may be sold and the proceeds will be applied to the delinquent balance and/or collection efforts may be instituted.

(h) Any party aggrieved by a decision of the hearing officer may seek judicial review of the decision of the hearing officer in accordance with Rule 2.15 of the Rules of Practice for the Eighth Judicial District Court if the State of Nevada.
(i) As used herein, "department" means the department of business license of Clark County, or such other enforcement entity that may be designated by the County Manager.

(ii) As used herein, "hearing officer" means any judge and any person designated by the Board of County Commissioners pursuant to Chapter 2.68 of the Clark County Code.

SECTION 2. Chapter 16.11.070 of the Clark County Code is hereby amended as follows:

16.11.070 - Storing and unloading materials on public sidewalks.

(a) No equipment, materials, parcels, containers, coolers, packages, bundles or other property may be stored, placed or abandoned in or on the public sidewalk. This provision shall not apply to materials or property held or stored in a carry bag or pack which is actually carried by a pedestrian or items such as a musical instrument case or a backpack which is temporarily placed next to a street performer for that street performer's use unless said musical instrument case or backpack actually obstructs the sidewalk in violation of this chapter;

(b) Except in designated loading zones, vehicles may not stop in traffic lanes to load or unload equipment, materials, parcels, containers, packages, bundles or other property unto the public sidewalk.

SECTION 3. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 4. All ordinances, parts of ordinances, chapters, sections, subsections,
clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 5. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on the 5th day of April, 2016.
PROPOSED BY: Steve Sisolak

PASSED on the 19th day of April, 2016.

AYES: Susan Brager
Lawrence L. Brown III
Chris Giunchigliani
Marilyn Kirkpatrick
Mary Beth Scow
Steve Sisolak
Lawrence Weekly

NAYS: None

ABSTAINING: None

ABSENT: None
This ordinance shall be in force and effect from and after the 3rd day of May 2016.