

**CITY COUNCIL
CITY OF PALM SPRINGS, CALIFORNIA**



MINUTES
WEDNESDAY, NOVEMBER 29, 2017
Palm Spring Convention Center
277 North Avenida Caballeros, Primrose B
Palm Springs, CA 92262

8:00 P.M. ADJOURNED REGULAR MEETING

CALL TO ORDER: Mayor Moon called the meeting to order at 8:01 p.m.

PLEDGE OF ALLEGIANCE: Mayor Moon led the salute to the flag.

ROLL CALL:

PRESENT: Councilmember Kors, Councilmember Mills, Councilmember Roberts, Mayor Pro Tem Foat, and Mayor Moon

ABSENT: None

ALSO PRESENT: City Manager Ready, Assistant City Manager Fuller, City Attorney Kotkin, Special Counsel Gary Schons, and Interim City Clerk Hart

PRESENTATIONS:

City Attorney Kotkin corrected the Closed Session report from November 15, 2017 as follows:

1. On November 15, 2017, he reported no time spent in closed session on an item noticed on the closed session agenda, "Initiation of Litigation, two (2) cases."
2. During closed session on November 15, 2017, the initiation of litigation as to one (1) case was discussed. The city attorney reported that for the record, the initiation of litigation item discussed related to an exposure to litigation matter. He further explained that he accidentally failed to make two (2) separate check marks in his handwritten closed session notes regarding these items. He indicated that he made this error, that he is correcting it tonight, and that this error relates to the discussion of Agenda Item 4A on the November 29, 2017 agenda.

The city attorney went on to discuss two (2) Brown Act and City ethics policy complaints received regarding the Virgin Hotel project, and indicated that per a decision by City Manager Ready and himself, special counsel has been brought in to assist with the matter. Special Counsel Gary Schons addressed both allegations of violation of the Brown Act and the City's ethics policies in their respective particulars.

City Attorney Kotkin acknowledged passion surrounding the project and discussed the importance of public integrity and transparency. He stated there were no Brown Act or

ethics policy violations. He expressed that he did not want to give legal advice to the City Council in open session, but that a verbatim transcript was available reflecting some of his comments on November 15 responding to an inquiry by Councilmember Kors.

Councilmember Roberts asked if the attorneys were completely confident that there was no violation of the Brown Act and no violation of the City's ethics policies. Special Counsel Schons and City Attorney Kotkin answered in the affirmative.

ACCEPTANCE OF THE AGENDA:

ACTION: Approve the agenda as presented.

Motion by Councilmember Roberts, seconded by Councilmember Mills, and carried 3-2-0 (Councilmember Kors and Councilmember Roberts dissenting).

PUBLIC TESTIMONY:

Charles LeMorte addressed the Council regarding Item 4A and questioned the 1090 protections and surrender of rights.

Frank Tysen expressed frustration regarding hotel approvals and TOT incentives. He suggested the Council postpone the issue.

Lew Stewart indicated opposition to welfare for developers and requested the Virgin Hotel ordinance be reconsidered for first reading.

Patrick Weiss suggested second reading for Ordinance No. 1940 be deferred until the new Council was seated.

Michael Kassinger suggested retaining the momentum on World Wide recognition and urged the Council to approve the Virgin Hotel. He thanked Mayor Pro Tem Foat and Councilmember Mills for their service.

Emily Hemphill stated John Wessman had relinquished all rights to the Virgin Hotel and the 1090 rights were illusive. She requested the Council determine the best interest for Palm Springs and urged the City Council to approve the Development Agreement.

Michael Braun, President of Grit Development, encouraged approval of the Virgin Hotel project.

Doug Huth questioned the financial viability of the Virgin Hotel without the TOT incentives. He questioned why the existing City Council was pushing to tie the hands of the incoming City Council.

Roger Tansey stated he was pleased with the promise of 200 jobs and encouraged preference be given to Palm Springs residents. He suggested negotiating something for the citizens. He stated the process seemed morally repugnant.

David Freedman stated they had substantial concerns on the lack of transparency and the development agreement should not have been discussed in closed session. He suggested the Council reconsider first reading.

Lisa Middleton commended Mayor Pro Tem Foat and Councilmember Mills for their service. She suggested the new City Council have the opportunity to make the decision. She stated she supported the Virgin Hotel but it should not be approved by the "lame duck" Council. She stated the City should not give up its 1090 rights.

Jim Wanless commended the City on the public/private partnership and Museum Specific Plan. He encouraged the Council to approve the Virgin Hotel Development Agreement.

Barbara Beaty thanked Mayor Pro Tem Foat and Councilmember Mills for their service. She expressed confusion about Wessman not benefitting since he was a member of the LLC. She stated she did not understand why the TOT rebate was being given to the developer.

Christy Holstege indicated support for the Virgin Hotel and project. She thanked Mayor Pro Tem Foat and Councilmember Mills for their service. She discussed the need to work to rebuild public trust and requested the new City Council have the opportunity to vote on the project.

Lanny Swerdlow addressed the Council in support of onsite consumption of cannabis.

Rick Pentele discussed the importance of cannabis lounges. He suggested marijuana be recognized like beer.

Joy Brown Meredith, Board of Main Street, requested the Council consider postponing Item 4C to allow discussion between merchants, residents and the Council. She questioned the rushed decision. She thanked Mayor Pro Tem Foat and Councilmember Mills.

Steve Rosenberg stated he had submitted information on separation distances and suggested proceeding with the cannabis ordinance. He thanked Mayor Pro Tem Foat and Councilmember Mills for their service.

CITY COUNCIL, SUBCOMMITTEE, AND CITY MANAGER'S COMMENTS AND REPORTS:

1. **CONSENT CALENDAR:** None
2. **PUBLIC HEARINGS:** None
3. **LEGISLATIVE:** None

4. UNFINISHED BUSINESS: None

A. SECOND READING AND ADOPTION OF ORDINANCE NO. 1940 APPROVING A DEVELOPMENT AGREEMENT WITH DTFS B-3, LLC RELATED TO CONSTRUCTION OF THE VIRGIN HOTEL LOCATED ON BLOCK B-1 OF THE DOWNTOWN PALM SPRINGS SPECIFIC PLAN AT THE NORTHEAST CORNER OF BELARDO ROAD AND MUSEUM WAY, CASE NO. 5.1204 SP AMEND, CASE NO. 3.3908 MAJ, AND CASE NO 5.1427 DA:

City Attorney Kotkin presented the staff report.

Council discussion ensued.

During Council discussion Special Counsel Schons' statements included the following:

- If the agreement is approved by the Council and
- If there is a financial interest by any member of the Council, and
- In this instance, if the former Mayor did receive a bribe from any source to approve that agreement there would be a 1090 violation and that contract would be void
- Concurs with City Attorney's statements as noted in the November 15, 2017, verbatim Minutes with respect to the City waiving its 1090 claim if the ordinance approving the development agreement was enacted (attached as Exhibit A)
- The enactment of the ordinance approving the development agreement will waive the City's 1090 claim

ACTION:

Waive the second reading of the ordinance text in its entirety and adopt Ordinance No. 1940, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT WITH DTFS B-3, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, RELATED TO CONSTRUCTION OF THE VIRGIN HOTEL LOCATED ON BLOCK B-1 OF THE DOWNTOWN PALM SPRINGS SPECIFIC PLAN AT THE NORTHEAST CORNER OF BELARDO ROAD AND MUSEUM WAY, CASE NO. 5.1204 SP AMEND, CASE NO. 3.3908 MAJ, AND CASE NO. 5.1427 DA" with amendments to the development agreement as noted in the staff report.

Motion by Mayor Moon, seconded by Mayor Pro Tem Foat, and approved on a majority (3-2-0, Councilmember Kors and Councilmember Roberts dissenting) roll call vote.

Interim City Clerk Hart read the ordinance title.

B. SECOND READING AND ADOPTION OF ORDINANCE NO. 1941 AMENDING AND RESTATING THE CITY'S SIGN ORDINANCE AND REPEALING THE CITY'S "SIT AND LIE" ORDINANCE:

City Attorney Kotkin presented the staff report.

Council discussion ensued.

At 11:02 p.m. Mayor Moon recessed the meeting.

At 11:17 p.m. Mayor Moon reconvened the meeting with all members of the Council present.

City Council discussion ensued.

ACTION:

Continue Items 4.B. and 4.C. to December 6, 2017, at 4:00 p.m. with closed session at 3:30 p.m.

Motion by Councilmember Roberts, seconded by Councilmember Kors, and carried unanimously (5-0-0) on vote.

B. SECOND READING AND ADOPTION OF ORDINANCE NO. 1941 AMENDING AND RESTATING THE CITY'S SIGN ORDINANCE AND REPEALING THE CITY'S "SIT AND LIE" ORDINANCE:

ACTION: Continued to December 6, 2017, 4:00 p.m. No action taken.

C. SECOND READING AND ADOPTION OF ORDINANCE NO. 1943 AMENDING THE PALM SPRINGS ZONING CODE (PSZC) RELATIVE TO ZONING REQUIREMENTS AND DEVELOPMENT STANDARDS FOR COMMERCIAL MEDICAL AND ADULT-USE CANNABIS FACILITIES:

ACTION: Continued to December 6, 2017, 4:00 p.m. No action taken.

4. NEW BUSINESS: None

PUBLIC COMMENT: None.

CITY COUNCIL AND CITY MANAGER REQUESTS AND UPCOMING AGENDA DEVELOPMENT:

Councilmember Kors requested the following:

- Temporary subcommittee and liaison assignments be made on December 6, 2017, to ensure representation between December 7, 2017, and December 13, 2017, and the Council Rules and Procedures Ad Hoc Subcommittee review the subcommittee and liaison assignments list and provide recommendations
- An economic impact analysis on the potential vacation rental ballot measure

The following were discussed:

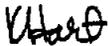
- Vacant and abandoned buildings would be considered at the first meeting in January 2018.
- City Grants and Sponsorships to non-profits will be considered on December 13, 2017.
- The animal ordinances could be considered at the first meeting in January.

Councilmember Roberts requested Municipal Code Chapter 8.05 regarding HSPB review of demolition permits be reviewed to not allow demolition until there was a proposed replacement. Director of Planning Services Fagg stated HSPB had submitted a letter to Council making that request. City Manager Ready requested a recommendation from HSPB.

ADJOURNMENT:

At 11:29 p.m., the City Council adjourned in memory of Randy Lowe, to the next regular meeting Wednesday, December 6, 2017, at 4:00 p.m. Council Chamber, City Hall, preceded by Closed Session, Small Conference Room, City Hall, 3200 East Tahquitz Canyon Way, Palm Springs.

Respectfully submitted,



Kathleen D. Hart, MMC
Interim City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, ANTHONY J. MEJIA, City Clerk of the City of Palm Springs, California, hereby certify that the November 29, 2017, MINUTES were approved by the City Council of the City of Palm Springs at a regular meeting held on February 7, 2018, by the following vote:

AYES: Councilmember Kors, Mayor Pro Tem Roberts, and Mayor Moon
NOES: None
ABSENT: None
ABSTAIN: Councilmembers Holstege and Middleton

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Palm Springs, California, this 12th day of February, 2018.



Anthony J. Mejia, MMC
City Clerk



**CITY OF PALM SPRINGS
MEMORANDUM
OFFICE OF THE CITY CLERK**

TO: Edward Z. Kotkin
City Attorney

cc: David H. Ready, Esq., Ph.D.
City Manager

FROM: Kathleen D. Hart, MMC *KDH*
Interim City Clerk

DATE: November 28, 2017

SUBJECT: 11-15-2017, City Council Meeting Transcription
Item A, Virgin Hotel Discussion (a portion only)

Per our discussion, at the request of Councilmember Kors, I have prepared a transcription of a portion of the Virgin Hotel Item, November 15, 2017, City Council Meeting.

Councilmember Kors

I obviously take some exception to a potential bribe being a technicality, but everyone's entitled to their opinion. When we voted to transfer the TOT from the Marriott to the Virgin, which we did, we were assured we were not waiving, potentially not waiving our 1090 claims. In every agreement we've done since, we've had language. So I want to ask the City Attorney - by combining the TOT program, which we have never done before, with the development agreement we are effectively voting to waive any 1090 claims we may have. Is that correct?

City Attorney Kotkin

I'm loathe to offer legal advice in response to one Councilmember's questions, since the entire Council is the holder of the attorney-client privilege. I apologize, my comments, my legal analysis, I'm very happy to offer that. If there's a vote that I answer that question, I . . .

Councilmember Kors

Anyone object to him answering the question? [Mayor and Councilmembers response]
Ok. You now have a majority.

City Attorney Kotkin

Great.

Terrific.

There's a verbal majority. I appreciate that. Thank you very much.

Mayor Moon

We're all listening.

City Attorney Kotkin

I appreciate that. Certainly with respect to this transaction, in the event that the agreements that are before the Council this evening are approved as they're presented in the staff report there would be no feasible way for the City of Palm Springs to seek to recover the potential share of TOT that might be realized by this property through a court proceeding. That is a right that today, under the existing agreements....my analysis is indicating that we would have that capacity.

Councilmember Kors

No, he is giving us his opinion... Chris. He is not saying guaranteed. Well, that's not his opinion.

City Attorney Kotkin

I will qualify my comments, because I have spoken with Councilmember Mills as well, and I will certainly say that with respect to the recovery under 1092, that as a practical matter, that type of a legal action is a challenging undertaking 100%, and that in a certain sense, regardless of the path that the Council chooses, any attorney that tells you "you're gonna get that money back" [Councilmember Kors, concurrently: "No guarantees, understood"] would be absolutely foolish. We'd be wrong to do that.

Councilmember Kors

So we are effectively taking it off the table.

City Attorney Kotkin

I would say if you approve these agreements as they're presented you're removing the potential to recover that future money. Again, that's not money that the City has ever spent or given anybody. It is future money.

Councilmember Kors

Ok, and just so it's clear. There's no reason we need to have the TOT agreement in this development agreement. So if they were separate, we could do the development agreement without that, that's correct as well.

City Attorney Kotkin

You could, in theory remove the TOT covenant from the development agreement, convey the consideration in the development agreement that is given to the developer in a separate document and extend the TOT in a new covenant the way we have in conjunction with this development agreement. But it's far from certain, in my opinion,

that that course of action would be any more likely to preserve the recovery potential under 1092. It's far from certain.

Councilmember Kors

The best course of action to do that, would be to pass an ordinance extending the TOT for the three (3) hotels that want them separate and apart from this development agreement. Correct?

City Attorney Kotkin

If I were charting your course to preserve the City's recovery rights with respect to 1092 of the Government Code, as to any of these issues with respect to hotel projects I would recommend that you do so in a project neutral, non-specific way by changing the ordinance that provides for the program itself. That is certainly something that could be done, and would obviate the need, potentially, for extensions of the TOT deadline for the commencement of construction with respect to hotel rooms.

/kdh