



**SUSTAINABILITY COMMISSION**  
**CITY OF PALM SPRINGS, CALIFORNIA**  
[www.palmsprings-ca.gov](http://www.palmsprings-ca.gov)    [www.yoursustainablecity.com](http://www.yoursustainablecity.com)

**February 19, 2019**  
**5:00 PM**

**REGULAR**  
**MEETING AGENDA**

**Palm Springs City Hall**  
**Large Conference Room**  
 3200 E Tahquitz Canyon Way  
 Palm Springs, CA 92262

<b>COMMISSIONERS</b>	
<b>Roy Clark, Chair</b>	<b>Robert McCann, Vice Chair</b>
<b>Carl Baker</b>	<b>John Goins</b>
<b>Jim Flanagan</b>	<b>Lani Miller</b>
<b>David Freedman</b>	<b>T Santora</b>
<b>Jennifer Futterman</b>	<b>Grant Wilson</b>
<b>Greg Gauthier</b>	

Staff representatives: Jay Virata, Director of Community & Economic Development; Patrick Tallarico, Manager, Office of Sustainability; Dan DeGarmo, Program Coordinator; Gary Calhoun, Recycling Coordinator

*City of Palm Springs Vision Statement: Palm Springs aspires to be a unique world-class desert community where residents and visitors enjoy our high quality of life and a relaxing experience. We desire to balance our cultural and historical resources with responsible, sustainable economic growth and enhance our natural desert beauty. We are committed to providing responsive, friendly, and efficient customer service in an environment that fosters unity among all our citizens.*

Please **MUTE OR TURN OFF** all audible electronic devices for the duration of this meeting. Thank you!

- CALL TO ORDER**
- ROLL CALL**
- ACCEPTANCE OF AGENDA**

- CITY MANAGER / STAFF COMMENTS** **(5 MINUTES)**
- COMMISSION and STUDENT LIAISON REPORTS - As available.** **(5 MINUTES)**

**PUBLIC COMMENTS:** This time is for members of the public to address the Sustainability Commission on Agenda items and items of general interest within the subject matter jurisdiction of the Commission. The Commission values your comments but, pursuant to the Brown Act, cannot take action on items not listed on the posted Agenda. Three (3) minutes are assigned for each speaker.

- A. WELCOME AND INTRODUCTIONS** **(5 MINUTES)**
- B. MEETING MINUTES** **(5 MINUTES)**  
 January 15, 2019 Regular Meeting Minutes
- C. RECYCLING REPORT - Gary Calhoun** **(5 MINUTES)**
- D. OLD BUSINESS** **(25 MINUTES)**
  - 1. Status of the Leaf Blower Exchange Programs (AQMD and Palm Springs) and Informational Campaign – Manager Tallarico.
  - 2. Status of Household Battery Recycling Program.
  - 3. Status of Recommended Ban Plastic Containers and Straws at Food Service Establishments. – Staff
  - 4. Status of Construction and Demolition Waste Ordinance. – Staff

Sustainability Commission Regular Meeting Agenda

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5. Sustainability Film Series Program, Palm Springs Cultural Center – “MOTION: The Sustainability Commission approves sponsorship of the Sustainability Film Series Program, \$2000”. – Staff
6. Request for input on electric scooters in Palm Springs. – Staff
7. “MOTION: The Sustainability Commission supports in principal, concept, intent, and purpose the ‘Clean Indoor Air and Health Protection’ ordinance of January 2019” – Commissioner Baker.

**E. NEW BUSINESS**

**(30 MINUTES)**

1. Electric Vehicle Charging Strategy. – Staff
2. ONE-PS Annual Picnic, March 23, 2019.  
“MOTION: The Sustainability Commission approves sponsorship of the ONE-PS, \$500”. – Staff
3. “MOTION: The Sustainability Commission approves the draft amendments to the wind energy conversion systems ordinance to facilitate the repowering of wind energy conversion systems to take account of energy efficiencies and recommends that the City forward the draft ordinance to the Planning Commission for adoption” – Commissioner Freedman

**F. COMMITTEE AND COMMISSIONER REPORTS**

**(15 MINUTES)**

1. Standing Subcommittee on Solar and Green Building - Commissioners Freedman and Goins
2. Standing Subcommittee on Waste Reduction - Commissioner McCann, Vice Chair Clark
3. Ad Hoc Subcommittee on Walkability & Pedestrian Planning - Commissioners Wilson, Gauthier, Futterman
4. Ad Hoc Subcommittee on Film Festival Programs – Commissioners Futterman and Gauthier
5. Ad Hoc Subcommittee on Bicycle Routes and Cycling – Commissioner Flanagan
6. ~~Ad Hoc Subcommittee on World Environment Day – Commissioners Futterman, Gauthier, Santora~~
7. Wellness – Commissioner Baker
8. Water - Commissioner Freedman
9. Outreach - Commissioner Futterman

**G. COMMISSIONER COMMENTS AND UPCOMING AGENDA DEVELOPMENT**

**(5 MINUTES)**

- H. ADJOURNMENT** - The meeting of the Sustainability Commission will adjourn to the Regular Meeting of the Sustainability Commission to be held at 5:00 p.m. on Tuesday, March 19, 2019, in the City Hall Large Conference Room, 3200 E Tahquitz Canyon Way, Palm Springs CA 92262. The Sustainability Commission’s regular meeting schedule is at 5 p.m. the third Tuesday each month except August unless otherwise noted or amended.

It is the intention of the City of Palm Springs to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you need special assistance beyond what is normally provided, the City will attempt to accommodate you in every reasonable manner. Please contact the Office of the City Clerk at (760) 323-8204 at least 48 hours prior to the meeting to inform us of your needs and to determine if accommodation is feasible.

Pursuant to G.C. Section 54957.5(b)(2) the designated office for inspection of records in connection with the meeting is the Office of Sustainability, City Hall, 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262. Agenda and staff reports are available on the City’s website [www.palmspringsca.gov](http://www.palmspringsca.gov). If you would like additional information on any item appearing on this agenda, please contact the Office of Sustainability at 760-323-8248.

AFFIDAVIT OF POSTING: I, Patrick Tallarico, Manager of the Office of Sustainability of the City of Palm Springs, California, certify this Agenda was posted at or before 5:00 p.m. on February 14, 2019, as required by established policies and procedures.

  
Patrick Tallarico, Manager of the Office of Sustainability



**SUSTAINABILITY COMMISSION - REGULAR MEETING MINUTES**  
 Tuesday, January 15, 2019 Palm Springs City Hall, Large Conference Room

**CALL TO ORDER:** Vice Chair Clark called the meeting to order at **5:00** p.m.

**ROLL CALL:** A quorum was present for this Regular Meeting of the City of Palm Springs Sustainability Commission.

**AGENDA APPROVAL:** The agenda was presented by Vice Chair Clark. A motion to approve as posted by Commissioner Baker and seconded by Commissioner McCann and unanimously carried.

	This Meeting	Present to Date	FY 2018/2019 Excused Absences	FY 2018/2019 Unexcused Absences
Roy Clark, Chair	X	30		
Robert McCann, Vice Chair	X	28		
Grant Wilson	X	67		
David Freedman	X	40	1	
Jennifer Futterman	X	27	1	
Greg Gauthier	X	21		
John Goins	X	18	2	
T Santora	X	10		
Carl Baker	X	10		

X = Present  
L = Late

E = Excused (notified Chair and Staff of absence)  
U = did not notify of absence

**CITY STAFF PRESENT:** Jay Virata, Director of Community & Economic Development; Patrick Tallarico, Manager, Office of Sustainability; Daniel DeGarmo, Program Coordinator; Gary Calhoun, Recycling Coordinator.

**CITY MANAGER / STAFF COMMENTS** – Director Virata introduced Patrick Tallarico, Manager, Office of Sustainability. Manager Tallarico commented on the College of the Desert Construction and Demolition plans. The project plans to reclaim and reuse the concrete onsite and establish separate waste streams for other recyclable materials.

**COMMISSION LIAISON REPORTS** – None.

**PUBLIC COMMENTS** –

Kim Floyd, Palm Desert, welcomed Patrick Tallarico to the City.

**A. WELCOME AND INTRODUCTIONS** – Vice Chair Clark welcomed Patrick Tallarico. Manager Tallarico introduced himself and stated that he would like to focus on where we are and where we are going.

**B. MEETING MINUTES**

December 18, 2018 Regular Meeting minutes approval: Motion by Commissioner Santora to approve as presented, second by Commissioner Baker and approved unanimously by an open vote.

**C. RECYCLING REPORT,** Recycling Coordinator Gary Calhoun was absent and in his stead, Mr. DeGarmo reported that the Ewaste and Recycling event held on January 12, 2019 was a huge success.

**D. OLD BUSINESS**

Commissioners discussed the following items. Key points are highlighted.

1. Status of the Leaf Blower Brochure and Informational Campaign – Director Virata reported that we are still waiting on AQMD to release the details of their program, which is expected soon.

2. Sustainability Film Series Program, Palm Springs Cultural Center. Mr. DeGarmo gave an update on the status of the Sustainability Film Series at the Cultural Center. The films will begin in February. The group reviewed the poster for the series and did not have any comments.  
**ACTION ITEM:** Mr. DeGarmo will follow up with the organizers to discuss opportunities for the Commission to provide some level of sponsorship as in previous years.
3. **MOTION:** “The Sustainability Commission recommends that there be consistency in design and color to conform to the norms of recycling and trash containers, blue for recycling and brown for trash.” Commissioner McCann (Original vote in October 2018). Per the request of City Manager Ready, Commissioner McCann re-stated the above motion, seconded by Commissioner Santora. Commissioner Santora asked why this item was brought back. Director Virata stated that the City Council requested that this motion be re-stated. Commissioner McCann stated that the City Council has previously discussed other options for trash and recycle containers downtown and that the issue is being brought back to the Council for review. Motion passed 9-0 in an open vote.
4. **MOTION:** “The Sustainability Commission endorses the Clean Indoor Air and Health Protection Resolution of January 2019.” – The motion was made by Commissioner Baker, seconded by Commissioner Freedman (for purposes of discussion). Commissioner Freedman stated that he has concerns with the way the resolution is presented and would like further clarification. Discussion continued on how the resolution has been presented and Commissioners requested to see the Clean Indoor Air and Health Protection draft ordinance passed by the Human Rights Commission on the same subject. Motion failed on an open vote, 2-7. Vice Chair Clark asked if this could be brought back in February with changes as requested.  
**ACTION ITEM:** Commissioners were asked to provide changes to Commissioner Baker and the City staff so that a revised version could be reviewed at the next meeting.

#### E. NEW BUSINESS

Commissioners discussed the following items. Key points are highlighted.

1. **Election of Commission Chairperson and Vice Chairperson.** Mr. DeGarmo asked if the Commission wanted to have elections for a six month period or for a year and a half. A six month election was decided upon.  
**ACTION ITEM:** Commissioner Baker nominated Commissioner Clark for Chair. There were no other nominations for Chair. Commissioner Clark was elected on a unanimous vote. Commissioner Wilson nominated Commissioner McCann for Vice-Chair. There were no other nominations for Vice Chair. Commissioner McCann was elected on a unanimous vote.
2. **Formation of an Ad Hoc Subcommittee to produce the World Environment Day event, Sunday, June 2, 2019.** Chair Clark reported to the Commission on the request to form an Ad Hoc Subcommittee for the World Environment Day event. Commissioner Futterman gave further information on the event and welcomed any Commissioner who would like to be a part of the Ad Hoc Committee.  
**ACTION ITEM:** Chair Clark asked for participation on the Committee and Commissioners Santora and Gauthier volunteered to be on the Committee.
3. **MOTION:** “The Sustainability Commission approves expenditures for World Environment Day, Sunday, June 2, not to exceed \$5000.” Commissioner Futterman shared the details of the Commission’s past sponsorship of the event and put forward the motion for similar funding for 2019. The motion was seconded by Commissioner Santora. There was some brief discussion of advertising for the event, including an article in the Desert Sun. The motion passed 9-0 on an open vote.

#### F. COMMITTEE AND COMMISSIONER REPORTS

Commissioners discussed the following items. Key points are highlighted.

1. Standing Subcommittee on Solar and Green Building - Commissioners Freedman and Goins – Commissioner Freedman reported on efforts of bringing the Energy Code Coach training program to the City Building Department with the assistance of CVAG. He also reported on steps being taken to update the City’s solar zoning ordinance. Commissioner Freedman also reported on the NUSA tours being offered in May that he will be leading. Commissioners Freedman and McCann are also working on a workshop during the NUSA conference. Commissioner Goins reported on status of the February 23, 2019 Modernism Week event.
2. Standing Subcommittee on Waste Reduction - Commissioner McCann and Vice Chair Clark. Vice Chair

McCann reported on the status of a plastic straw and Styrofoam ban and that Councilmember Holstege is working on getting the issue on a City Council agenda. Vice Chair McCann also reported on the issues regarding the Anaergia Orex system and the Waste Water Treatment Plant. Chair Clark reported on the Battery Recycling program and that he has visited a couple of the locations where the recycle containers are scheduled to be placed. This program will continue to move forward with additional support and input from City staff.

3. Ad Hoc Committee on Walkability and Pedestrian Planning - Commissioner Wilson reported that a meeting is planned for January 22, 2019 on the pedestrian plan on the Indian Canyon two-way conversion. Commissioner Gauthier reported that he has researched information on what other cities are doing in regards to electric scooters. Commissioner Gauthier requested that scooters be on the agenda for February.
4. Ad Hoc Subcommittee on Film Festival Programs – Commissioner Gauthier stated no report this month and that the committee members are planning on attending the movies being presented for the series.
5. Ad Hoc Subcommittee on Bicycle Routes and Cycling – Jim Flanagan reported on recommendations he has been discussing with the Engineering Department on bike lane improvements. He requested direction on whether or not a motion should be brought to the Commission or to continue working with Engineering. It was agreed that he will work more with Engineering before bringing a motion to the Commission. Mr. Flanagan also requested direction on the American Bicycle Association “Bicycle Friendly City” application. Chair Clark asked if the bicycle map should be updated. Mr. Flanagan reported that there are not that many changes that need to be made at this time.
6. Wellness – Commissioner Baker reported on his research regarding “Green Monday” organization and program. One way to promote is to encourage local restaurants to provide a meatless entrée on Mondays. Commissioner Baker suggested that as Commissioners go out to eat that they ask the restaurant how they feel about the program. Commissioner Baker also handed out a brochure put out by the Parks and Recreation Department showing their programs. Commissioners can report out on what they heard at the February meeting and determine next steps.
7. Water - Commissioner Freedman reported current numbers for water conservation are at 13.4% in November with a savings over the last twelve months of 13.8% with a cumulative savings of 16.4% since 2016. He also reported that DWA still has funds available for turf conversion.
8. Outreach – Commissioner Futterman stated no report this month.

#### **G. COMMISSIONER COMMENTS -**

Commissioner Santora requested clarification on the process for getting items on the agenda and why an item can be removed from the agenda by City Staff.

Commissioner Futterman stated that Parks and Recreation Staff have had requests for battery recycling information and that the bicycle maps are being requested also at the Leisure Center.

Chair Clark stated that the Commission has supported the ONE-PS picnic in the past and that sponsor applications are now available for the 2019 picnic.

Commissioner Freedman reported that the FLIX bus now picks up passengers in downtown Palm Springs instead of at the train station.

- #### **H. ADJOURNMENT**
- The meeting of the Sustainability Commission adjourned at 6:40 PM by a motion from Commissioner Baker and seconded by Commissioner Santora and approved by a unanimous vote. They adjourned to the Regular Meeting of the Sustainability Commission to be held at 5:00 p.m. on Tuesday, February 19, 2019, in the Large Conference Room at the Palm Springs City Hall. The Sustainability Commission’s regular meeting schedule is at 5 p.m. the third Tuesday each month except August unless otherwise noted or amended.

Respectfully Submitted,

Patrick Tallarico, Manager, Office of Sustainability

# *Palm Springs Gasoline-Powered Leaf Blower Ban: Enforcement Begins April 1<sup>st</sup>!*

As of January 1, 2019, the City of Palm Springs has banned the use of gasoline-powered leaf blowers within the city limits.

**Individuals and organizations that operate gasoline-powered leaf blowers will be subject to the following fines:**

- **\$100 for first offense**
- **\$250 for second offense**
- **\$500 for third and subsequent offenses**

Enforcement will begin April 1, 2019. Until then, individuals found using a gasoline-powered leaf blower will receive a reminder.

Please make the switch to an electric-powered leaf blower NOW! Take advantage of the commercial and residential equipment recycling and exchange incentives available through the South Coast Air Quality Management District (AQMD) and the City of Palm Springs Office of Sustainability!

Find out more at the following website:

**[www.psleafblowers.com](http://www.psleafblowers.com)**

Report violations as of April 1, 2019 to the Code Enforcement Compliance Hotline at 760-778-8434 or on the GO Request App.



Available on the App Store and Google Play.



# *Prohibición del soplador de hojas a gasolina de Palm Springs: La aplicación comienza el 1 de Abril!*

A partir del 1 de Enero de 2019, la Ciudad de Palm Springs ha prohibido el uso de sopladores de hojas de gasolina dentro de los límites de la ciudad.

**Las personas y organizaciones que operan sopladores de hojas a gasolina estarán sujetas a las siguientes multas:**

- \$ 100 por la primera ofensa
- \$ 250 por la segunda ofensa
- \$ 500 por tercera ofensa y subsecuentes

La aplicación comenzará el 1 de Abril de 2019. Hasta entonces, las personas que se encuentren usando un soplador de hojas de gasolina recibirán un recordatorio.

¡Haga el cambio a un soplador de hojas eléctrico AHORA! Aproveche el reciclaje de equipos comerciales y residenciales e intercambie incentivos disponibles a través del Distrito de Administración de la Calidad del Aire de la Costa Sur (AQMD, por sus siglas en inglés) y la Oficina de Sostenibilidad de la Ciudad de Palm Springs!

Obtenga más información en el siguiente sitio web :

**[www.psleafblowers.com](http://www.psleafblowers.com)**

Reporte las violaciones a partir del 1 de Abril de 2019 a la línea directa de quejas de cumplimiento de códigos al 760-778-8434 o en la aplicación de solicitud GO.

Disponible en la App Store y Google Play.





## CITY OF PALM SPRINGS OFFICE OF SUSTAINABILITY LEAF BLOWER EXCHANGE REBATE PROGRAM APPLICATION

The City of Palm Springs Sustainability Commission and the Office of Sustainability is offering a rebate to Palm Springs residents who purchase a new electric leaf blower when they turn in a working gasoline-powered blower. The amount of the rebate is 40% of the price of the new electric blower up to a maximum rebate of \$100. The rebate is only available to Palm Springs residents who drop off and purchase their blowers at Yoshi Lawnmower Shop located at 652 South Williams Road, Palm Springs, CA 92264. To receive your rebate:

1. Bring your working gasoline-powered leaf blower to Yoshi. They will verify it works when you bring it in.
2. Select a new electric-powered blower from any of the models available.
3. Complete the applicant information below, and have a representative from Yoshi fill out the exchange information.
4. Attach the receipt for the new blower to this form.
5. Bring your form with attached receipt to the receptionist at the Palm Springs City Hall located at 3200 E. Tahquitz Canyon Way. Limit one rebate per household.

After your application form is received, we will verify your address and process your rebate.

Additional application forms are available at the City of Palm Springs, Yoshi Lawnmower Shop, or online at:

[www.yoursustainablecity.com](http://www.yoursustainablecity.com)

### ***Applicant Information:***

**Resident's Name:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City / State / Zip:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**City / State / Zip:** \_\_\_\_\_

**Cell Phone:** \_\_\_\_\_

**Home Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_



### ***Gasoline-Powered Leaf Blower Exchange Information:***

**Brand of gasoline-powered leaf blower exchanged:** \_\_\_\_\_

**Is gasoline-powered leaf blower operational?** Yes \_\_\_\_\_ No \_\_\_\_\_

**Electric leaf blower model purchased:** \_\_\_\_\_

**Price of electric leaf blower:** \$ \_\_\_\_\_

**Signature of Representative from Yoshi's Lawnmower Shop:** \_\_\_\_\_

**Attach the receipt to this application for rebate to be applied**

*For City of Palm Springs:*

Date Application received: \_\_\_\_\_  
Date Application Processed: \_\_\_\_\_

Rebate Amount: \$ \_\_\_\_\_  
Date rebate check mailed: \_\_\_\_\_



## CITY OF PALM SPRINGS OFICINA DE SOSTENIBILIDAD HOJA BLOWER EXCHANGE REBATE PROGRAMA APLICACIÓN

La Comisión de Sostenibilidad de la Ciudad de Palm Springs y la Oficina de Sostenibilidad están ofreciendo un reembolso a los residentes de Palm Springs que compran un nuevo soplador de hojas eléctrico cuando entregan un soplador de gasolina que funciona. El monto del reembolso es del 40% del precio del nuevo soplador eléctrico hasta un reembolso máximo de \$ 100. El reembolso solo está disponible para los residentes de Palm Springs que dejen y compren sus sopladores en Yoshi Lawnmower Shop, ubicada en 652 South Williams Road, Palm Springs, CA 92264. Para recibir su reembolso:

1. Lleve su soplador de hojas a gasolina de trabajo a Yoshi. Ellos verificarán que funcione cuando lo traigas.
2. Seleccione un nuevo soplador eléctrico de cualquiera de los modelos disponibles.
3. Complete la información del solicitante a continuación, y pida a un representante de Yoshi que complete la información de intercambio.
4. Adjunte el recibo del nuevo soplador a este formulario.
5. Lleve su formulario con el recibo adjunto a la recepcionista en el Ayuntamiento de Palm Springs ubicado en 3200 E. Tahquitz Canyon Way. Límite de un reembolso por hogar.

Después de recibir su formulario de solicitud, verificaremos su dirección y procesaremos su reembolso.

Los formularios de solicitud adicionales están disponibles en la ciudad de Palm Springs, Yoshi Lawnmower Shop, o en línea en:

[www.yoursustainablecity.com](http://www.yoursustainablecity.com)

### Información del aplicante:

Nombre del residente: \_\_\_\_\_

Dirección: \_\_\_\_\_

Ciudad/Estado/Código postal: \_\_\_\_\_

Dirección de envío: \_\_\_\_\_

Ciudad/Estado/Código postal: \_\_\_\_\_

Teléfono móvil: \_\_\_\_\_

Teléfono de casa: \_\_\_\_\_

Email: \_\_\_\_\_



### Información sobre el intercambio de sopladores de hojas a gasolina:

Marca de soplador de hojas de gasolina intercambiada: \_\_\_\_\_

¿Funciona el soplador de hojas de gasolina?      Sí                      No

Modelo de soplador de hojas eléctrico comprado: \_\_\_\_\_

Precio del soplador de hojas eléctrico:              \$ \_\_\_\_\_

Firma del representante de la tienda de Yoshi's Lawnmower: \_\_\_\_\_

Adjunte el recibo a esta solicitud de reembolso que se aplicará

Para la ciudad de Palm Springs:

Fecha de recepción de la solicitud: \_\_\_\_\_

Fecha de la solicitud procesada: \_\_\_\_\_

Importe de la rebaja: \$ \_\_\_\_\_

Fecha en que se envió el cheque de reembolso: \_\_\_\_\_

## Electric Scooters Pros and Cons

Pros	Cons	Limitations
		Ride only in bike lanes
Good alternative for travel	Sidewalks could be littered with scooters	should have corrals to pick up and drop off
Last mile home from Public Transit	Scooters could be left leaned against trees	Where can they be ridden
Great way to get around downtown	Local Code prohibits scooters - does it apply?	What is City's view
Good for visitors and residents	Last mile does not work with corrals	Look at history of why City code prohibits scooters
33 emails received in support of scooters	Negative comments on social media	Can modification be made to the City Code?
	Potential for injuries	develop best practices from other cities
		develop plan for City
		What would work for Palm Springs

**AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA,  
AMENDING THE MUNICIPAL CODE TO REGULATE  
CLEAN AIR, SMOKING AND TOBACCO PRODUCT USE**

The City Council of the City of Palm Springs, California, does ordain as follows:

**SECTION I. FINDINGS.**

The City Council of the City of Palm Springs, California, hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation's leading cause of preventable death;<sup>1</sup> and
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths;<sup>2</sup> and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;<sup>3</sup> and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;<sup>4,5</sup> and
- The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;<sup>6</sup> and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke occurs at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers;<sup>7,8</sup> and
- Smoking cigarettes near building entryways can increase air pollution levels by more than

two times background levels, with maximum levels reaching the “hazardous” range on the United States EPA’s Air Quality Index;<sup>8</sup> and

- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 23 feet away from the source of the smoke, about the width of a two-lane road;<sup>8,9</sup> and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;<sup>2,10</sup> and
- Secondhand smoke is responsible for an estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States;<sup>10</sup> and
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent<sup>11</sup> and increases the risk of stroke by 20 percent to 30 percent;<sup>12</sup> and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- Between 2009 and 2012, the total annual economic burden of smoking in the United States was between \$289 billion and \$332.5 billion;<sup>1</sup> and
- From 2005 to 2009, the average annual health care expenditures attributable to smoking were approximately \$132.5 billion to \$175.9 billion in direct medical care costs for adults and \$151 billion in lost productivity;<sup>1</sup> and
- The total annual cost of smoking in California was estimated at \$548 per resident or between \$2,262 and \$2,904 per smoker per year;<sup>13</sup> and
- California’s Tobacco Control Program saved the state and its residents \$134 billion in health care expenditures between the year of its inception, 1989, and 2008, with savings growing yearly;<sup>13</sup> and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs with a review of over 80 peer-reviewed research studies showing that smoke-free policies effectively do the following:

- Reduce tobacco use: tobacco use is reduced by median of 2.7 percent;<sup>14</sup> and
- Reduce exposure to secondhand smoke: air pollution is reduced by a median of 88 percent

and biomarkers for secondhand smoke are reduced by a median of 50 percent;<sup>14</sup> and

- Increase the number of tobacco users who quit by a median of 3.8 percent;<sup>14</sup> and
- Reduce initiation of tobacco use among young people;<sup>14</sup> and
- Reduce tobacco-related illnesses and death: there is a 5.1 percent median decrease in hospitalizations from heart attacks and a 20.1 percent decrease in hospitalizations from asthma attacks after such laws are passed;<sup>14</sup> and

WHEREAS, laws restricting electronic smoking devices use also have benefits to the public as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,<sup>6, 15, 16, 17</sup> such as formaldehyde, acetaldehyde, lead, nickel, and toluene;<sup>18,19, 20</sup> and
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping;<sup>18,20,21</sup> and
- The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment;<sup>22</sup> and
- The State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of e-cigarettes in all areas where other tobacco products are banned;"<sup>23</sup> and

WHEREAS, smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease, as evidenced by the following:

- Smokeless tobacco use is associated with oral, esophageal, and pancreatic cancers;<sup>24</sup> and
- Smokeless tobacco is associated with increased risk for heart disease and stroke,<sup>25, 26, 27</sup> stillbirth and preterm delivery,<sup>1, 28</sup> and Parkinson's disease;<sup>1</sup> and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- In 2007, it was estimated that Americans consume 360 billion cigarettes each year;<sup>29, 30</sup> and

- 55.7 percent of smokers admit to littering cigarettes in the last month;<sup>31</sup> and
- In an observational study of nearly 10,000 individuals, after cigarettes were smoked, 45 percent of cigarettes ended up as litter;<sup>30</sup> and
- In 2011, 22.6 percent of all debris collected from beaches and coastal areas are smoking related products;<sup>32</sup> and
- Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons, and ultimately the ocean;<sup>32, 33</sup> and

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2012, American poison control centers received nearly 8,648 reports of poisoning by the ingestion of cigarettes, cigarette butts, and other tobacco products and 84.5 percent of these poisonings were in children ages five and younger;<sup>34</sup> and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;<sup>35</sup> and

WHEREAS, though widely perceived as a comprehensive smoke-free air law, exemptions and loopholes in the California Smoke-free Workplace Act<sup>36</sup> mean that one in seven Californians faces secondhand smoke exposure at work;<sup>37</sup> and

WHEREAS, exemptions and loopholes in the California Smoke-free Workplace Act<sup>36</sup> disproportionately impact low-income and communities of color as evidenced by the following:

- California Labor Code does not prohibit smoking in hotels, cabs of trucks, warehouses, long-term care facilities, outdoor places of employment, small businesses, tobacco shops, and private smokers' lounges, which disproportionately employ individuals of low-income and individuals of color;<sup>38, 39, 40</sup> and
- Male and Hispanic/Latino workers are the most likely to report being exposed to secondhand smoke at work;<sup>41</sup> and

WHEREAS, California cities and counties have the legal authority to adopt local laws that make all indoor places of employment nonsmoking;<sup>42</sup> and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;<sup>43</sup> and

WHEREAS, the state smoke-free workplace law does not expressly prohibit the use of electronic smoking devices in enclosed workplaces;<sup>36</sup> and

WHEREAS, there is broad public recognition of the dangers of secondhand smoke and support for smoke-free air laws, as evidenced by the following:

- A 2008 survey of California voters found that 97 percent thought that secondhand smoke is harmful, 88 percent thought secondhand smoke was harmful even outdoors, 65 percent were bothered by secondhand smoke, and 73 percent support laws restricting smoking in outdoor public places;<sup>44</sup> and

WHEREAS, as of April 2015, there are at least 64 California cities and counties with local laws restricting smoking in workplaces not covered by the state smoke-free workplace law;<sup>45</sup> and

WHEREAS, as of April 2014, at least 131 local jurisdictions in California prohibit the use of electronic smoking devices in specific locations;<sup>46</sup> and

WHEREAS, as of January 2015, there are at least 348 California cities and counties with local laws restricting smoking in recreational areas, 129 with local laws restricting smoking in outdoor dining places, and 48 with local laws restricting smoking on sidewalks in commercial areas;<sup>47</sup> and

WHEREAS, there is no Constitutional right to smoke;<sup>48</sup>

NOW THEREFORE, it is the intent of the Palm Springs, California City Council, in enacting this ordinance, to provide for cleaner air for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking and tobacco use around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work, and play; by reducing the potential for children to wrongly associate smoking and tobacco use with a healthy lifestyle; and by affirming and promoting a healthy environment in the City of Palm Springs.

**SECTION II.** Article \_\_ of the Palm Springs Municipal Code is hereby amended to read as follows:

**Sec. \_\_\_\_ (\*1) DEFINITIONS.** The following words and phrases, whenever used in this article shall have the meanings defined in this section unless the context clearly requires otherwise:

- (a) “Business” means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes.
- (b) “Common Area” means every Enclosed Area and Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, restrooms, laundry rooms, cooking areas, and eating areas.
- (c) “Dining Area” means any area, including streets and sidewalks, that is available to or customarily used by the general public or an Employee, and that is designed, established, or regularly used, for consuming food or drink.
- (d) “Electronic Smoking Device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic Smoking Device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
- (e) “Employee” means any Person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer.
- (f) “Employer” means any Business or Nonprofit Entity that retains the service of one or more Employees.
- (g) “Enclosed Area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has
  - (1) any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical constraint to airflow including, but not

limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or

(2) four (4) walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

(h) “Multi-Unit Residence” means property containing two (2) or more Units except the following specifically excluded types of housing:

(1) a hotel or motel that meets the requirements of California Civil Code section 1940(b)(2);

(2) a mobile home park;

(3) a campground;

(4) a marina or port;

(5) a single-family home;

(6) a single-family home with a detached or attached in-law or second Unit.

(i) “Nonprofit Entity” means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a Nonprofit Entity within the meaning of this article.

(j) “Person” means any natural person, cooperative association, Employer, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.

(k) “Place of Employment” means any area under the legal or de facto control of an Employer that an Employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation.

- (l) “Public Place” means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.
- (m) “Reasonable Distance” means a distance of twenty-five (25) feet in any direction from an area in which Smoking is prohibited.
- (n) “Recreational Area” means any area, including streets and sidewalks, that is publicly or privately owned and open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement parks, and beaches.
- (o) “Service Area” means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more Persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term “Service Area” includes but is not limited to areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.
- (p) “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine *and* the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, marijuana smoke, and crack cocaine smoke.
- (q) “Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.
- (r) “Tobacco Product” means:
- (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether Smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
  - (2) Any Electronic Smoking Device.

(3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

(s) “Unenclosed Area” means any area that is not an Enclosed Area.

(t) “Unit” means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. “Unit” includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy (“SRO”) facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit.

**Sec. \_\_\_\_ (\*2). PROHIBITION OF SMOKING AND TOBACCO PRODUCT USE IN ENCLOSED PLACES**

(a) Smoking and the use of Tobacco Products is prohibited in the Enclosed Areas of the following places within the City of Palm Springs:

(1) Places of Employment;

(2) Other Businesses that have a common or shared air space with an Enclosed Area in which smoking is prohibited by law, such as, without limitation, openings, cracks, air ventilation systems, doorways, hallways, and stairways. Notwithstanding any other provision, the fact that Smoke enters one Enclosed Area from another Enclosed Area is conclusive proof that the areas share a common or shared air space;

(3) Public Places; and

(4) Common Areas of Multi-Unit Residences.

(b) Smoking and the use of Tobacco Products is prohibited by this article in all Enclosed Areas exempted by the California smoke-free workplace law (Labor Code section 6404.5(d), as that section may be amended from time to time) except as provided below.

- (1) Smoking is not restricted by this subsection in up to ten percent (10%) of guestroom accommodations in a hotel, motel, or similar transient lodging establishment that meets the requirements of California Civil Code section 1940(b)(2) if the hotel or motel permanently designates particular guestrooms as nonsmoking rooms such that ninety percent (90%) or more of guestrooms are permanently nonsmoking and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent “No Smoking” signage shall be placed in nonsmoking guestrooms.
  
- (2) Smoking inside a Tobacco Shop is not prohibited by this subsection if: (a) the Tobacco Shop does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises; (b) the Tobacco Shop prohibits minors from entering the store at all times; and (c) the premises of the Tobacco Shop is an independent freestanding building unattached to any other building, establishment, or use. For the purposes of this exception, “Tobacco Shop” means any tobacco retailer that derives more than seventy-five percent (75%) of gross sales receipts from the sale or exchange of Tobacco Products and tobacco paraphernalia.
  
- (3) Smoking in a theatrical production by the actors is not prohibited by this subsection if Smoking is an integral part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of Smoking in an effective way to a reasonable member of the anticipated audience.

**Sec. \_\_\_\_ (\*3). PROHIBITION OF SMOKING AND TOBACCO PRODUCT USE IN UNENCLOSED AREAS**

- (a) Smoking and the use of Tobacco Products is prohibited in the Unenclosed Areas of the following places within the City of Palm Springs:
  - (1) Recreational Areas;
  
  - (2) Service Areas;
  
  - (3) Dining Areas;
  
  - (4) Places of Employment;
  
  - (5) Common Areas of Multi-Unit Residences provided, however, that a Person with legal control over a Common Area may designate a portion of the Unenclosed Area of the

Common Area as a designated Smoking area if the area meets all of the following criteria:

- (i) the area must be located a Reasonable Distance from any Unit or Enclosed Area where Smoking is prohibited by this article or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a Person with legal control over the property. In the case of a nonsmoking area created by agreement or designation, this provision does not apply unless the Person designating the Smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A Person with legal control over a designated Smoking area may be obliged to modify, relocate, or eliminate that as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established;
  - (ii) the area must not include, and must be a Reasonable Distance from, Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, school campuses, and sandboxes;
  - (iii) the area must be no more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;
  - (iv) the area must have a clearly marked perimeter;
  - (v) the area must be identified by conspicuous signs;
  - (vi) the area must be completely within an Unenclosed Area; and
  - (vii) the area must not overlap with any Enclosed or Unenclosed Area in which Smoking is otherwise prohibited by this article or other provisions of this Code, state law, or federal law; and
- (6) Common Areas of Home Owner Associations, Planned Urban Developments, and Common Interest Community Spaces; and
- (7) Other Public Places, when being used for a public event, including but not limited to a farmers' market, parade, craft fair, festival, or any other event open to the general public.

- (b) Nothing in this article prohibits any Person, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking and Tobacco Product use on any part of such property, even if Smoking or the use of Tobacco Products is not otherwise prohibited in that area.
- (c) The Director of Community and Economic Development or his/her designee shall conduct an ongoing educational program to explain and clarify the purposes and requirements of this article, as well as to provide guidance to Persons, Employers, and Nonprofit Entities about compliance. However, lack of such education shall not be a defense to a violation of this article.

**Sec. \_\_\_\_ (\*4). REASONABLE SMOKING DISTANCE REQUIRED**

- (a) Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited.
- (b) Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under Sec. \_\_\_\_ (\*3) of this article.
- (c) The prohibitions in subdivisions (a) and (b) shall not apply to Unenclosed Areas of private residential properties that are not Multi-Unit Residences.

**Sec. \_\_\_\_ (\*5). OTHER REQUIREMENTS AND PROHIBITIONS**

- (a) No Person, Employer, or Nonprofit Entity shall knowingly permit Smoking or the use of Tobacco Products in an area which is under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law.
- (b) No Person, Employer, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law, including, without limitation, within a Reasonable Distance required by this article from any area in which Smoking or the use of Tobacco Products is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this

subsection shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any provision of this article.

(c) No Person shall dispose of used Smoking or Tobacco Product waste within the boundaries of an area in which Smoking or Tobacco Product use is prohibited, including within any Reasonable Distance required by this article.

(d) A Person, Employer, or Nonprofit Entity that has legal or de facto control of an area in which Smoking and the use of Tobacco Products is prohibited by this article shall post a clear, conspicuous and unambiguous “No Smoking” and “No Use of Tobacco Products” or “Smoke-free” and “Tobacco-Free” sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). Signs shall also indicate the maximum fines allowable. Signs posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in Sec. \_\_\_ (\*4). At least one sign with the City of Palm Springs phone number to which complaints can be directed must be placed conspicuously in each place in which Smoking is prohibited. For purposes of this section, the City Manager or his / her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City of Palm Springs. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any other provision of this article.

(e) No Person, Employer, or Nonprofit Entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this article.

(f) Each instance of Smoking or Tobacco Product use in violation of this article shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this article shall constitute a separate violation.

**Sec. \_\_\_ (\*6). PENALTIES AND ENFORCEMENT.**

(a) The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.

- (b) Each incident of Smoking or use of Tobacco Products in violation of this article is an infraction subject to a fine of up to five hundred dollars (\$500) and/or up to twenty-five (25) hours of monitored community service work or completion of a smoking cessation program or otherwise punishable pursuant to section \_\_\_ of this code. Other violations of this article may, at the discretion of the City Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of the City Attorney. In addition, any peace officer or code enforcement official also may enforce this chapter.
- (c) Violations of this article are subject to a civil action brought by the City of Palm Springs, punishable by a civil fine not exceeding five hundred dollars (\$500) per violation and/or up to twenty-five (25) hours of monitored community service work or completion of a smoking cessation program.
- (d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this article shall also constitute a violation of this article.
- (e) Any violation of this article is hereby declared to be a nuisance.
- (f) In addition to other remedies provided by this article or by other law, any violation of this article may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- (g) Any Person acting for the interests of itself, its members, or the general public (hereinafter "Private Enforcer") may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this article against any Person who has violated this article two or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment. If there is insufficient or no proof of actual damages for a specific violation, the court shall award one-hundred and fifty dollars (\$150) for each violation as statutory damages.
- (h) Notwithstanding any other provision of this article, a Private Enforcer may bring a civil action to enforce this article only if the following requirements are met:
- (1) The Private Enforcer's civil action is begun more than sixty (60) days after the Private Enforcer has given written notice of the alleged violations of this article to the City Attorney and to the alleged violator; and

- (2) On the date the Private Enforcer's civil action is filed, no other Person acting on behalf of the City of Palm Springs or the state has commenced or is prosecuting an administrative, civil, or criminal action based upon, in whole or in part, any violation which was the subject of the Private Enforcer's notice; and
- (3) A Private Enforcer shall provide a copy of his, her, or its action to the City Attorney within seven (7) days of filing it.
- (i) Upon a settlement or judgment based upon, in whole or in part, any violation that was the subject of the Private Enforcer's notice, the Private Enforcer shall give the City Attorney notice of the settlement or judgment and final disposition of the case within thirty (30) days of the date of the settlement or judgment. No settlement by a Private Enforcer of a violation of this article shall be valid or enforceable if, within thirty (30) days of receiving notice of the settlement, the City Attorney determines the settlement to be unreasonable in light of the purposes of this article. Any settlement or judgment that does not meet the requirements of this subsection may be set aside upon motion to a court of competent jurisdiction by the City Attorney.
- (j) Except as otherwise provided, enforcement of this article is at the sole discretion of the City. Nothing in this article shall create a right of action in any Person against the City or its agents to compel public enforcement of this article against private parties.

**Sec. \_\_\_\_ (\*7). OTHER LAWS.**

It is not the intention of this article to regulate any conduct where the regulation of such conduct has been preempted by the State of California.

**SECTION III. STATUTORY CONSTRUCTION & SEVERABILITY**

It is the intent of the City Council of the City of Palm Springs, California, to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any Person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other Person or circumstance. The City Council of the City of Palm Springs, California, hereby declares that it would have adopted each section, subsection, subdivision,

paragraph, sentence, clause, or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

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## CLEAN INDOOR AIR AND HEALTH PROTECTION

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~~Licensing of tobacco retailers and tobacco sale restrictions.~~

### **Title.**

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This chapter shall be known as the indoor air and health protection regulations.

### **Definitions.**

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The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

A. "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.

B. "Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit making purposes.

C. "Cannabis" means a dried preparation of the flowering tops or other parts of the cannabis plant, or a resinous extract of it (cannabis resin), typically smoked, transdermal administration and/or orally consumed.

C. "City" shall mean the City of Palm Springs, California.

D. "Common area" means every area of a multi-unit residence that residents of more than one unit of that multi-unit residence are entitled to enter or use, including, for example, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

E. "Common interest complex" means a multi-unit residence that is a condominium project, a community apartment project, a stock cooperative, or a planned development as defined by California Civil Code Section [1351](#).

F. "Dining area" means any area, including streets and sidewalks, which is available to or customarily used by the general public or an employee, and which is designed, established, or regularly used for consuming food or drink.

G. "Electronic smoking device" means an electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately (a/k/a "vape" and/or "vaping").

H. "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

I. "Employer" means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more individual persons or utilizes volunteers.

J. "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by portions which do not extend to the ceiling or are not solid, such as "office landscaping" or similar structures.

K. "Landlord" means any person who owns property let for residential use, any person who lets residential property, and any person who manages such property, except that "landlord" does not include a master tenant who sublets a unit as long as the master tenant sublets only a single unit of a multi-unit residence.

L. "Minor" shall mean any individual who is less than 18 years old.

M. "Multi-unit common area" means any indoor or outdoor area of a multi-unit residence, multi-unit commercial facilities, senior citizen residences and nursing homes accessible to and usable by residents of different small units and/or members of the public, including but not limited to halls and paths, lobbies, laundry rooms, common areas, outdoor eating areas, play areas, tennis courts and swimming pools.

N. "Multi-unit residence" means property containing two or more units, including, for example, rental complexes, common interest complexes, senior citizen residences, nursing homes, and marinas or ports.

"Multi-unit residence" does not include the following specifically excluded types of housing:

1. A hotel or motel that meets the requirements set forth in California Civil Code Section [1940\(b\)\(2\)](#);
2. A mobile home park;
3. A campground;
4. A single-family home; and
5. A single-family home with a detached or attached in-law or second unit when permitted pursuant to California Government Code Sections [65852.1](#), [65852.150](#), and [65852](#).

O. "New unit" means a unit that is issued a certificate of occupancy/final inspection more than      days after                     , and also means a unit that is let for residential use for the first time more than      days after                     .

P. "Nonprofit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social, religious or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "nonprofit entity" within the meaning of this section.

Q. "No Smoking sign" means a sign containing the words "No Smoking" or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette in a red circle or red heart with a red bar across it).

R. "Openings" shall include main entrances, exits, operable windows and ventilation intake systems.

S. "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

T. "Place of employment" means any area under the legal or de facto control of an employer that an employee or the general public may have cause to enter in the normal course of operation, regardless of the hours of operation, including, but not limited to, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges and restrooms, conference and banquet rooms, employee cafeterias, warehouses, long-term health care facilities, and lobbies and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

U. "Premises" means a piece of land and any improvements upon it such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same natural person or by legal persons under common control.

V. "Public place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

W. "Reasonable distance" means a distance of 25 feet in any direction from an area in which smoking is prohibited.

X. "Recreational area" means any area that is publicly or privately owned and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "recreational area" includes but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, horseback riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement parks, and tennis courts.

Y. "Rental complex" means a multi-unit residence for which 50 percent or more of units are let by or on behalf of the same landlord.

Z. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

AA. "Self-service merchandising" means open display of tobacco products and point-of-sale tobacco promotional products to which the public has access without the intervention of an employee.

BB. "Service area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to wait for or receive a service or make a transaction, whether or not such service or transaction involves the exchange of money. The term "service area" includes but is not limited to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, transit shelters, mobile vendor lines or cab stands.

CC. "Smoke" means the gases and particles released into the air by combustion when the apparent or usual purpose of the combustion is human inhalation of the resulting combustion products, such as, for example, tobacco smoke and marijuana smoke, except when the combusting material contains no tobacco and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense.

DD. "Smoking" means engaging in an act that generates smoke, such as, for example: possessing a lighted cigar, a lighted cigarette of any kind, a lighted pipe, or a lighted hookah pipe; or lighting a pipe, a hookah pipe, a cigar, or a cigarette of any kind. [Smoking includes the consumption of both tobacco and cannabis.](#)

[EE. "Smoking Lounge" means a licensed commercial business establishment, open to the public, or paid membership wherein the consumption of tobacco and/or cannabis is permitted by adults pursuant to Palm Springs Municipal Code Title 5: Business Regulations et seq.](#)

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EE. "Sports arena" means enclosed or unenclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

FF. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types (including "bongs"), cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

GG. "Tobacco product" means:

1. Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, liquid electronic smoking device solution, or any other preparation of tobacco;

2. Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body by inhalation; but does not include any cessation product specifically approved by the U.S. Food and Drug Administration for use in treating nicotine or tobacco dependence; and

3. Any electronic smoking device as defined herein.

HH. "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco, tobacco products, or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

II. "Tobacco vending machine" means any machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

JJ. "Unenclosed area" means any area that is not an enclosed area.

KK. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy ("SRO") facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a boat, vessel or houseboat; a single-family home; and an in-law, second unit or accessory dwelling unit.

LL. "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer to supply the product. The customer does not take possession of the product until it is purchased.

#### **City-owned vehicles and facilities.**

All City-owned vehicles, including jitneys and buses and other means of public transit under the authority of the City, and all enclosed facilities owned and controlled by the City, including jails or holding facilities, and any board, council, commission and agency of the City shall be subject to the provisions of this chapter.

#### **Prohibition of smoking in public places, places of employment, and certain other areas.**

A. Enclosed Areas. Smoking shall be prohibited in the following enclosed areas within the City of Palm Springs except in places listed in subsection C of this section, and except in such places in which smoking is already prohibited by State or Federal law, in which case the State or Federal law applies:

1. Places of employment.
2. Public places.
3. Recreational areas.
4. Common areas.

B. Unenclosed Areas. Smoking shall be prohibited in the following unenclosed areas within the City of Palm Springs except in such places in which smoking is already prohibited by State or Federal law, in which case the State or Federal law applies:

1. Places of employment.
2. Recreational areas.
3. Service areas.
4. Dining areas.
5. Common areas; provided, that a person with legal control over a common area may designate a portion of the unenclosed area of the common area as a designated smoking area if the area meets all of the following criteria:

- a. The area must be located a reasonable distance from any unit or enclosed area where smoking is prohibited by this chapter or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a person with legal control over the property. In the case of a nonsmoking area created by agreement or designation, this provision does not apply unless the person designating the smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A designated smoking area may require modification or elimination as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established;

b. The area must not include, and must be a reasonable distance from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, and school campuses;

c. The area must be no more than 10 percent of the total unenclosed area of the multi-unit residence for which it is designated;

d. The area must have a clearly marked perimeter;

e. The area must be identified by conspicuous signs;

f. The area must be completely within an unenclosed area; and

g. The area must not overlap with any enclosed or unenclosed area in which smoking is otherwise prohibited by this chapter or other provisions of this code, State law, or Federal law.

6. Other public places when being used for a public event, including a farmers' market, parade, craft fair, festival, or any other event which may be attended by the general public; provided, that smoking is permitted on streets and sidewalks being used in a traditional capacity as pedestrian or vehicular thoroughfares, unless otherwise prohibited by this chapter or other law.

C. Unless otherwise prohibited by law, smoking is not prohibited in the following enclosed areas:

1. Smoking is not prohibited in up to 20 percent of guestroom accommodations in a hotel, motel, bed and breakfast or similar transient lodging establishment if the hotel or motel permanently designates particular guestrooms as nonsmoking rooms such that 80 percent or more of guestrooms are permanently nonsmoking and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent no smoking signage shall be posted in nonsmoking guestrooms.

2. Smoking at theatrical production sites is not prohibited by this subsection if smoking is an integral part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience.

3. Smoking inside a retail tobacco store [and/or Smoking Lounge](#) is not prohibited if:

a. The [retail tobacco store and/or Smoking Lounge](#) ~~retail tobacco store~~ does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on

the business premises [\(edible and/or liquid variations of cannabis shall are not to be considered 'edible products' under this section;](#)

b. The [retail tobacco store and/or Smoking Lounge](#)~~retail tobacco~~ store prohibits minors from entering the store at all times; and

c. The premises of the retail tobacco store [and/or Smoking Lounge](#) are an independent freestanding building unattached to any other structure or use.

4. Smoking inside a detached, single-family home is not prohibited, except those used as a child care or health care facility subject to licensing requirements.

D. Notwithstanding any other provisions of this section, nothing in this chapter prohibits any person, landlord, employer, or nonprofit entity with legal control over any property or facility from declaring the entire property or facility as nonsmoking and prohibiting smoking on any part of such property or facility, even if smoking is not otherwise prohibited in that area.

#### **Nonsmoking buffer zones.**

A. Smoking in all unenclosed areas shall be prohibited within a reasonable distance from any doorway, window, opening, crack, or vent into an enclosed area in which smoking is prohibited, except while actively passing on the way to another destination and provided smoke does not enter any enclosed area in which smoking is prohibited.

B. Smoking in unenclosed areas shall be prohibited within a reasonable distance from any unenclosed areas in which smoking is prohibited under [PS Municipal Code \\_\\_\\_\\_\\_](#), except while actively passing on the way to another destination and provided smoke does not enter any unenclosed area in which smoking is prohibited.

C. The prohibitions in subsections A and B of this section shall not apply to unenclosed areas of private residential properties that are not multi-unit residences.

D. Smoking is prohibited in unenclosed areas of a multi-unit residence, including balconies, porches, decks, and patios, within a reasonable distance from any doorway, window, opening, or other vent into an enclosed area where smoking is prohibited by this chapter or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a person with legal control over the property.

#### **Smoking restrictions in new units of multi-unit residences.**

A. All new units of a multi-unit residence are hereby designated nonsmoking units, including any associated exclusive-use enclosed areas or unenclosed areas, such as, for example, a private balcony, porch, deck, or patio; and including without limitation new units in a rental complex and new units in a common interest complex.

B. Smoking in a designated nonsmoking unit is a violation of this chapter.

**Nonsmoking designations for existing units of a common interest complex.**

A. All units of a common interest complex that are not new units, including any associated exclusive-use enclosed areas or unenclosed areas, such as, for example, a private balcony, porch, deck, or patio, are hereby designated nonsmoking units as of [redacted] [date]; provided, however, that a lesser percentage of units may be designated nonsmoking units if a common interest complex fully complies with subsection C of this section.

B. Smoking in a designated nonsmoking unit is a violation of this chapter.

C. By a vote of the membership as provided in subsection (C)(1) of this section, a common interest complex may choose to designate fewer than 100 percent of existing units as nonsmoking units by fully complying with the requirements stated in subsections (C)(1) through (4) of this section. Otherwise, subsection A of this section shall apply.

1. A vote by the membership on the threshold question of allowing less than 100 percent of units to be designated nonsmoking units must take place before [redacted] [date].

2. Up to 100 percent, but no less than 80 percent, of units that are not new units, including, for example, any associated exclusive-use enclosed areas or unenclosed areas, such as, for example, a private balcony, porch, deck, or patio, shall be permanently designated as nonsmoking units.

3. Where possible, best efforts shall be made to group nonsmoking units together, both horizontally and vertically, and physically separate them from units where smoking may be allowed.

4. No later than [redacted] [date], the final designations must be made and the following must be submitted:

a. A description of each designated nonsmoking unit sufficient to readily identify the unit; and

b. A diagram depicting the location of the designated nonsmoking units in relation to all other units.

**Nonsmoking designations for existing units of a rental complex.**

A. All units of a rental complex that are not new units, including any associated exclusive-use enclosed areas or unenclosed areas, such as, for example, a private balcony, porch, deck, or patio, are hereby designated nonsmoking units as of [redacted] [date]; provided, however, that a lesser percentage of units may be designated nonsmoking units if a landlord fully complies with subsection D of this section.

B. Smoking in a designated nonsmoking unit is a violation of this chapter.

C. Except if a landlord fully complies with subsection D of this section, at least 60 days before [redacted] [date], the landlord shall provide each tenant with:

1. A written notice clearly stating that all units, including the tenant's unit, are designated nonsmoking units and that smoking in a unit will be illegal as of [redacted] [date], as specified in this section; and

2. A copy of this chapter.

D. A landlord may choose to designate fewer than 100 percent of existing units that are not new units of a rental complex as nonsmoking units by fully complying with the requirements stated in subsections (D)(1) through (7) of this section. However, subsection A of this section shall apply whenever a landlord takes no action or only partially complies with the requirements of this subsection.

1. The landlord shall permanently designate up to 100 percent of units, but no less than 80 percent of units, including, for example, any associated exclusive-use enclosed areas or unenclosed areas, such as, for example, a private balcony, porch, deck, or patio, as nonsmoking units.

2. To the maximum extent practicable, nonsmoking units must be grouped together both horizontally and vertically and physically separated from units where smoking may be allowed. Where possible, all units where smoking may be allowed shall be in a single building of a multibuilding multi-unit residence.

3. No later than [redacted] [date], a landlord who chooses to designate fewer than 100 percent of the units of a multi-unit residence as nonsmoking shall submit the following:

a. A description of each designated nonsmoking unit sufficient to identify the unit; and

b. A diagram depicting the location of the designated nonsmoking units in relation to all other units.

4. At least 60 days before submitting the nonsmoking unit designations required by subsection (D)(3) of this section, the landlord shall provide each tenant with:

a. A written notice of the proposed designations, clearly stating that smoking in a unit which is designated as a nonsmoking unit will be illegal as of [redacted] [date], and inviting comments on the proposed designations of nonsmoking units within the requisite timeline;

b. A diagram depicting the location of the designated nonsmoking units in relation to all other units; and

c. A copy of this chapter.

5. A landlord may modify the proposed designations based upon comments received from tenants.

6. At least 30 days before submitting the final designations of nonsmoking units required by subsection (D)(3) of this section, the landlord shall provide all tenants written notice of the final designations clearly stating that smoking in a designated nonsmoking unit will be illegal as of [redacted] [date], as specified in PS Municipal Code [redacted], and a copy of the final documents that will be submitted. These final designations may differ from the proposed designations on which tenants were invited to comment.

7. A unit in a rental complex for which a landlord is required to submit information pursuant to this section but for which such information, for any reason, is not fully and timely submitted is hereby designated as a nonsmoking unit as of [redacted] [date].

**Required and implied lease terms for all new and existing units in rental complexes.**

A. Every lease or other rental agreement for the occupancy of a unit in a rental complex, including, for example, new units and existing units, entered into, renewed, or continued month to month after [redacted] [date], shall include the provisions set forth in subsection B of this section on the earliest possible date when such an amendment is allowable by law when providing the minimum legal notice.

B. Every lease or other rental agreement for the occupancy of a unit in a rental complex, including, for example, new units and existing units, entered into, renewed, or continued month to month after [redacted] [date], shall be amended to include the following provisions:

1. A clause providing that as of [redacted] [date], it is a material breach of the agreement to allow or engage in smoking in the unit unless the landlord has supplied written notice that the unit has not been designated a nonsmoking unit and no other prohibition against smoking applies. Such a clause might state:

It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in the unit as of [redacted] [date] unless landlord has provided written notice that the unit has not been designated a nonsmoking unit and smoking in the unit is not otherwise prohibited by this agreement, other agreements, or by law.

2. A clause providing that it is a material breach of the agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property other than a designated smoking area. Such a clause might state:

It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to engage in smoking in any common area of the property, except in an outdoor designated smoking area, if one exists.

3. A clause providing that it is a material breach of the agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property. Such a clause might state:

It is a material breach of this agreement for tenant or any other person subject to the control of the tenant or present by invitation or permission of the tenant to violate any law regulating smoking while anywhere on the property.

4. A clause expressly conveying third-party beneficiary status to all occupants of the rental complex as to the smoking provisions of the agreement. Such a clause might state:

Other occupants of the property are express third-party beneficiaries of those provisions in this agreement that concern smoking. As such, other occupants of the property may seek to enforce such provisions by any lawful means, including by bringing a civil action in a court of law.

C. Whether or not a landlord complies with subsections A and B of this section, the clauses required by those subsections shall be implied and incorporated by law into every agreement to which subsection A or B of this

section applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection A or B of this section.

D. A tenant who breaches a smoking provision of a lease or other rental agreement for the occupancy of a unit in a rental complex, or who knowingly permits any other person subject to the control of the tenant or present by invitation or permission of the tenant, shall be liable for the breach to:

1. The landlord; and
2. Any occupant of the rental complex who is exposed to smoke or who suffers damages as a result of the breach.

E. This chapter shall not create additional liability in a landlord to any person for a tenant's breach of any smoking provision in a lease or other rental agreement for the occupancy of a unit in a rental complex if the landlord has fully complied with this section and PS Municipal Code [REDACTED].

F. Failure to enforce any smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

#### **Additional duties of a landlord of a rental complex with less than 100 percent nonsmoking units.**

A landlord of a rental complex with less than 100 percent nonsmoking units shall provide to every prospective tenant, prior to entering into a new lease or other rental agreement for the occupancy of a unit in a rental complex, a copy of the designation documents required pursuant to PS Municipal Code [REDACTED] describing each designated nonsmoking unit with an accompanying diagram depicting the location of nonsmoking units in relation to all other units and any designated smoking areas.

#### **Procedures and requirements for mandated submissions.**

A. Documents maintained pursuant to this chapter must include all material and information required by this chapter as well as other materials and information as the City Manager or his or her designee deems necessary for the administration and enforcement of this chapter.

B. All documents maintained pursuant to this chapter shall be available for the City Manager or his or her designee to access and review during regular business hours or upon 24 hours' written notice.

C. All materials and information maintained pursuant to this chapter and requested by the City Manager or his or her designee shall constitute disclosable public records and are not private or confidential.

#### **Smoking prohibited by law in units and common areas.**

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A. Smoking in a common area, on or after [redacted] [date], other than in a designated smoking area established pursuant to PS Municipal Code [redacted] is a violation of this chapter.

B. Smoking in a new unit, on or after [redacted] [date], is a violation of this chapter.

C. Smoking in a designated nonsmoking unit, on or after [redacted] [date] , is a violation of this chapter.

#### **Smoking and smoke generally.**

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A. The provisions of this chapter are restrictive only and establish no new rights for a person who engages in smoking. Notwithstanding (1) any provision of this chapter or other provisions of this code, (2) any failure by any person to restrict smoking under this chapter, or (3) any explicit or implicit provision of this code that allows smoking in any place, nothing in this code shall be interpreted to limit any person's legal rights under other laws with regard to smoking, including, for example, rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

B. Notwithstanding any other provision of this chapter, smoking marijuana for medical purposes as permitted by California Health and Safety Code Section [11362.7](#) et seq. in any unit of a multi-unit residence is not prohibited by this chapter; provided, that the marijuana smoke is not reasonably detectable. The City shall only enforce this section if:

1. A complaint is made by a resident of the multi-unit building that the marijuana smoke is detectable to him or her; and
2. The marijuana smoke is also detectable to law or code enforcement personnel. If the marijuana smoke is not detectable by the law or code enforcement personnel, this subsection does not preclude the resident from taking private enforcement action as provided in subsection C of this section.

Notwithstanding the foregoing, such use of marijuana may be prohibited by other provisions of this code, State law, or Federal law.

C. For all purposes within the jurisdiction of the City, nonconsensual exposure to smoke occurring on or drifting into residential property is a nuisance, and the uninvited presence of smoke on residential property is a

nuisance and a trespass. Any person bringing a civil action to enforce the nuisance provision contained in this section need not prove an injury different in kind or in degree from injury to others to prove a violation of this chapter.

#### **Other requirements and prohibitions.**

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A. No person, landlord, employer, or nonprofit entity shall knowingly permit smoking in an area which is under the legal or de facto control of the person, employer or nonprofit entity and in which smoking is prohibited by this chapter, unless otherwise required by State or Federal law.

B. No person, landlord, employer, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ashtrays or ash cans, within an area under the legal or de facto control of the person, landlord, employer or nonprofit entity and in which smoking is prohibited by law, including, without limitation, within a reasonable distance required by this chapter from any area in which smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of smoking in violation of any provision of this chapter.

C. No person shall dispose of used smoking or tobacco product waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any reasonable distance required by this chapter.

D. A person, landlord, employer, or nonprofit entity that has legal or de facto control of an area in which smoking is prohibited by this chapter shall post a clear, conspicuous and unambiguous "No Smoking" or "Smoke-Free" sign at each point of ingress to the area, and in at least one other conspicuous point within the area. No smoking signs are not required inside or at doorways of designated nonsmoking units. The signs shall have letters of no less than one inch in height and shall include the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the reasonable distance requirement set forth in PS Municipal Code [REDACTED]. At least one sign with a toll-free phone number where complaints can be directed must be conspicuously posted in each place in which smoking is prohibited. For purposes of this section, the City Manager or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

E. No person, landlord, employer, or nonprofit entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this chapter.

Moreover, no person shall intentionally or recklessly expose another person to smoke in response to that person's effort to achieve compliance with this chapter.

F. Each instance of smoking in violation of this chapter shall constitute a separate violation. For violations other than for smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

#### **Smoking prohibitions, violations and penalties.**

A. The remedies provided by this chapter are not intended to preclude any other remedy available at law or in equity. Remedies may be sought independently or cumulatively.

B. It is unlawful to cause, permit, aid, abet, or conceal a violation of any provision of this chapter.

C. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to refuse to comply with any of its provisions, or to permit any employee or patron to violate this chapter.

D. It shall be unlawful for any person to smoke in any area where smoking is prohibited under this chapter.

E. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.

F. Any person, business, tobacco retailer, or owner who violates provisions in PS Municipal Code [REDACTED] shall be deemed guilty of an infraction, punishable by the administrative penalties as regulated in PS Municipal Code [REDACTED].

#### **Other applicable laws.**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

#### **Public education.**

The City of Pam Springs shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide individuals, landlords, employers, and nonprofit entities in their compliance with it. Such program may include publication of a brochure for affected individuals, landlords, employers, and/or nonprofit entities explaining the provisions of this chapter.

#### **Governmental agency cooperation.**

The City of Palm Springs shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all Federal, State, County and school district agencies to update their existing tobacco control regulations to be consistent with current health findings regarding environmental tobacco smoke.

**93.23.07 Commercial Wind Energy Conversion Systems (WECS). (formerly 94.02.00 (H, 8))**

A. Purposes.

A conditional use permit for a commercial wind energy conversion system (WECS) is intended to regulate and provide for the installation of commercial WECS which are made feasible by the strong prevailing winds within certain areas of the city designated by the general plan. The conditions of the permit are meant to ensure that a safe and beneficial environment, for both the WECS development and the adjacent properties, is provided.

B. Applicability.

Commercial WECS or WECS arrays, and all other uses listed in subsection (C) of this section, are permitted in the following zone classifications; provided, the general plan designates the lot within the wind energy overlay and a conditional use permit is granted pursuant to this section:

1. Watercourse zone (W);
2. Open land zone (O-5);
3. Energy industrial zone (E-I);
4. Manufacturing zone (M-2).

C. Uses Permitted With a Conditional Use Permit.

1. Commercial WECS and WECS arrays with no limit as to rated power output;
2. Meteorological towers under ~~two-three~~ hundred thirty (20330) feet high;
3. Accessory Uses.

Parcels may be used for accessory uses; provided, such uses are established on the same parcel of land, are incidental or supplemental, to a permitted use, and do not substantially alter the character of any permitted use. Accessory uses include, but are not limited to:

- (a) Storage of trucks and other vehicles;
- (b) Storage of materials, inventory, tools and machinery;
- (c) Offices and maintenance shop structures;
- (d) Caretaker dwellings; provided, no compensation is received for the use of any such dwelling and the size of such dwelling is no greater than two thousand (2000) square feet;

- (e) Overhead and underground transmission and communications lines and facilities, including transformers, substations, control rooms, switching facilities and microwave towers;
- (f) Structures necessary for the conservation and development of water resources, such as dams, pipelines and pumping facilities, and aquaculture;
- (g) Cogeneration facilities;
- (h) Solar collectors and photovoltaic panels;
- (i) Energy storage facilities.

D. Application.

Every application for a conditional use permit shall be made in writing to the planning commission on the forms provided by the department of planning and building and shall be accompanied by the filing fee set forth by city council resolution. Applications shall be reviewed by the planning commission for conformance with this section. The application shall include the following information:

1. Name and address of the applicant;
2. Evidence that the applicant is the owner of the property involved or has written permission of the owner to make such application;
3. A plot plan and development plan drawn in sufficient detail to clearly describe the following:
  - (a) Physical dimensions of the property,
  - (b) Location and physical dimensions of existing and proposed structures,
  - (c) Location of electrical lines and facilities,
  - (d) Existing topography,
  - (e) Proposed grading and removal of natural vegetation,
  - (f) Wind characteristics and dominant wind direction at the site. Dominant wind direction is the direction from which fifty (50) percent or more of the energy contained in the wind flows,
  - (g) Setbacks,
  - (h) Circulation,

- (i) Ingress and egress,
  - (j) Utilization of the property under the requested permit;
4. Utility interconnection data and a copy of written notification to the utility of the proposed interconnection;
5. A photograph or detailed drawing of each model of WECS including the tower and foundation; and one (1) or more detailed perspective drawings showing the site fully-developed with all proposed WECS and accessory structures;
6. Specific information on the type, size, rotor material, rated power output, performance, safety and noise characteristics of each model of WECS;
7. Specific information on the type, height, material and safety of each model of tower;
8. A site preparation and installation schedule;
9. A geotechnical report;
10. A vicinity map or aerial photograph describing the location, including distances from existing and proposed WECS, of all residences and other structures which are within one (1) mile of any property proposed for WECS installation;
11. Drawings which show phase spacings, configurations and grounding practices of any proposed electrical distribution lines;
12. An application including any WECS which is located within twenty thousand (20,000) feet of the runway of any airport shall be accompanied by a copy of written notification to the Federal Aviation Administration;
13. If the application includes any WECS which requires the approval of a height limit greater than that allowed in Subsection (E,1,a) (~~35~~500 feet) of this section, a variance application, pursuant to Section 94.06.00 of the Zoning Code, shall be filed concurrently;
14. An application including any WECS with a rated power output of one hundred (100) kw or larger which is located within a state-designated Alquist-Priolo Act Special Study Zone shall be accompanied by a detailed fault hazard report prepared by a California registered geologist which shall address the potential for rotor tower failure calculated for the vertical and horizontal accelerations reasonably expected on the site in the event of a design earthquake;
15. An application including any WECS which is located within two (2) miles of any microwave communications link shall be accompanied by a copy of a written

notification to the operator of the link or evidence that no WECS are located in the microwave path;

16. An application including any WECS which is located within a 100-year floodplain area, as such flood hazard areas are shown on the zoning map, shall be accompanied by a detailed report which shall address the potential for wind erosion, water erosion, sedimentation and flooding, and such report(s) shall propose mitigation measures for such impacts to the extent that such impacts are caused by the proposed WECS;

17. Such additional information as shall be reasonably required by the director of planning and building.

E. Standard and Development Criteria.

1. Height Limits.

(a) No commercial WECS shall exceed ~~threefive~~ hundred (3500) feet in height, measured at the top of the blade in the "twelve o'clock position." Where unusual conditions warrant, a lower height limit may be imposed as a condition of a conditional use permit.

(b) No other building or structure shall exceed thirty (30) feet in height, except for meteorological towers permitted by Subsection (C,2) of this section.

2. Setbacks.

All commercial WECS shall meet these general setback requirements as well as the other setbacks set forth below.

(a) No building or structure shall be located closer than fifty (50) feet from any lot line.

(b) No WECS shall be located closer than one thousand two hundred (1,200) feet from any residence, hotel, hospital, school, library or convalescent home unless the owner of such structure waives, in writing, the setback requirement.

(c) Notwithstanding the one thousand two hundred (1,200) foot setback requirement specified in subsection (E,2) ("Setbacks") of this section, a lesser setback may be permitted where due to factors of topography or the characteristics of the proposed WECS project, the approving entity finds that the noise, aesthetic or other environmental impacts of the project on adjacent properties will not be any more significant than if the one thousand two hundred (1,200) foot setback were applied. In the case of the replacement of WECS, pursuant to subsection (F,3) ("Replacement") of this

section, the standard for determining whether a reduction shall be approved is whether the replacement WECS will have a substantially reduced cumulative impact on surrounding property, as compared to the existing project, and whether adhering to the one thousand two hundred (1,200) foot setback will be an unreasonable economic hardship to the applicant. Wherever a setback reduction is proposed pursuant to this subsection, the setback reduction shall be included in all notices, and, if the WECS permit shall specifically state the required setback.

### 3. Safety Setbacks.

(a) No commercial WECS shall be located where the center of the tower is within a distance of 1.251 times the total WECS height from any above-ground electrical transmission line of more than twelve (12) kV.

(b) No commercial WECS shall be located where the center of the tower is within a distance of 1.251 times the total WECS height from any public highway or road, railroad or off-site building. The setback herein specified shall be measured from the boundary of the public right-of-way or railroad right-of-way.

(c) No commercial WECS shall be located where the center of the tower is within a distance of 1.251 times the total WECS height from any lot line. No commercial WECS shall be located where the center of the tower is within ~~two-five~~ hundred (~~2500~~) feet from any lot line of a lot which contains a dwelling, if this distance is more than 1.1 times the total WECS height.

(d) Notwithstanding the provisions of subsections (E,3,b) and (E,3,c) ("Safety Setbacks") of this section, the setbacks therein specified may be reduced to less than 1.251 times the total WECS height if the planning commission determines that the topography of, or other conditions related to, the adjacent property or right-of-way eliminates or substantially reduces the potential safety hazards. Whenever a setback reduction is proposed pursuant to this subsection, the setback reduction shall be included in all notices regarding the conditional use permit, and, if granted, the conditional use permit shall specifically state the required setback.

### 4. Wind Access Setbacks.

(a) No commercial WECS shall be located where the center of the tower is within a distance of five (5) rotor diameters from a lot line that is perpendicular to and downwind of, or within forty-five (45) degrees of perpendicular to and downwind of, the dominant wind direction.

(b) Notwithstanding the provisions of subsection (4,a) (Wind access setbacks) of this section, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement or waiver

for a period of twenty-five (25) years or the life of the permit that the adjacent landowner agrees to the elimination of the setback, or if the planning commission determines that the characteristics of the downwind property eliminate the ability to develop said downwind property with commercial WECS.

5. Scenic Setbacks.

(a) No commercial WECS shall be located where the center of the tower is within one thousand three hundred fifteen (1,315) feet (one-quarter ( $\frac{1}{4}$ ) mile) of State Highway 62 and of that portion of Interstate 10 between State Highway 62 and the Whitewater River, commonly known as the Whitewater Grade.

(b) No commercial WECS shall be located where the center of the tower is within five hundred (500) feet of Indian Canyon Drive/~~Indian Avenue~~.

(c) No commercial WECS shall be located where the center of the tower is within five hundred (500) feet of Interstate 10, except as specified in subsection (5,a) ("Scenic Setbacks") of this section.

(d) No commercial WECS shall be located where the center of the tower is within three thousand four hundred seventy-two (3,472) feet (two-thirds ( $\frac{2}{3}$ ) mile) of State Highway 111.

(e) No commercial WECS shall be permitted south of State Highway 111.

(f) No commercial WECS shall be located where the center of the tower is within 1.~~25~~1 times the total WECS height from Dillon Road.

(g) The setbacks specified in the subsections above shall be measured from the nearest boundary of the public right-of-way.

(h) Notwithstanding the provisions of the subsections (5) ("Scenic Setbacks") of this section, the setbacks therein specified may be reduced if the planning commission determines that the characteristics of the surrounding property eliminate or substantially reduce considerations of scenic value. Whenever a setback reduction is proposed pursuant to this subsection, the setback reduction shall be included in all notices regarding the conditional use permit, and, if granted, the conditional use permit shall specifically state the required setback.

6. Safety and Security.

(a) Fencing, or other appropriate measures, shall be required to prevent unauthorized access to the WECS or WECS array.

- (b) Guy wires shall be distinctly marked.
- (c) Signs in English and Spanish warning of the electrical and other hazards associated with the WECS shall be posted at the base of each tower and at reasonable intervals on fences or barriers.
- (d) Horizontal-axis WECS.

The lowest extension of the rotor of a horizontal-axis WECS shall be at least twenty-five (25) feet from the ground.

- (e) Vertical-axis WECS.

A fence or other barrier shall be erected around a vertical-axis WECS whose rotors are less than fifteen (15) feet from the ground.

#### 7. Seismic Safety.

- (a) All WECS shall comply with the requirements of the applicable seismic zone of the Uniform Building Code or with the seismic design recommendation in an approved geotechnical report on the project.
- (b) Control facilities for commercial WECS or WECS arrays shall not be located within six hundred sixty (660) feet of any fault within a state-designated Alquist-Priolo Act Special Studies Zone.

#### 8. Fire Protection.

Upon recommendation of the city fire department, commercial WECS and WECS arrays may include fire control and prevention measures including, but not limited to, the following:

- (a) Fireproof or fire-resistant building materials;
- (b) Buffers of fire-retardant landscaping;
- (c) An automatic fire-extinguishing system;
- (d) Fire breaks.

#### 9. Interconnection and Electrical Distribution Facilities.

Interconnection shall conform to procedures and standards established by the California Public Utilities Commission.

10. Unsafe and Inoperable WECS.

(a) Whenever any existing commercial WECS are modified, or any new commercial WECS are installed, any commercial WECS on the site which are unsafe, inoperable or abandoned or for which the permit has expired shall be removed by the owner or brought into compliance with the provisions of this section. All safety hazards created by the installation and operation of the WECS shall be eliminated. Whenever the operation of any WECS is eliminated, the site shall be restored to its condition prior to installation. A bond, in an amount approved by the director of planning and building, or other appropriate form of security, in a form approved by the city attorney, may be required to cover the cost of removal and site restoration.

(b) Every unsafe or inoperable commercial WECS and every commercial WECS which has not generated power for twelve (12) consecutive months is declared to be a public nuisance which shall be abated by repair, rehabilitation, demolition or removal. The appropriate abatement method shall be determined by the director of planning and building based upon the cost of abatement and the degree to which the WECS will meet the requirements of this section following abatement. A commercial WECS which has not generated power for twelve (12) consecutive months shall not be considered a public nuisance; provided, the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and that a good faith effort is being made to return the WECS to service at the earliest practical date. If a commercial WECS does not deliver power as a result of a curtailment whereby power is not accepted by the contracted utility, the period of curtailment shall be added to the minimum period defined above.

11. Interference with Navigational Systems.

No commercial WECS shall be installed which do not comply with Federal Aviation Administration regulations for siting structures near an airport or VORTAC installation.

12. Site Disruption.

Prior to the issuance of building permits for a commercial WECS development, all areas where significant site disruption is proposed shall be temporarily marked off. All construction activities shall be limited to the areas marked off.

13. Certification.

(a) The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in California that they conform with good engineering

practices and comply with the appropriate provisions of the Uniform Building Code that have been adopted by the city.

(b) The electrical system shall be certified in writing by an electrical engineer, registered in California, that it conforms with good engineering practices and complies with appropriate provisions of the National Electrical Code that have been adopted by the city.

(c) The rotor overspeed control system shall be certified in writing by a mechanical engineer, registered in any state, that it conforms to good engineering practices.

14. Noise.

A commercial WECS or WECS array shall not be operated inconsistent with the provisions of Chapter 11.74, (Noise ordinance) of the Palm Springs Municipal Code.

15. Electrical Distribution Lines.

(a) To the extent economically prudent, as determined by the planning commission, electrical distribution lines on the project site shall be undergrounded up to the low voltage side of the step-up transformer or to the utility interface point of an on-site substation.

(b) Any electrical distribution line of less than thirty-four (34) kV, not subject to the jurisdiction of the California Public Utilities Commission, which is located within one (1) mile of State Highways 62 and 111, or within one (1) mile of the portion of Interstate 10 commonly known as the Whitewater Grade (between State Highway 62 and the Whitewater River) shall be installed underground if such installation is feasible, as determined by the director of planning and building.

(c) Electrical distribution lines shall be governed by the latest edition of "Suggested Practices for Raptor Protection on Powerlines" on file with the Bureau of Land Management. Use of this information should be made to design the proposed facilities with proper grounding, phase spacing and configuration such that it will prevent, to the best of the design engineer's ability, the electrocution of raptors. The use of designs other than those included in "Suggested Practices" that are, in the opinion of the director of planning and building, raptor safe, shall be permitted in public rights-of-way. The cost of such alternate designs shall be at the applicant's expense.

16. Monitoring.

(a) Upon reasonable notice, and subject to the applicant's safety and security procedures, city officials or their designated representatives may

enter a lot on which a conditional use permit has been granted for the purpose of monitoring noise and other environmental impacts. Twenty-four (24) hours advance notice shall be deemed reasonable notice.

(b) The holder of a conditional use permit shall report to the city department of planning and building all dead birds found within five hundred (500) feet of a WECS and all sightings of the Coachella Valley Fringe-Toed Lizard on the WECS site.

(c) The holder of a conditional use permit may be required to submit periodic monitoring reports containing data on the operations and environmental impacts.

(d) A toll-free telephone number shall be maintained for each commercial WECS project and shall be distributed to surrounding property owners to facilitate the reporting of noise irregularities and equipment malfunctions.

#### 17. Time-Related Conditions.

Where no operating data for the proposed turbines is available, the granting of a conditional use permit may be conditioned upon the installation and operation of one (1) or more WECS for a period not to exceed six (6) months in order to demonstrate performance characteristics of the WECS. If such a monitoring condition is imposed, the permit shall specify the standards which must be met in order to continue development. If a standard is not being met at the expiration of the required monitoring period, the applicant and the city may agree to an extension. The time within which the permit must be used shall be extended for the period of required monitoring.

#### 18. Development Impacts.

A one-time or periodic fee and a requirement to provide public works or services may be imposed as a condition of a conditional use permit. Such exactions must be related to the public need created by the wind energy development. The purposes for which the permit exaction may be used include, but are not limited to, providing roads required by the wind development and establishing and operating a monitoring system.

#### 19. Signs.

No advertising sign or logo shall be placed or painted on any commercial WECS. Unless otherwise approved by the planning commission, the conditional use permit may permit the placement of no more than one (1) project identification sign relating to the development on the project site, but no such sign shall exceed fifty (50) square feet in surface area or eight (8) feet in height.

20. Color and Finish of WECS.

All commercial WECS shall be either light environmental colors (such as off-white, gray, beige or tan) or darker fully-saturated colors (such as dark blue or green, maroon or rust red) or galvanized. All commercial WECS shall have a matte or galvanized finish unless the director of planning determines that such finish adversely affects the performance of the WECS or other good cause is shown to permit any other finish.

21. Contingent Approval.

A commercial WECS may be granted subject to necessary approvals from the Federal Aviation Administration or other approving authorities.

22. General Conditions.

The city may impose conditions on the granting of a conditional use permit in order to achieve the purposes of this Zoning Code and the general plan and to protect the health, safety or general welfare of the community.

23. Notification.

Upon approval of a conditional use permit, the city shall provide written notice to the California Public Utilities Commission, the California Energy Commission and the concerned utility.

F. Use of Permit.

1. Any conditional use permit that is granted shall be used within two (2) years from the effective date thereof or within such additional time as may be set in the conditions or approval, which shall not exceed a total of four (4) years; otherwise, the permit shall be null and void. Notwithstanding the foregoing, if a permit is required to be used within less than four (4) years, the permittee may, prior to its expiration, request an extension of time pursuant to Section 94.12.00 in which to use the permit. An extension of time may be granted by the commission upon a determination that valid reason exists for permittee not using the permit within the required period of time. If an extension is granted, the total time period allowed for use of the permit shall not exceed a period of four (4) years, calculated from the effective date of the issuance of the permit. The term "use" shall mean the beginning of substantial construction or commencement of the use that is authorized, which construction must thereafter be pursued diligently to completion.

2. Life of Permit.

A conditional use permit shall be valid for the useful life of the WECS included in the permit. The life of the permit shall be determined at the time of approval and shall not exceed thirty (30) years.

3. Replacement.

(a) Individual commercial WECS which have been installed pursuant to a conditional use, or other WECS, permit may be replaced with approval of a land use permit provided the replacement WECS meets the standards of subsection (E) on Standards and Development Criteria of this section. Such determination shall be made by the director of planning and building according to Section 94.02.01 (Land use permits).

(b) WECS arrays which have been installed pursuant to a conditional use, or other WECS, permit may be replaced with approval of a land use permit; provided, two (2) or more individual WECS shall be removed for each replacement WECS installed and the resultant array meets the standards of subsection "E" ("Standard and Development Criteria") of this section. Such determination shall be made by the director of planning and building according to Section 94.02.01 (Land use permits).

(c) WECS replacements not meeting the criteria above require approval of a subsequent conditional use permit.

(d) Any WECS on which the cost of alteration, restoration, repair or rebuilding in a twelve (12) month period exceeds seventy-five (75) percent of the replacement cost and shall be subject to subsections (E,3,a) through (E,3,c) ("Safety Setbacks") of this section.

(e) Existing WECS, upon adoption of this section, shall be considered to hold a valid conditional use permit under the conditions by which such WECS was originally approved; such WECS shall not be considered nonconforming by virtue of the provisions of this section.

G. Revocation or Voiding of Conditional Use Permit.

1. The council, with or without a recommendation from the planning commission, may, after notice and public hearing, revoke any conditional use permit for noncompliance with any of the conditions set forth in granting the permit.

2. Notice.

(a) Notice shall be mailed to the record owner and lessee of the subject property not less than twenty (20) days prior to holding a public hearing. Such notice shall state the complaint and shall request appearance of such owner and lessee at the

time and place specified for the hearing to show cause why the permit should not be revoked.

(b) Notification of property owners shall be given as provided in Section 94.02.00(B)(4).

3. Within ten (10) days after the public hearing, the council may by resolution, revoke or modify the conditional use permit. After revocation, the subject property shall conform to all regulations of the zone in which it is located according to a time schedule determined by the city council.

4. If the time limit for development expires and development has not commenced, or the use permitted by the conditional use permit does not exist or commenced, the conditional use permit shall be considered void. No notice need be given nor hearing held. An extension of time may be approved pursuant to the requirements of Section 94.12.00.

5. Termination of a use granted herein for a period of one (1) calendar year shall terminate the use rights granted without further notice or public hearing. An extension of the time limit may be approved by the planning commission, or the city council, upon written request by the applicant and a showing of good cause.

#### H. Reapplication.

Application may not be made for a similar conditional use permit on the same land, building or structure within a period of six (6) months from the date of the final decision on such previous application unless such decision is a denial without prejudice.

#### I. Existing Permits.

Any conditional use permit granted pursuant to any zoning ordinance enacted prior to the effective date of this Zoning Code shall be construed to be a conditional use permit under this Zoning Code subject to all conditions imposed in such permit. Such permit may, however, be revoked or voided as provided in Section 94.02.00(I) above.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTION 93.23.07 OF THE PALM SPRINGS ZONING CODE RELATING TO COMMERCIAL WIND ENERGY CONVERSION SYSTEMS (CASE \_\_.\_\_\_\_ ZTA).

**City Attorney's Summary**

*This Ordinance is intended to facilitate the repowering of commercial wind energy conversion systems (WECS) to take account of energy efficiencies. The Ordinance increases the maximum height of WECS from 300 to 500 feet and the maximum height of meteorological towers from 200 to 330 feet. It also adjusts certain setback requirements.*

THE CITY COUNCIL FINDS AND DETERMINES AS FOLLOWS:

- A. The Sustainability Commission of the City of Palm Springs, by vote of \_\_ to \_\_ at its meeting of \_\_\_\_\_, 2019, recommended that staff initiate an amendment to the Zoning Code to facilitate the repowering of wind energy conversion systems to take account of energy efficiencies and refer the matter to the Planning Commission for recommendation.
- B. Notice of a public hearing of the Planning Commission of the City of Palm Springs to consider Case \_\_.\_\_\_\_ ZTA was given in accordance with applicable law.
- C. On \_\_\_\_\_, 2019, a public hearing on the proposed Zone Text Amendment was held by the Planning Commission in accordance with applicable law, at which meeting the Planning Commission voted \_ to \_ to recommend approval of the proposed amendment.
- D. On \_\_\_\_\_, 2019, the City Council held a noticed public hearing on the proposed Zone Text Amendment in accordance with applicable law.
- E. The proposed Zone Text Amendment is not subject to the California Environmental Quality Act (Public Resources Code Section 21000 *et. seq.*) pursuant to Section 15060(c)(2) and 15060(c)(3) of the State Guidelines, because the Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project," as that term is defined in Section 15378 of the State Guidelines. Certain structures and projects allowable under this proposed Zone Text Amendment would require an environmental evaluation under the California Environmental Quality Act (CEQA) at the time an application is filed for such development.

F. The City Council has carefully reviewed and considered all the evidence presented in connection with the hearing on the Zone Text Amendment, including, but not limited to, the staff report, and all written and oral testimony presented.

G. The City Council finds that approval of the proposed Zone Text Amendment would:

1. Facilitate the repowering of commercial wind energy conversion systems to take account of energy efficiencies since the existing systems were first installed:

2. Assist in meeting the State of California's goal to get 100 percent of its electricity from carbon-free energy sources like solar, wind and geothermal by 2045 in accordance with SB 100;

3. Implement the following goals of the General Plan:

- Facilitate the orderly and efficient development of wind energy resources and regulate their location, operation, and management;
- Support and encourage the use of alternative energy sources such as wind;
- Encourage "green technologies," renewable energy, and related activities as a business development goal and to attract this type of business activity to Palm Springs;
- Establish minimum setback requirements from residential areas for commercial wind energy conversion systems.

4. Implement the following goals of the Sustainability Plan:

- Help to create 500 clean tech jobs by 2020;
- Train and grow the City's green workforce;
- Supply 50% of all energy from renewable sources by 2030;
- Be a regional leader.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1.** That the findings and determinations reflected above are true and correct and are incorporated by this reference herein as the cause and foundation for the action taken by and through this Ordinance.

**SECTION 2.** Section 93.23.07 of the Palm Springs Zoning Code is amended to read as follows:

**93.23.07 Commercial Wind Energy Conversion Systems (WECS). (formerly 94.02.00 (H, 8))**

A. Purposes.

A conditional use permit for a commercial wind energy conversion system (WECS) is intended to regulate and provide for the installation of commercial WECS which are made feasible by the strong prevailing winds within certain areas of the city designated by the general plan. The conditions of the permit are meant to ensure that a safe and beneficial environment, for both the WECS development and the adjacent properties, is provided.

B. Applicability.

Commercial WECS or WECS arrays, and all other uses listed in subsection (C) of this section, are permitted in the following zone classifications; provided, the general plan designates the lot within the wind energy overlay and a conditional use permit is granted pursuant to this section:

1. Watercourse zone (W);
2. Open land zone (O-5);
3. Energy industrial zone (E-I);
4. Manufacturing zone (M-2).

C. Uses Permitted With a Conditional Use Permit.

1. Commercial WECS and WECS arrays with no limit as to rated power output;
2. Meteorological towers under three hundred thirty (330) feet high;
3. Accessory Uses.

Parcels may be used for accessory uses; provided, such uses are established on the same parcel of land, are incidental or supplemental, to a permitted use, and do not substantially alter the character of any permitted use. Accessory uses include, but are not limited to:

- (a) Storage of trucks and other vehicles;
- (b) Storage of materials, inventory, tools and machinery;

- (c) Offices and maintenance shop structures;
- (d) Caretaker dwellings; provided, no compensation is received for the use of any such dwelling and the size of such dwelling is no greater than two thousand (2000) square feet;
- (e) Overhead and underground transmission and communications lines and facilities, including transformers, substations, control rooms, switching facilities and microwave towers;
- (f) Structures necessary for the conservation and development of water resources, such as dams, pipelines and pumping facilities, and aquaculture;
- (g) Cogeneration facilities;
- (h) Solar collectors and photovoltaic panels;
- (i) Energy storage facilities.

D. Application.

Every application for a conditional use permit shall be made in writing to the planning commission on the forms provided by the department of planning and building and shall be accompanied by the filing fee set forth by city council resolution. Applications shall be reviewed by the planning commission for conformance with this section. The application shall include the following information:

1. Name and address of the applicant;
2. Evidence that the applicant is the owner of the property involved or has written permission of the owner to make such application;
3. A plot plan and development plan drawn in sufficient detail to clearly describe the following:
  - (a) Physical dimensions of the property,
  - (b) Location and physical dimensions of existing and proposed structures,
  - (c) Location of electrical lines and facilities,
  - (d) Existing topography,
  - (e) Proposed grading and removal of natural vegetation,

- (f) Wind characteristics and dominant wind direction at the site. Dominant wind direction is the direction from which fifty (50) percent or more of the energy contained in the wind flows,
  - (g) Setbacks,
  - (h) Circulation,
  - (i) Ingress and egress,
  - (j) Utilization of the property under the requested permit;
4. Utility interconnection data and a copy of written notification to the utility of the proposed interconnection;
  5. A photograph or detailed drawing of each model of WECS including the tower and foundation; and one (1) or more detailed perspective drawings showing the site fully-developed with all proposed WECS and accessory structures;
  6. Specific information on the type, size, rotor material, rated power output, performance, safety and noise characteristics of each model of WECS;
  7. Specific information on the type, height, material and safety of each model of tower;
  8. A site preparation and installation schedule;
  9. A geotechnical report;
  10. A vicinity map or aerial photograph describing the location, including distances from existing and proposed WECS, of all residences and other structures which are within one (1) mile of any property proposed for WECS installation;
  11. Drawings which show phase spacings, configurations and grounding practices of any proposed electrical distribution lines;
  12. An application including any WECS which is located within twenty thousand (20,000) feet of the runway of any airport shall be accompanied by a copy of written notification to the Federal Aviation Administration;
  13. If the application includes any WECS which requires the approval of a height limit greater than that allowed in Subsection (E,1,a) (500 feet) of this section, a variance application, pursuant to Section 94.06.00 of the Zoning Code, shall be filed concurrently;

14. An application including any WECS with a rated power output of one hundred (100) kw or larger which is located within a state-designated Alquist-Priolo Act Special Study Zone shall be accompanied by a detailed fault hazard report prepared by a California registered geologist which shall address the potential for rotor tower failure calculated for the vertical and horizontal accelerations reasonably expected on the site in the event of a design earthquake;

15. An application including any WECS which is located within two (2) miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link or evidence that no WECS are located in the microwave path;

16. An application including any WECS which is located within a 100-year floodplain area, as such flood hazard areas are shown on the zoning map, shall be accompanied by a detailed report which shall address the potential for wind erosion, water erosion, sedimentation and flooding, and such report(s) shall propose mitigation measures for such impacts to the extent that such impacts are caused by the proposed WECS;

17. Such additional information as shall be reasonably required by the director of planning and building.

E. Standard and Development Criteria.

1. Height Limits.

(a) No commercial WECS shall exceed five hundred (500) feet in height, measured at the top of the blade in the "twelve o'clock position." Where unusual conditions warrant, a lower height limit may be imposed as a condition of a conditional use permit.

(b) No other building or structure shall exceed thirty (30) feet in height, except for meteorological towers permitted by Subsection (C,2) of this section.

2. Setbacks.

All commercial WECS shall meet these general setback requirements as well as the other setbacks set forth below.

(a) No building or structure shall be located closer than fifty (50) feet from any lot line.

(b) No WECS shall be located closer than one thousand two hundred (1,200) feet from any residence, hotel, hospital, school, library or

convalescent home unless the owner of such structure waives, in writing, the setback requirement.

(c) Notwithstanding the one thousand two hundred (1,200) foot setback requirement specified in subsection (E,2) (“Setbacks”) of this section, a lesser setback may be permitted where due to factors of topography or the characteristics of the proposed WECS project, the approving entity finds that the noise, aesthetic or other environmental impacts of the project on adjacent properties will not be any more significant than if the one thousand two hundred (1,200) foot setback were applied. In the case of the replacement of WECS, pursuant to subsection (F,3) (“Replacement”) of this section, the standard for determining whether a reduction shall be approved is whether the replacement WECS will have a substantially reduced cumulative impact on surrounding property, as compared to the existing project, and whether adhering to the one thousand two hundred (1,200) foot setback will be an unreasonable economic hardship to the applicant. Wherever a setback reduction is proposed pursuant to this subsection, the setback reduction shall be included in all notices, and, if the WECS permit shall specifically state the required setback.

### 3. Safety Setbacks.

(a) No commercial WECS shall be located where the center of the tower is within a distance of 1.1 times the total WECS height from any above-ground electrical transmission line of more than twelve (12) kV.

(b) No commercial WECS shall be located where the center of the tower is within a distance of 1.1 times the total WECS height from any public highway or road, railroad or off-site building. The setback herein specified shall be measured from the boundary of the public right-of-way or railroad right-of-way.

(c) No commercial WECS shall be located where the center of the tower is within a distance of 1.1 times the total WECS height from any lot line. No commercial WECS shall be located where the center of the tower is within five hundred (500) feet from any lot line of a lot which contains a dwelling, if this distance is more than 1.1 times the total WECS height.

(d) Notwithstanding the provisions of subsections (E,3,b) and (E,3,c) (“Safety Setbacks”) of this section, the setbacks therein specified may be reduced to less than 1.1 times the total WECS height if the planning commission determines that the topography of, or other conditions related to, the adjacent property or right-of-way eliminates or substantially reduces the potential safety hazards. Whenever a setback reduction is proposed pursuant to this subsection, the setback reduction shall be included in all notices regarding the conditional use permit, and, if granted, the conditional use permit shall specifically state the required setback.

4. Wind Access Setbacks.

(a) No commercial WECS shall be located where the center of the tower is within a distance of five (5) rotor diameters from a lot line that is perpendicular to and downwind of, or within forty-five (45) degrees of perpendicular to and downwind of, the dominant wind direction.

(b) Notwithstanding the provisions of subsection (4,a) (Wind access setbacks) of this section, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement or waiver for a period of twenty-five (25) years or the life of the permit that the adjacent landowner agrees to the elimination of the setback, or if the planning commission determines that the characteristics of the downwind property eliminate the ability to develop said downwind property with commercial WECS.

5. Scenic Setbacks.

(a) No commercial WECS shall be located where the center of the tower is within one thousand three hundred fifteen (1,315) feet (one-quarter (¼) mile) of State Highway 62 and of that portion of Interstate 10 between State Highway 62 and the Whitewater River, commonly known as the Whitewater Grade.

(b) No commercial WECS shall be located where the center of the tower is within five hundred (500) feet of Indian Canyon Drive.

(c) No commercial WECS shall be located where the center of the tower is within five hundred (500) feet of Interstate 10, except as specified in subsection (5,a) ("Scenic Setbacks") of this section.

(d) No commercial WECS shall be located where the center of the tower is within three thousand four hundred seventy-two (3,472) feet (two-thirds (2/3) mile) of State Highway 111.

(e) No commercial WECS shall be permitted south of State Highway 111.

(f) No commercial WECS shall be located where the center of the tower is within 1.1 times the total WECS height from Dillon Road.

(g) The setbacks specified in the subsections above shall be measured from the nearest boundary of the public right-of-way.

(h) Notwithstanding the provisions of the subsections (5) ("Scenic Setbacks") of this section, the setbacks therein specified may be reduced if the planning commission determines that the characteristics of the

surrounding property eliminate or substantially reduce considerations of scenic value. Whenever a setback reduction is proposed pursuant to this subsection, the setback reduction shall be included in all notices regarding the conditional use permit, and, if granted, the conditional use permit shall specifically state the required setback.

6. Safety and Security.

(a) Fencing, or other appropriate measures, shall be required to prevent unauthorized access to the WECS or WECS array.

(b) Guy wires shall be distinctly marked.

(c) Signs in English and Spanish warning of the electrical and other hazards associated with the WECS shall be posted at the base of each tower and at reasonable intervals on fences or barriers.

(d) Horizontal-axis WECS.

The lowest extension of the rotor of a horizontal-axis WECS shall be at least twenty-five (25) feet from the ground.

(e) Vertical-axis WECS.

A fence or other barrier shall be erected around a vertical-axis WECS whose rotors are less than fifteen (15) feet from the ground.

7. Seismic Safety.

(a) All WECS shall comply with the requirements of the applicable seismic zone of the [Uniform Building Code](#) or with the seismic design recommendation in an approved geotechnical report on the project.

(b) Control facilities for commercial WECS or WECS arrays shall not be located within six hundred sixty (660) feet of any fault within a state-designated Alquist-Priolo Act Special Studies Zone.

8. Fire Protection.

Upon recommendation of the city fire department, commercial WECS and WECS arrays may include fire control and prevention measures including, but not limited to, the following:

(a) Fireproof or fire-resistant building materials;

(b) Buffers of fire-retardant landscaping;

(c) An automatic fire-extinguishing system;

(d) Fire breaks.

9. Interconnection and Electrical Distribution Facilities.

Interconnection shall conform to procedures and standards established by the California Public Utilities Commission.

10. Unsafe and Inoperable WECS.

(a) Whenever any existing commercial WECS are modified, or any new commercial WECS are installed, any commercial WECS on the site which are unsafe, inoperable or abandoned or for which the permit has expired shall be removed by the owner or brought into compliance with the provisions of this section. All safety hazards created by the installation and operation of the WECS shall be eliminated. Whenever the operation of any WECS is eliminated, the site shall be restored to its condition prior to installation. A bond, in an amount approved by the director of planning and building, or other appropriate form of security, in a form approved by the city attorney, may be required to cover the cost of removal and site restoration.

(b) Every unsafe or inoperable commercial WECS and every commercial WECS which has not generated power for twelve (12) consecutive months is declared to be a public nuisance which shall be abated by repair, rehabilitation, demolition or removal. The appropriate abatement method shall be determined by the director of planning and building based upon the cost of abatement and the degree to which the WECS will meet the requirements of this section following abatement. A commercial WECS which has not generated power for twelve (12) consecutive months shall not be considered a public nuisance; provided, the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and that a good faith effort is being made to return the WECS to service at the earliest practical date. If a commercial WECS does not deliver power as a result of a curtailment whereby power is not accepted by the contracted utility, the period of curtailment shall be added to the minimum period defined above.

11. Interference with Navigational Systems.

No commercial WECS shall be installed which do not comply with Federal Aviation Administration regulations for siting structures near an airport or VORTAC installation.

12. Site Disruption.

Prior to the issuance of building permits for a commercial WECS development, all areas where significant site disruption is proposed shall be

temporarily marked off. All construction activities shall be limited to the areas marked off.

13. Certification.

(a) The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in California that they conform with good engineering practices and comply with the appropriate provisions of the Uniform Building Code that have been adopted by the city.

(b) The electrical system shall be certified in writing by an electrical engineer, registered in California, that it conforms with good engineering practices and complies with appropriate provisions of the National Electrical Code that have been adopted by the city.

(c) The rotor overspeed control system shall be certified in writing by a mechanical engineer, registered in any state, that it conforms to good engineering practices.

14. Noise.

A commercial WECS or WECS array shall not be operated inconsistent with the provisions of Chapter 11.74, (Noise ordinance) of the Palm Springs Municipal Code.

15. Electrical Distribution Lines.

(a) To the extent economically prudent, as determined by the planning commission, electrical distribution lines on the project site shall be undergrounded up to the low voltage side of the step-up transformer or to the utility interface point of an on-site substation.

(b) Any electrical distribution line of less than thirty-four (34) kV, not subject to the jurisdiction of the California Public Utilities Commission, which is located within one (1) mile of State Highways 62 and 111, or within one (1) mile of the portion of Interstate 10 commonly known as the Whitewater Grade (between State Highway 62 and the Whitewater River) shall be installed underground if such installation is feasible, as determined by the director of planning and building.

(c) Electrical distribution lines shall be governed by the latest edition of "Suggested Practices for Raptor Protection on Powerlines" on file with the Bureau of Land Management. Use of this information should be made to design the proposed facilities with proper grounding, phase spacing and configuration such that it will prevent, to the best of the design engineer's ability, the electrocution of raptors. The use of designs other than those

included in “Suggested Practices” that are, in the opinion of the director of planning and building, raptor safe, shall be permitted in public rights-of-way. The cost of such alternate designs shall be at the applicant’s expense.

16. Monitoring.

(a) Upon reasonable notice, and subject to the applicant’s safety and security procedures, city officials or their designated representatives may enter a lot on which a conditional use permit has been granted for the purpose of monitoring noise and other environmental impacts. Twenty-four (24) hours advance notice shall be deemed reasonable notice.

(b) The holder of a conditional use permit shall report to the city department of planning and building all dead birds found within five hundred (500) feet of a WECS and all sightings of the Coachella Valley Fringe-Toed Lizard on the WECS site.

(c) The holder of a conditional use permit may be required to submit periodic monitoring reports containing data on the operations and environmental impacts.

(d) A toll-free telephone number shall be maintained for each commercial WECS project and shall be distributed to surrounding property owners to facilitate the reporting of noise irregularities and equipment malfunctions.

17. Time-Related Conditions.

Where no operating data for the proposed turbines is available, the granting of a conditional use permit may be conditioned upon the installation and operation of one (1) or more WECS for a period not to exceed six (6) months in order to demonstrate performance characteristics of the WECS. If such a monitoring condition is imposed, the permit shall specify the standards which must be met in order to continue development. If a standard is not being met at the expiration of the required monitoring period, the applicant and the city may agree to an extension. The time within which the permit must be used shall be extended for the period of required monitoring.

18. Development Impacts.

A one-time or periodic fee and a requirement to provide public works or services may be imposed as a condition of a conditional use permit. Such exactions must be related to the public need created by the wind energy development. The purposes for which the permit exaction may be used include, but are not limited to, providing roads required by the wind development and establishing and operating a monitoring system.

19. Signs.

No advertising sign or logo shall be placed or painted on any commercial WECS. Unless otherwise approved by the planning commission, the conditional use permit may permit the placement of no more than one (1) project identification sign relating to the development on the project site, but no such sign shall exceed fifty (50) square feet in surface area or eight (8) feet in height.

20. Color and Finish of WECS.

All commercial WECS shall be either light environmental colors (such as off-white, gray, beige or tan) or darker fully-saturated colors (such as dark blue or green, maroon or rust red) or galvanized. All commercial WECS shall have a matte or galvanized finish unless the director of planning determines that such finish adversely affects the performance of the WECS or other good cause is shown to permit any other finish.

21. Contingent Approval.

A commercial WECS may be granted subject to necessary approvals from the Federal Aviation Administration or other approving authorities.

22. General Conditions.

The city may impose conditions on the granting of a conditional use permit in order to achieve the purposes of this Zoning Code and the general plan and to protect the health, safety or general welfare of the community.

23. Notification.

Upon approval of a conditional use permit, the city shall provide written notice to the California Public Utilities Commission, the California Energy Commission and the concerned utility.

F. Use of Permit.

1. Any conditional use permit that is granted shall be used within two (2) years from the effective date thereof or within such additional time as may be set in the conditions or approval, which shall not exceed a total of four (4) years; otherwise, the permit shall be null and void. Notwithstanding the foregoing, if a permit is required to be used within less than four (4) years, the permittee may, prior to its expiration, request an extension of time pursuant to Section 94.12.00 in which to use the permit. An extension of time may be granted by the commission upon a determination that valid reason exists for permittee not using the permit within the required period of time. If an extension is granted, the total time period allowed for use of the permit shall not exceed a period of four (4) years, calculated from the effective date of the issuance of the permit. The term

“use” shall mean the beginning of substantial construction or commencement of the use that is authorized, which construction must thereafter be pursued diligently to completion.

2. Life of Permit.

A conditional use permit shall be valid for the useful life of the WECS included in the permit. The life of the permit shall be determined at the time of approval and shall not exceed thirty (30) years.

3. Replacement.

(a) Individual commercial WECS which have been installed pursuant to a conditional use, or other WECS, permit may be replaced with approval of a land use permit provided the replacement WECS meets the standards of subsection (E) on Standards and Development Criteria of this section. Such determination shall be made by the director of planning and building according to Section 94.02.01 (Land use permits).

(b) WECS arrays which have been installed pursuant to a conditional use, or other WECS, permit may be replaced with approval of a land use permit; provided, two (2) or more individual WECS shall be removed for each replacement WECS installed and the resultant array meets the standards of subsection “E” (“Standard and Development Criteria”) of this section. Such determination shall be made by the director of planning and building according to Section 94.02.01 (Land use permits).

(c) WECS replacements not meeting the criteria above require approval of a subsequent conditional use permit.

(d) Any WECS on which the cost of alteration, restoration, repair or rebuilding in a twelve (12) month period exceeds seventy-five (75) percent of the replacement cost and shall be subject to subsections (E,3,a) through (E,3,c) (“Safety Setbacks”) of this section.

(e) Existing WECS, upon adoption of this section, shall be considered to hold a valid conditional use permit under the conditions by which such WECS was originally approved; such WECS shall not be considered nonconforming by virtue of the provisions of this section.

G. Revocation or Voiding of Conditional Use Permit.

1. The council, with or without a recommendation from the planning commission, may, after notice and public hearing, revoke any conditional use permit for noncompliance with any of the conditions set forth in granting the permit.

2. Notice.

(a) Notice shall be mailed to the record owner and lessee of the subject property not less than twenty (20) days prior to holding a public hearing. Such notice shall state the complaint and shall request appearance of such owner and lessee at the time and place specified for the hearing to show cause why the permit should not be revoked.

(b) Notification of property owners shall be given as provided in Section 94.02.00(B)(4).

3. Within ten (10) days after the public hearing, the council may by resolution, revoke or modify the conditional use permit. After revocation, the subject property shall conform to all regulations of the zone in which it is located according to a time schedule determined by the city council.

4. If the time limit for development expires and development has not commenced, or the use permitted by the conditional use permit does not exist or commenced, the conditional use permit shall be considered void. No notice need be given nor hearing held. An extension of time may be approved pursuant to the requirements of Section 94.12.00.

5. Termination of a use granted herein for a period of one (1) calendar year shall terminate the use rights granted without further notice or public hearing. An extension of the time limit may be approved by the planning commission, or the city council, upon written request by the applicant and a showing of good cause.

H. Reapplication.

Application may not be made for a similar conditional use permit on the same land, building or structure within a period of six (6) months from the date of the final decision on such previous application unless such decision is a denial without prejudice.

I. Existing Permits.

Any conditional use permit granted pursuant to any zoning ordinance enacted prior to the effective date of this Zoning Code shall be construed to be a conditional use permit under this Zoning Code subject to all conditions imposed in such permit. Such permit may, however, be revoked or voided as provided in Section 94.02.00(I) above.

**SECTION 3.** If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this ordinance shall remain valid. The City Council hereby declares that it would have adopted this Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

**SECTION 4.** The proposed Zone Text Amendment is not subject to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) pursuant to Section 15060(c)(2) and 15060(c)(3) of the State Guidelines, because the Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project," as that term is defined in Section 15378 of the State Guidelines

**SECTION 5.** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED, AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL  
THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

\_\_\_\_\_  
Robert Moon, Mayor

ATTEST:

\_\_\_\_\_  
Anthony Mejia, MMC, City Clerk

CERTIFICATION

STATE OF CALIFORNIA )

COUNTY OF RIVERSIDE ) ss.

CITY OF PALM SPRINGS )

I, Anthony Mejia, City Clerk of the City of Palm Springs, California, do hereby certify that Ordinance No. \_\_\_\_ is a full, true, and correct copy, and introduced by the City Council at a regular meeting held on \_\_\_ the \_\_\_ day of \_\_\_\_\_, 2019, and adopted at a regular meeting of the City Council held on the \_\_\_ day of \_\_\_\_\_, 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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ANTHONY MEJIA, MMC

CITY CLERK



# COMMITTEE REPORT

PRESENTED FOR COMMISSION MEETING DATE: 02/19/19

SUBMITTED BY: David Freedman

COMMITTEE NAME: Standing Committee on Solar and Green Building

SUBMITTED DATE: 02/13/19

COMMITTEE MEETING DATE: 02/05/19

NEXT COMMITTEE MEETING DATE: 03/05/19, 10 am

## Committee Meeting Goals:

- Follow-up on Energy Code Coach proposal from Center for Sustainable Energy
- Desert Community Energy update.
- Presentation of solar zoning and wind energy conversion systems ordinances.
- Preparation for Modernism Week.

## Summary:

With CVAG Director of Environmental Resources Katie Barrows participating by phone, the meeting began with a discussion of potential funding for the Energy Code Coach Program proposal from the Center for Sustainable Energy (CSE). Ms. Barrows reported that that funding support would not be available from the Coachella Valley Energy Partnership, funded by SCE and SoCalGas, as this program is being wound down. Office of Sustainability Manager Patrick Tallarico reported that he would follow up with the City's new Building and Safety Director to see what the department's training needs are and explore free alternatives to CSE, such as the Energy Code Ace program.

Ms. Barrows then provided an update on Desert Community Energy (DCE), the Community Choice Aggregation (CCA) program. The DCE Board will decide at its February 25 meeting whether to launch in 2020, most likely in the spring. A recent survey conducted for DCE showed that 62.6% said they would be willing to pay 1-5% more on their electricity bill for a 100% carbon-free product and 49% said they would be willing to pay 6-10% more on their electricity bill for a 100% carbon-free product, in each case as long as they could opt down at any time. As a result, DCE will consider having the default option be the 100% carbon-free product. Councilmember Geoff Kors, who represents Palm Springs on the DCE Board, will schedule a presentation by DCE at an upcoming Council meeting.

Commissioner Freedman then presented the draft solar zoning and wind energy conversion systems ordinances that he had prepared and discussed with Planning Services Director Flinn Fagg and his staff. Following Sustainability Commission approval of the two draft ordinances, they will be sent to Planning Services staff for presentation to the Planning Commission as amendments to the City's Zoning Code. The ordinances would then go to City Council for approval.

The solar zoning ordinance updates the City's zoning rules for solar energy systems in anticipation of the 2019 Energy Code requirements for solar energy systems on new residential construction effective January 1, 2020. The draft ordinance, which is based on discussions with the National League of Cities and the National Renewable Energy Laboratory on best practices for solar zoning, provides that solar energy systems are permitted in all zoning districts except environmentally sensitive areas as an

accessory use, establishes height, visibility and setback and lot line orientation requirements and protects solar access. In response to a question from Commissioner Goins, Commissioner Freedman advised that orientation requirements for solar energy systems are set by the Energy Code and cannot be made stricter without Energy Commission approval.

The wind energy conversion systems ordinance is intended to facilitate the repowering of commercial wind energy conversion systems (WECS) located on the northern edge of Palm Springs to take account of energy efficiencies. It increases the maximum height of WECS from 300 to 500 feet and the maximum height of meteorological towers from 200 to 330 feet. It also adjusts certain setback requirements. The draft ordinance is consistent with the Planning Commission's approval at its January 23 meeting of height and setback variances in connection with a project to decommission and remove 363 existing wind turbine generators and replace them with 20 new wind turbines with a maximum height of 499 feet.

Finally, Commissioner Goins discussed plans for the Sustainability & Modernism workshop as part of Modernism Week on February 23.

**Recommendation/Request:**

Continuing working with stakeholders on 2019 Energy Code issues as it moves towards effectiveness.

<b>ACTION ITEMS REQUEST TO COMMISSION</b>	Approve draft solar zoning and wind energy conversion systems ordinances.
<b>ACTION ITEMS REQUEST TO OFFICE OF SUSTAINABILITY</b>	<ul style="list-style-type: none"> <li>• Discuss Energy Code Ace and other training programs with Building and Safety Department staff.</li> <li>• Work with Planning Services Department staff on draft solar zoning and wind energy conversion systems ordinances.</li> </ul>
<b>POTENTIAL FISCAL IMPACT/REQUEST IF ANY:</b>	The Modernism Week workshop is expected to cost \$500 - \$1,000, including brochure printing. There may be a request to Energy Code training programs, but no cost estimate is available yet. These funds have been approved in the Committee's FY 2018-19 outreach budget.