

ORDINANCE NO. 1972

AN ORDINANCE OF CITY OF PALM SPRINGS, CALIFORNIA, AMENDING CHAPTER 5.26 OF THE PALM SPRINGS MUNICIPAL CODE, RE-ESTABLISHING THE HOTEL OPERATIONS INCENTIVE PROGRAM.

City Attorney's Summary

*This Ordinance re-establishes the hotel operations incentive program in the City of Palm Springs, with certain modifications, for existing hotels that undertake specified renovation projects involving significant investment, subject to new limitations upon the incentives that hotel operators may receive through the program.*

The City Council of the City of Palm Springs Ordains:

**SECTION 1.** Section 5.26.020 of the Palm Springs Municipal Code is amended to include the following new definitions:

“Certified Renovation Investment” means the amount of money that the operator of a Renovation Hotel plans to invest in the course of a Phase II Renovation Project, and (i) documents to the City’s satisfaction, in its Hotel Operations Incentive Program application, all improvements proposed, and subsequently (ii) certifies in writing, to the City Manager or their designee, upon completion of the project, the actual costs and expenses incurred. If a Phase II Renovation Project includes hotel rooms, the amount of the investment shall not be less than five thousand dollars (\$5,000.00) per room subject to the project. If the project includes any common area or amenity, or any other area for guest use at the hotel, the amount of the investment shall not be less than the amount, if any, invested in rooms, added to the total number of rooms at the hotel that will exist at the end of the project multiplied by five thousand dollars (\$5,000.00).

“Construction” means the process of making, building, fabricating, installing, and setting up tangible physical enhancements to a hotel that include without limitation, one or more of the following: (i) modification of an existing structure or amenity, (ii) new or upgraded furniture, fixtures or equipment, (iii) new or upgraded landscaping. Construction may address hotel rooms, common areas, and/or other areas for guest use.

“Phase II Renovation Project” means a hotel improvement project constructed by a Renovation Hotel commencing no more than twelve (12) months after the City’s execution of the operating covenant for that hotel, and completed no later than December 31, 2023. The hotel may suspend all or some of its operations during construction of the project. Collection and payment to the City of transient occupancy tax under Chapter 3.24 of this Code for any portion of the hotel that remains open during construction of the project shall continue until the project’s completion, without any consideration to the

operator pursuant to this Chapter. Whether the hotel suspends operations or not, collection and payment to the City of transient occupancy tax under Chapter 3.24 of this Code by a Phase II Renovation Project hotel pursuant to this Chapter shall commence immediately on the Renovation Approval Date.

"Phase II Renovation Project Transient Occupancy Tax Base" means the annual average, during the thirty-six (36) month period, prior to the date when the City deems the Hotel Operations Incentive Program application of a potential Renovation Hotel to be complete, of transient occupancy tax owed to the City.

"Phase II Renovation Project Transient Occupancy Tax Base Adjustment" means the annual increase to the Phase II Renovation Project Transient Occupancy Tax Base, after. This increase shall be in an amount equal to three percent (3%), or the annual percentage change in the most recent month's data in the Consumer Price Index, whichever is higher. The Consumer Price Index used in calculating this adjustment shall be the "Consumer Price Index, Los Angeles-Long Beach-Anaheim, All Items, 1982-84=100 base, All Urban Consumers (CPI-U)." The City shall calculate a Renovation Hotel's Phase II Renovation Project Occupancy Tax Base Adjustment on the anniversary date of the Renovation Approval Date of the hotel.

"Phase II Renovation Project Transient Occupancy Tax Increment" means the amount of transient occupancy tax that a Renovation Hotel owes to the City annually, pursuant to Chapter 3.42 of this Code, after the Renovation Approval Date, minus the Phase II Renovation Project Transient Occupancy Tax Base as adjusted by the Transient Occupancy Tax Base Adjustment.

"Renovation Approval Date" is the date of the City's final inspection and approval of improvements constructed pursuant to a Phase II Renovation Project.

"Renovation Hotel" means a "hotel" as defined in Palm Springs Zoning Code Section 91.00.00, as the City may amend that section from time to time, which hotel participates in the Hotel Operations Incentive Program as a Phase II Renovation Project hotel. Upon the adoption of this ordinance, "hotel" is defined *"any building or portion thereof containing six (6) or more guest rooms used by six (6) or more guests, for compensation (excepting jails and hospitals), where provision for cooking may be made in a limited number of individual suites, and which rooms are designed and intended as temporary or overnight accommodations."* In order to qualify and apply for participation in the Hotel Operations Incentive Program under this Chapter, a Renovation Hotel must be in operation for a period of five (5) years prior to the date when the City accepts the Hotel Operations Incentive Program application of an operator of a proposed Renovation Hotel as complete. This five (5) year period may include changes in the ownership and/or name of the hotel in question. No property that operates as a Homeshare or Vacation Rental pursuant to Chapter 5.25 of this Code may also operate as a Renovation Hotel or receive any payment under this Chapter.

**SECTION 2.** Section 5.26.030 of the Palm Springs Municipal Code is amended to include subdivision (d) which shall read as follows:

(d) To qualify for the Hotel Operations Incentive Program and undertake a Phase II Renovation Project, the operator of a Renovation Hotel shall:

- (1) Complete and submit to the City Manager, the City's application for participation in the Hotel Operations Incentive Program as a Phase II Renovation Project hotel, including documentation, satisfactory to the City, of
  - a. of the applicant's projected Certified Renovation Investment,
  - b. that the hotel in question meeting the requirements of a Renovation Hotel, and
  - c. the hotel improvement project in question qualifying as, and meeting the requirements of a Phase II Renovation Project, and the ;
- (2) If requested by the City, subscribe to the Palm Springs Convention Center's "committable rooms" program;
- (3) Execute an operating covenant that includes provisions regarding continuing use, maintenance, good faith, non-discrimination, and such other provisions as the City Council, in its sole discretion, may reasonably determine to be necessary or appropriate in order to advance the goals and intent of this Chapter.

**SECTION 3.** Section 5.26.040 of the Palm Springs Municipal Code is amended to include subdivision (d) which shall read as follows:

(d) Phase II Renovation Project Hotels. Operators shall only receive an incentive pursuant to this Chapter in accordance with this Section 5.26.040(d).

- (1) On a hotel's Renovation Approval Date, the City shall inspect that hotel, and verify that the operator has implemented all Phase II Renovation Project improvements, and that the improvements remain on-site. Further, on or before a hotel's Renovation Approval Date, the operator of that hotel shall submit to the City such documentation as the City may require, and thereby certify and demonstrate the expenditure of that operator's Certified Renovation Investment. Any unexpended portion of the Certified Renovation Investment shall be subtracted from the Certified Renovation Investment as that sum pertains to an operator's recoupment of same in accordance with Section 5.26.040(d)(2).
- (2) he City shall on an annual basis, return, reimburse and pay to the operator of a Phase II Renovation Project hotel an amount equal to fifty percent (50%) of the Phase II Renovation Project Transient Occupancy Tax Increment collected and remitted to the City. Renovation Hotels that are Class 1 Historic Sites as

defined in Palm Springs Municipal Code Chapter 8.05, shall receive an amount equal to seventy-five percent (75%) of the Phase II Renovation Project Transient Occupancy Tax Increment. The City shall continue making such payments until the ten (10) year anniversary of the first payment hereunder, or until an operator has recouped their Certified Renovation Investment, whichever occurs first. Notwithstanding any other provision in this Chapter, City payments to an operator, or the successor of an operator of a Phase II Renovation Project hotel under this Section 5.26.040(d) shall terminate immediately and permanently at the end of any period of thirty (30) days during which the hotel in question is not operated as a hotel, unless the City has consented to a suspension of operations pursuant to an operating covenant.

**SECTION 4.** Section 5.26.040 of the Palm Springs Municipal Code is amended to include subdivision (e) which shall read as follows:

(e) No Renovation Hotel receiving any amount of Phase II Renovation Project Transient Occupancy Tax Increment or any other consideration pursuant to an operating covenant entered pursuant to this Chapter may apply for any additional benefit pursuant to this Chapter, based upon a second Phase II Renovation Project or otherwise, until the termination of that Renovation Hotel's receipt of such consideration or benefit in accordance with Section 5.26.040(d)(2).

**SECTION 5.** Section 5.26.050 of the Palm Springs Municipal Code is amended in its entirety to read as follows:

**5.26.050 Operating Covenants and Public Hearing Requirements.**

(a) Each operator eligible to participate in the City's hotel operations incentive program shall execute an operating covenant negotiated between the City and the operator, approved by the City Council, and recorded in the official records of Riverside County.

(b) Each operating covenant shall state that a Renovation Hotel receiving any portion of Phase II Renovation Project Transient Occupancy Tax Increment or any other benefit under this Chapter shall include the following language, modified only as approved by the City Attorney:

1. **Prevailing Wage.** In accordance with California Labor Code section 1781(a)(2), the Participant acknowledges that the City has expressly indicated to the Participant and persons associated with the Participant that laborers employed relative to the construction of the Project must be paid the prevailing *per diem* wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, *et seq.* and Palm Springs Municipal Code Section 7.06.030(1). The Participant agrees with the City that the Participant shall assume the responsibility and be solely responsible for payment of the prevailing *per diem* wage rate for their labor classification.

The Participant, on behalf of itself, its successors, and assigns, waives and releases the City from any right of action that may be available to it pursuant to California Labor Code Sections 1726 and 1781. The Participant acknowledges the protections of Civil Code Section 1542 relative to the waiver and release contained in this Section \_\_\_\_\_, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BY INITIALING BELOW, THE PARTICIPANT KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION \_\_\_\_\_.

\_\_\_\_\_  
Participant's Initials

Additionally, in accordance with this Section \_\_\_\_\_, the Participant shall indemnify, defend with counsel acceptable to the City, and hold the City harmless against any claims pursuant to California Labor Code Sections 1726 and 1781 arising from this Covenant or the construction or operation of the Project.

2. General Indemnification. Participant agrees, for itself and for its successors and assigns, to indemnify, defend with counsel acceptable to the City, and hold the City, together with its officers, members, officials, employees, agents, volunteers, and representatives, harmless from and against any loss, liability, claim, or judgment arising from or related to participant's participation in the Hotel Operations Incentive Program pursuant Palm Springs Municipal Code Chapter 5.26.
- (c) In the event that a proposed Renovation Hotel's projected Certified Renovation Investment documented in an application for participation in the Hotel Operations Incentive Program equals one hundred thousand dollars (\$100,000) or more, City Council consideration of the operating covenant for that Renovation Hotel shall take place at a public hearing subject to all requirements of California Government Code 53083 applicable to grants of economic development subsidies, as that statute may be amended from time to time.

SECTION 6. On or about the fourth (4<sup>th</sup>) anniversary of the adoption of this Ordinance, the City shall review its implementation and effectiveness. At that time, the City Council shall determine whether it wants to extend the December 31, 2023 Program sunset date reflected in the "Phase II Renovation Project," and if so, for how long.

SECTION 7. 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 8. The adoption of this ordinance 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 9. 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 6<sup>th</sup> DAY OF FEBRUARY, 2019.



ROBERT MOON, MAYOR

ATTEST:



Anthony J. Mejia, MMC  
City Clerk

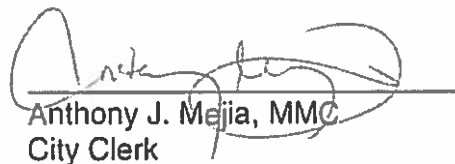
CERTIFICATION

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

I, Anthony Mejia, City Clerk, hereby certify that the attached is a true copy of Ordinance No. 1972 introduced by the City Council of the City of Palm Springs, California, at a City Council meeting held the 23<sup>rd</sup> day of January, 2019. Ordinance No. 1972 was passed, approved and adopted at a regular City Council meeting held at the 6<sup>th</sup> day of February, 2019, by the following vote:

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Palm Springs, California, this 12<sup>th</sup> day of February, 2019.

  
Anthony J. Mejia, MMC  
City Clerk