



CITY COUNCIL STAFF REPORT

DATE: JULY 7, 2010

LEGISLATIVE

SUBJECT: INTRODUCTION OF AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS ADDING SECTIONS 3.16.011, 3.16.012, AND 3.16.013 TO, AMENDING SECTIONS 3.24.140, 3.24.180, 3.24.200, 3.24.210, 3.24.250 AND SUBSECTION (8) OF SECTION 3.24.020 OF, AND REPEALLING SECTIONS 3.24.130 AND 3.32.216 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO CLAIMS FOR RECOVERY OF TAXES.

FROM: David H. Ready, City Manager

BY: Office of the City Attorney

SUMMARY

The City Attorney's Office is recommending certain amendments to the City's Municipal Code to explicitly adopt the "pay first/litigate later" rule that has long been relied on and implemented by cities and counties, consistent with provisions of the State Constitution.

RECOMMENDATION:

Waive reading and introduce "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING SECTIONS 3.16.011, 3.16.012, AND 3.16.013 TO, AMENDING SUBSECTION (8) OF SECTION 3.24.020 OF, AND REPEALLING SECTIONS 3.24.130 AND 3.32.216 OF, THE PALMS SPRINGS MUNICIPAL CODE, RELATING TO CLAIMS FOR RECOVERY OF TAXES."

STAFF ANALYSIS:

The proposed "pay first, litigate later" ordinance will require that any tax assessment provided or required under the City's Municipal Code (including without limitation any transient occupancy tax or utility user taxes) must be paid as a condition precedent to pursuing redetermination or judicial review by way of litigation. The policy behind the rule is that government entities dependent upon the timely payment of taxes cannot function or produce reliable budgets if taxes could be challenged at any time on their face without payment of the amount due. Adoption of this ordinance will protect the City against delay tactics that could preclude payment of taxes legitimately due and owing to the City.

Pursuant to Article XIII, Section 32 of the California State Constitution, state agencies and officers currently enforce this rule:

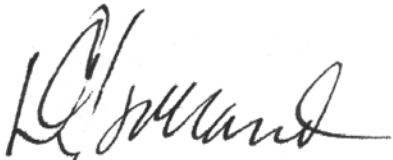
ITEM NO. 3.A.

"No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature."

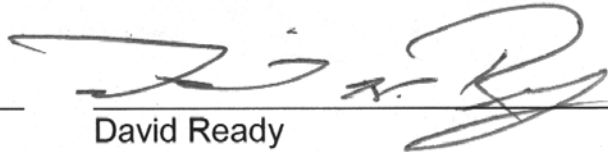
The State requires that all taxes due the State be paid before seeking judicial review of a tax assessment. The "pay first, litigate later" rule allows revenue collection to continue during litigation so funds necessary for essential public services are not withheld from the state.

Throughout the state, such payment and claim filing requirements have always been understood and applied as generally prohibiting direct pre-payment challenges to city taxes. A recent court of appeal case in California held that this rule only applies to state agencies and not cities or counties, unless a city or county expressly adopts the rule. Thus, the City Attorney's Office is recommending that the City Council adopt the proposed Ordinance.

This Ordinance also cleans-up a few provisions of the City's transient occupancy tax ordinance. The definition of "transient" has been amended to consistently refer to occupancies of 28 or fewer days and the reference to "three years" as an inferred statute of limitations and reporting period have been changed to "four years" to be consistent with the provisions of state law that allows for a statute of limitations of four years to bring a claim for the payment of transient occupancy taxes that may be in arrears.



Douglas Holland
City Attorney



David Ready
City Manager

Attachment: Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS ADDING SECTIONS 3.16.011, 3.16.012, AND 3.16.013 TO, AMENDING SECTIONS 3.24.140, 3.24.180, 3.24.200, 3.24.210, 3.24.250 AND SUBSECTION (8) OF SECTION 3.24.020 OF, AND REPEALLING SECTIONS 3.24.130 AND 3.32.216 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO CLAIMS FOR RECOVERY OF TAXES.

City Attorney's Summary

This Ordinance codifies the City's existing practice and interpretation of Title 3, Division I of the Palm Springs Municipal Code by explicitly adopting the "pay first/litigate later" provisions. This Ordinance also includes clean-up provisions for internal consistency and consistency with State law for certain provisions of the City's transient occupancy tax.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS ORDAINS:

SECTION 1. Section 3.16.011 is added to the Palm Springs Municipal Code to read:

3.16.011 Enjoining Collection Forbidden – Claims for Recovery of Taxes

- A. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the City or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to this Title.
- B. Payment of all tax, interest, and penalties shall be required as a condition precedent to seeking judicial review of any tax liability.
- C. No suit or proceeding for the recovery of taxes, penalties, or interest alleged to have been erroneously or illegally determined or collected may be filed unless a claim of such taxes has been filed and rejected in accordance with the provisions of this Chapter.

SECTION 2. Section 3.16.012 is added to the Palm Springs Municipal Code to read:

3.16.012 Basis For Tax Refund To Be Stated

A claim for the recovery of taxes subject to the provisions of this Chapter may be filed by any taxpayer or the taxpayer's guardian, executor, conservator, or administrator if the payment of such tax has been accompanied by a written statement, signed by the

taxpayer or the taxpayer's guardian, executor, conservator, or administrator which states that the tax was paid under protest, or other basis for the requested refund. These provisions shall not be construed as relieving any person of the obligation to make full payment of any taxes owed or assessed.

SECTION 3. Section 3.16.013 is added to the Palm Springs Municipal Code to read:

3.16.013 Tax Refund Claims Procedures

A. A claim for the recovery of any taxes paid under protest shall be filed in writing by the taxpayer or by the taxpayer's guardian, executor, conservator or administrator with the City Attorney no later than one year after the date of the payment under protest. The claim shall be deemed to be filed on the date of receipt by the City Attorney. Any such claim shall indicate the following information:

1. The name and address of the taxpayer, and, where applicable, the taxpayer's guardian, executor, conservator or administrator.
2. The amount of tax paid and the amount assessed, the payment date and that nature of any taxes paid, including the address of any property to which the tax is applicable.
3. A description of the specific reasons for the request for refund.
4. The signature of the taxpayer or the taxpayer's guardian, executor, conservator, or administrator following and accompanied by a contemporaneous statement that the information on the claim has been provided under penalty of perjury.

B. No claim may be filed on behalf of a class of taxpayers or on behalf of any person other than the taxpayer filing the claim unless the membership of the class is identified with particularity; provided, however, that any claim filed on behalf of a class of taxpayers shall be further limited to persons who have paid their taxes under protest during the twelve months immediately preceding the filing of the class claim.

SECTION 4. Sections 3.24.130 and 3.32.216 are repealed.

SECTION 5. Subsection (8) of Section 3.24.020 of the Palm Springs Municipal Code is amended to read:

(8) "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, time-share arrangement or ownership or agreement, or other agreement of whatever nature, for a period of twenty-eight consecutive calendar days or less, counting portions of calendar days as full days. Any person so occupying space in a hotel shall be deemed to be a transient if his actual total period of occupancy does not exceed twenty-eight days. Unless days of occupancy

or entitlement to occupancy by one person are consecutive without any break, then prior or subsequent periods of such occupancy or entitlement to occupancy shall not be counted when determining whether a period exceeds the stated twenty-eight calendar days.

SECTION 6. In order to ensure consistency between the provisions of state law and the Palm Springs Municipal Code, the term "three years" as used in Sections 3.24.140, 3.24.180, 3.24.200, 3.24.210, and 3.24.250 is amended to read "four years."

SECTION 7. This Ordinance reflects the City of Palm Springs longstanding and consistent understanding and application of the law of the State of California, including without limitation Article XIII, Section 32 of the California State Constitution and Section 3.32.216 of this Code which is being repealed and readopted pursuant to this Ordinance. This Ordinance is therefore declaratory of existing law.

SECTION 8. The City Council has determined that this Ordinance does not constitute a "project" as that term is defined by the California Environmental Quality Act (CEQA), Public Resources Code Section 21000, *et seq.*, and therefore, in accordance with Section 15061(b)(3) OF Title 14 of CEQA, environmental review is not required.

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 THIS _____ DAY OF _____, 2010.

Stephen P. Pougnet
Mayor

ATTEST:

APPROVED AS TO FORM:

James Thompson, City Clerk

Douglas Holland, City Attorney