



CITY COUNCIL STAFF REPORT

DATE: April 6, 2011 Legislative

SUBJECT: AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING SECTION 6.10.081 TO, AMENDING SECTION 6.10.020 OF, AND AMENDING SUBSECTION (a) OF SECTION 6.10.100 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO PROHIBITION OF SMOKING NEAR PLAYGROUNDS.

FROM: David H. Ready, City Manager

BY: Douglas Holland, City Attorney

SUMMARY

The City has a comprehensive ordinance (PSMC Chapter 6.10) that prohibits smoking in various public areas. The proposed ordinance would add a prohibition of smoking near playgrounds when children are present.

RECOMMENDATION:

1. Waive the reading of text in its entirety and read by title only; and
2. Introduce on first reading, Ordinance No. _____, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING SECTION 6.10.081 TO, AMENDING SECTION 6.10.020 OF, AND AMENDING SUBSECTION (a) OF SECTION 6.10.100 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO PROHIBITION OF SMOKING NEAR PLAYGROUNDS.

STAFF ANALYSIS:

In 1986 the City Council adopted a comprehensive ordinance that prohibited smoking in specific public areas of the City. The prohibition specifically includes elevators, health care facilities, public meeting rooms, theaters and auditoriums, eating establishments, department stores, and the airport terminal. The ordinance also regulates smoking in the workplace, public and private. A copy of PSMC Chapter 6.10, including the changes proposed in the ordinance, is attached for your reference. (The proposed changes are in bold print and underlined.)

In 2001, the State of California adopted legislation that regulates smoking within 25 feet of any playground or tot lot sandbox area located in public/private school grounds, or on

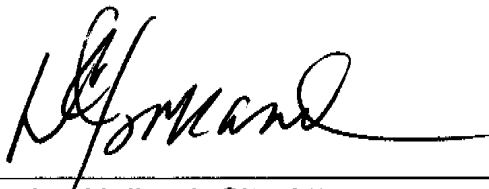
city, county, or state parks. (California Health and Safety Code Sec. 104495.) The term "playground" in this statute is limited to "any park or recreational area specifically designed to be used by children that has play equipment installed. . . ." We would note that this legislation is not preemptive of local discretion; it simply establishes the baseline. The City can enact stronger policy and adopt a regulatory program that is more restrictive than state law. Several jurisdictions have adopted regulations that prohibit smoking in all areas of their parks.

The proposed ordinance prohibits smoking within 25 feet of "playgrounds" when children are present. The term "playground" is broadly defined in the proposed ordinance to include any area "within a city park designed, equipped, and/or set aside for play by children." The definition specifically includes any "athletic playing field, athletic court, tot lots, skate park, and picnic areas" and any attendant facilities including play equipment, surfacing, etc. The existing provisions of PSMC Chapter 6.10 require the posting of signs whenever smoking is prohibited, stating the prohibition. The proposed ordinance includes a minor language change to Section 6.10.100 to ensure that "appropriate language" be included on the sign. We anticipate that signs near playgrounds would simply state: "No Smoking When Children Are Present."

Violations of PSMC Chapter 6.10 are infractions. (Infractions are punished solely by fines in an amount that can not exceed \$1,000.00.) If the Council adopts the proposed ordinance, any violation of the prohibition on smoking near playgrounds provisions would be treated as an infraction. In the event the Council introduces the proposed ordinance, we will come back with an amendment to the City's bail schedule to include a \$250.00 fine for violating the prohibition on smoking near playgrounds provisions for the Council to consider at the time the ordinance is submitted for adoption.

FISCAL IMPACT:

The primary cost in the implementation of this Ordinance will be in the installation of signage.



Douglas Holland, City Attorney



David Ready, City Manager

Attachments: Proposed Ordinance
PSMC Chapter 6.10 (Marked-up showing proposed changes)

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING SECTION 6.10.081 TO, AMENDING SECTION 6.10.020 OF, AND AMENDING SUBSECTION (a) OF SECTION 6.10.100 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO PROHIBITION OF SMOKING NEAR PLAYGROUNDS.

City Attorney Summary

This Ordinance prohibits smoking within 25 feet of playgrounds in city parks when children are present.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS ORDAINS:

SECTION 1. Section 6.10.020 of the Palm Springs Municipal Code is amended by adding and/or amending the following definitions:

"Children" means persons under 18 years of age.

"Playground" means an area within a city park designed, equipped, and/or set aside for play by children, including without limitation any athletic playing field, athletic court, tot lots, skate park, and picnic areas, and shall include any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.

"Smoking" or to "Smoke" means possessing a lighted pipe, lighted cigar, or lighted cigarette of any kind, including without limitation tobacco, or any other weed or plant, or the lighting of a pipe, cigar, or cigarette of any kind, including without limitation, tobacco or any other weed or plant.

SECTION 2. Section 6.10.081 is added to the Palm Springs Municipal Code to read:

6.10.081 Smoking Prohibited – Playgrounds.

Smoking is prohibited and is unlawful within 25 feet of any playground when children are present.

SECTION 3. Subsection (a) of Section 6.10.100 of the Palm Springs Municipal Code is amended to read:

(a) Except where other signs are required, whenever in this chapter smoking is prohibited, conspicuous signs shall be posted so stating, containing appropriate language in capital lettering not less than one inch in height and/or the international no-smoking logo, on a contrasting background. It is the duty of the owner, operator, manager or other persons having control of such room, building or other place where smoking is prohibited, to post such signs or to cause such signs to be posted. Nothing

herein shall be deemed or construed to authorize violation of the Palm Springs sign ordinance.

SECTION 4. 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.

ADOPTED THIS _____ DAY OF _____, 2011.

ATTEST:

STEPHEN P. POUINET, MAYOR

JAMES THOMPSON, CITY CLERK

APPROVED AS TO FORM:

DOUGLAS C. HOLLAND, CITY ATTORNEY

CERTIFICATION

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

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, California, do hereby certify that Ordinance No. _____ is a full, true, and correct copy, and was introduced at a regular meeting of the Palm Springs City Council on _____, 2011, and adopted at a regular meeting of the City Council held on _____, 2011 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

James Thompson, City Clerk
City of Palm Springs, California

Chapter 6.10 SMOKING PROHIBITED IN CERTAIN PUBLIC AREAS

6.10.010 Purpose of chapter.

Because smoking of tobacco, or any other weed or plant, is a positive danger to health and a cause of material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined places, and in order to serve public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco, or any other weed or plant, in certain areas which are used by or open to the public. (Ord. 1261 § 1 (part), 1986)

6.10.020 Definitions.

(a) "Bar" means an area which is devoted to serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

(b) **"Children" means persons under 18 years of age.**

(b) "Eating establishment" means every publicly or privately owned eating place, including every coffee shop, cafeteria, short-order cafe, luncheonette, sandwich shop, soda fountain and restaurant.

(c) "Employee" means any person who is employed by an employer for direct or indirect monetary wages or profit.

(d) "Employer" means any person who employs the services of an individual person.

(e) "Enclosed" means closed in by a roof and walls with appropriate openings for ingress and egress, but does not include areas commonly described as public lobbies.

(f) "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.

(g) **"Playground" means an area within a city park designed, equipped, and/or set aside for play by children, including without limitation any athletic playing field, athletic court, tot lots, skate park, and picnic areas, and shall include any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.**

(h) ~~"Smoking" means the combustion of any cigar, cigarette, pipe or any similar article, using any form of tobacco or other combustible substance in any form.~~ **"Smoking" or to "Smoke" means possessing a lighted pipe, lighted cigar, or lighted cigarette of any kind, including without limitation tobacco, or any other**

weed or plant, or the lighting of a pipe, cigar, or cigarette of any kind, including without limitation, tobacco or any other weed or plant.

(i) "Workplace" means any enclosed area of a structure or portion thereof intended for occupancy by business entities which will provide primarily clerical, professional or business services of the business entity, or which will provide primarily clerical, professional or business services to other business entities or to the public, at that location. "Workplace" includes, but is not limited to, offices spaces in office buildings, medical office waiting rooms, libraries, museums, hospitals and nursing homes.

Except as herein defined, words used in this chapter shall have the meanings commonly ascribed to them. In case of a dispute over the meaning of a word, the definition shall be that given in the most recent edition of Webster's Collegiate Dictionary. (Ord. 1261 § 1 (part), 1986)

6.10.030 Smoking prohibited—Elevators.

Smoking is prohibited and is unlawful in elevators. (Ord. 1261 § 1 (part), 1986)

6.10.040 Smoking prohibited—Hospitals, health care and child care facilities.

(a) In public areas of health care facilities and hospitals, as defined in Section 1250 of the California Health and Safety Code, including waiting rooms, public hallways and lobbies, smoking is prohibited, except in specially designated smoking areas, which may be all or part of a public area.

(b) Every publicly or privately owned health care facility, including hospitals, shall make a reasonable effort to determine preference and to assign patients placed in rooms occupied by two or more patients according to the patient's individual nonsmoking or smoking preference. Where a nonsmoker is placed in a room with a smoker, the rights of the nonsmoker shall be given precedence.

(c) In rooms and areas occupied by nonsmoking patients, smoking shall be prohibited for hospital staff, visitors and the general public. "STAFF AND VISITOR SMOKING PROHIBITED" signs and/or the international logo sign for no smoking shall be conspicuously posted in each nonsmoking patient's room.

(d) In child care facilities, including those in private homes, during operating hours in rooms where children are present, smoking is prohibited. (Ord. 1261 § 1 (part), 1986)

6.10.050 Smoking prohibited—Public meeting rooms.

Smoking is prohibited and is unlawful in hearing rooms, conference rooms, chambers and places of public assembly in which public business is conducted, when

the public business requires or provides direct participation or observation by the general public. (Ord. 1261 § 1 (part), 1986)

6.10.060 Smoking prohibited—Theaters and auditoriums.

Smoking is prohibited and is unlawful in every publicly or privately owned theater, auditorium, or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic events or any other performance or event in all areas except either in that area commonly known as the lobby, or in areas not open to public, except athletic events where smoking shall be permitted in specially designated areas. Every owner and/or manager of such theater, auditorium or other enclosed facility used for the purposes stated herein, shall post signs conspicuously in the lobby stating that smoking is prohibited within the theater, auditorium or facility, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds before showing feature motion pictures. Any facility in use for conventions or similar purposes or for exhibitions associated therewith are exempt from the provisions of this chapter during such use. (Ord. 1261 § 1 (part), 1986)

6.10.070 Smoking prohibited—Eating establishments.

Smoking is prohibited and is unlawful in all indoor eating establishments serving food whose occupancy capacity is fifty or more persons. This prohibition shall not apply to any such establishment maintaining a contiguous no smoking area of at least one-quarter of the seating capacity. This prohibition shall not apply to any rooms which are being used for eating establishment purposes for private functions. If a smoking area is maintained, the preference of the patron is to be determined by the management and the patron shall be seated according to preference if possible. Any portion of an indoor eating establishment used for bar purposes is excluded from the restrictions of this section. (Ord. 1261 § 1 (part), 1986)

6.10.080 Smoking prohibited—Department stores.

Smoking is prohibited and is unlawful in public areas of every department store which sells dry goods, clothing or utensils, excluding areas outdoors. (Ord. 1261 § 1 (part), 1986)

6.10.081 Smoking Prohibited – Playgrounds.

Smoking is prohibited and is unlawful within 25 feet of any playground when children are present.

6.10.082 Smoking prohibited—Airport terminal.

Smoking is prohibited and is unlawful in all public areas of the Palm Springs Municipal Airport Terminal, including lobbies, waiting areas, restrooms and baggage

claim area. This prohibition does not apply to leased areas of the terminal building. Section 6.10.090 of this chapter shall apply to such leased areas. (Ord. 1279 § 1, 1987)

6.10.090 Regulation of smoking in the workplace.

(a) Within ninety days of the effective date of this chapter, or within ninety days of having first engaged the services of an employee, for employers who are not in operation on the effective date of this chapter, each employer shall adopt, implement and maintain a reasonable written smoking policy which should contain at a minimum the following:

(1) Prohibition of smoking in employer conference and meeting rooms, classrooms, auditoriums, medical facilities, and elevators;

(2) Provision and maintenance of a contiguous no smoking area of not less than one-half of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges;

(3) Any employee in the workplace shall be given the right to designate his or her immediate work areas as a nonsmoking area and to post it with appropriate signs or sign. The policy adopted by the employer shall include a definition of the term "immediate work area" which gives preferential consideration to nonsmokers.

(b) In any dispute arising under the smoking policy, the rights of the nonsmoker shall be given precedence.

(c) Except where other signs are required, whenever smoking is prohibited in the work place, conspicuous signs shall be posted so stating, containing all capital lettering not less than one inch in height, on a contrasting background. In lieu of such signs the international no-smoking logo may be prominently displayed.

(d) The smoking policy shall be communicated to all employees within two weeks of its adoption.

(e) Notwithstanding the provisions of subsection (a) of this section, every employer shall have the right to designate any workplace as a nonsmoking area.

(f) This section is not intended to regulate smoking in the following places and under the following conditions:

(1) A private home which may serve as a workplace, except as required pursuant to Section 6.10.040(d);

(2) Any property owned or leased by other governmental agencies;

(3) A private, enclosed workplace occupied exclusively by smokers, even though such a workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation;

(4) Food and beverage service areas of indoor eating establishments;

(g) An employer who in good faith develops and promulgates a reasonable written policy regarding smoking and nonsmoking in the workplace shall be deemed to be in compliance with this chapter provided that a policy which designates an entire workplace as a smoking area shall not be deemed a reasonable policy. (Ord. 1261 § 1 (part), 1986)

6.10.100 Posting of signs required.

(a) Except where other signs are required, whenever in this chapter smoking is prohibited, conspicuous signs shall be posted so stating, containing **appropriate language in all** capital lettering not less than one inch in height and/or the international no-smoking logo, on a contrasting background. It is the duty of the owner, operator, manager or other persons having control of such room, building or other place where smoking is prohibited, to post such signs or to cause such signs to be posted. Nothing herein shall be deemed or construed to authorize violation of the Palm Springs sign ordinance.

(b) It shall be unlawful to wilfully mutilate or destroy any signs required by this chapter. (Ord. 1261 § 1 (part), 1986)

6.10.110 Other agency cooperation.

Federal, state, county, school and special district officials are urged to enact and enforce provisions similar to the provisions contained herein. (Ord. 1261 § 1 (part), 1986)

6.10.120 Structural modifications not required.

(a) It shall be the responsibility of employers to provide smoke-free areas for nonsmokers within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.

(b) Nothing in this chapter shall require the owner, operator or manager of any theater, auditorium, health care facility or any building, facility, structure or business to incur any expense to make structural or other physical modifications to any area or workplace.

(c) Nothing in this section shall relieve any person from the duty to post signs or adopt policies as required by this chapter. (Ord. 1261 § 1 (part), 1986)

6.10.130 Exemptions.

Any owner or manager of a business or other establishment subject to this chapter may apply to the individual, department or agency designated by the city council for an exemption or modification to any provisions of this chapter due to unusual circumstances or conditions.

(a) Such exemption shall be granted only if the designated individual, department or agency designated by the city council finds from the evidence presented by the applicant for exception at a public hearing either that:

- (1) The applicant cannot comply with the provisions of this chapter for which an exemption is requested without incurring expenses for structural or other physical modifications, other than posting signs, to buildings and structures;
- (2) Due to such unusual circumstances, the failure to comply with the provision for which the exemption is requested will not result in a danger to health or annoyance, inconvenience or discomfort.

(b) The applicant for an exemption shall pay the fee prescribed by city council resolution with the application to cover cost of the hearing and noticing of the hearing. (Ord. 1261 § 1 (part), 1986)

6.10.140 Penalties.

Violation of any provision or failure to comply with any requirement of this chapter is an infraction. (Ord. 1261 § 1 (part), 1986)

6.10.150 Severability.

If any provision or clause of this chapter or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other chapter provisions or clauses or application thereof which can be implemented without the invalid provisions or clause or application, and to this end the provisions and clauses of the ordinance are declared to be severable. (Ord. 1261 § 1 (part), 1986)