



# CITY COUNCIL STAFF REPORT

DATE: APRIL 20, 2011

Legislative Item

SUBJECT: CONSIDERATION OF DRAFT ORDINANCES OF THE CITY OF PALM SPRINGS, CALIFORNIA, PROHIBITING SMOKING NEAR PALYGROUNDS AND IN THE ALTERNATIVE, PROHIBITING SMOKING IN CITY PARKS.

FROM: David H. Ready, City Manager

BY: Douglas Holland, City Attorney

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## SUMMARY

The City has a comprehensive ordinance (PSMC Chapter 6.10) that prohibits smoking in various public areas. The City Council considered and introduced at its meeting of April 6, 2011, a proposed ordinance would add a prohibition of smoking near playgrounds when children are present. During Council's deliberation on this subject, the Council instructed staff to come back to the Council with a proposed ordinance that would prohibit smoking in all city parks. The Council can consider both ordinances and take action accordingly.

## RECOMMENDATION:

Staff recommends the Council take one of the following actions:

1. Waive further reading and adopt on second reading, Ordinance No. 1788, "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"

Or

2. Waive the reading of text in its entirety, read by title only, and re-ntroduce on first reading, Ordinance No. 1788, "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 IN PARKS"

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.

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.

At its last meeting, the City Council considered a proposed ordinance that would prohibit 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."

During the course of its deliberation, the City Council expressed a desire to consider a prohibition of smoking in city parks in lieu of the prohibition near playgrounds. Mayor Pro Tem Weigel read into the record statements from medical doctors regarding the potential harm to the general public from second-hand smoke. Members of Council and the City Manager also observed that a park-wide prohibition would be easier and less costly to both sign and enforce than a prohibition near playgrounds. A playground prohibition would require identification of all potential areas within each city park and the posting of signs near each of these areas. A park prohibition would only require signage at entries to parks.

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 either of the proposed ordinances, any violation would be treated as an infraction.

If the Council wishes to move forward with the playground prohibition, the Council should move to ADOPT the prohibition near playgrounds ordinance that was introduced at the last meeting. If the Council wishes to move forward with the prohibition on smoking in city parks approach, the Council should "WAIVE READING AND RE-INTRODUCE" the prohibition in parks ordinance.

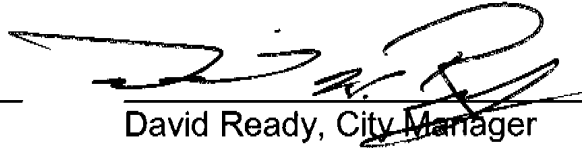
FISCAL IMPACT:

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



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Douglas Holland, City Attorney



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David Ready, City Manager

Attachments: Proposed Ordinance re Playgrounds  
Proposed Ordinance re Parks

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. POUCKET, 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

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 IN PARKS.**

***City Attorney Summary***

*This Ordinance prohibits smoking within any city park.*

**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 the following definition:

"Park" means all grounds, buildings, improvements, and areas dedicated to use by the public for park, recreation, or open space purposes and over which the city has acquired right of use for such purposes. The term "Park" includes sidewalks, trails, and pathways in or around park facilities, park strips, and other grounds of any park.

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

6.10.081 Smoking Prohibited – Parks.

Smoking is prohibited and is unlawful within any Park.

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.

\_\_\_\_\_  
STEPHEN P. POUCKET, MAYOR

ATTEST:

\_\_\_\_\_  
JAMES THOMPSON, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
DOUGLAS C. HOLLAND, CITY ATTORNEY

CERTIFICATION

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- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

\_\_\_\_\_  
James Thompson, City Clerk  
City of Palm Springs, California