



City Council Staff Report

DATE: April 20, 2011 CONSENT CALENDAR
SUBJECT: SECOND READING AND ADOPTION OF PROPOSED ORDINANCE NO. 1787, PROVIDING FOR DISPLACEMENT PAYMENTS FOR RESIDENTIAL HOUSEHOLDS
FROM: David H. Ready, City Manager
BY: Office of the City Clerk

SUMMARY:

The City Council will consider adoption of Ordinance No. 1787.

RECOMMENDATION:


Waive further reading and adopt Ordinance No. 1787, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING ARTICLE VIII TO CHAPTER 8.04 OF THE PALM SPRINGS MUNICIPAL CODE, PROVIDING FOR DISPLACEMENT PAYMENTS FOR RESIDENTIAL HOUSEHOLDS."

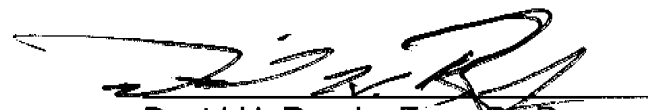
STAFF ANALYSIS:

At its April 6, 2011, meeting Ordinance No. 1787 was introduced by the following vote:

AYES: Councilmember Foat, Councilmember Hutcheson, Councilmember Mills, and Mayor Pro Tem Weigel
NOES: None
ABSENT: Mayor Pougnet

This report provides for the City Council to waive further reading and adopt the ordinance. The ordinance shall be effective 30-days from adoption.


James Thompson
City Clerk


David H. Ready, Esq., Ph.D.
City Manager

/kdh
Attachment: Ordinance No. 1787

PROPOSED ORDINANCE NO. 1787

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING ARTICLE VIII TO CHAPTER 8.04 OF THE PALM SPRINGS MUNICIPAL CODE, PROVIDING FOR DISPLACEMENT PAYMENTS FOR RESIDENTIAL HOUSEHOLDS.

City Attorney Summary

This Ordinance requires property Owners who fail to maintain their properties in a safe and habitable condition to pay certain relocation expenses incurred by their tenants when ordered to vacate their properties so that property can be appropriately repaired and remediated in compliance with the Palm Springs Municipal Code.

The City Council of the City of Palm Springs finds:

- A. Some residential rental units in the City of Palm Springs have severe code violations which threaten the safety of the residents and require the units to be vacated to allow for extensive repairs and remediation.
- B. Residential households displaced as a result of severe code violations suffer a financial burden and the threat of homelessness because of the acute lack of resources available for locating and securing suitable replacement housing.
- C. The displacement payment obligations imposed on property Owners by this Ordinance will partially mitigate the financial hardships faced by displaced Residential Households.
- D. These displacement payment obligations have the additional purpose of encouraging Owners to maintain their properties in a habitable condition and in compliance with all applicable codes.

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

SECTION 1: Article VIII is added to Chapter 8.04 of the Palm Springs Municipal Code to read:

Article VIII Displacement Payments to Tenants

8.04.700. Displacement Payments Obligation. Any Residential Household that is displaced or subject to displacement from a Residential Unit as a result of an order to vacate or an order requiring the vacation of a Residential Unit by the Enforcement Department as a result of a violation so extensive and of such a nature that the immediate health and safety of the residents is endangered, shall be entitled to receive

displacement payments from the Owner.

8.04.701. Definitions.

As used in this Article, the following terms shall have the following meanings:

“City Department” means any department, department, division, or political subdivision of the City of Palm Springs.

“Department Head” means the department head of an Enforcement Department or the Department Head’s designee.

“Displacement” means the required vacating of a Residential Unit by a Residential Household as a result of an order to vacate or an order requiring the vacation of a Residential Unit by the Enforcement Department.

“Enforcement Department” means any City Department, including its Department Head, authorized to ascertain the condition of a Residential Unit and to issue notices requiring Owners to bring such units into compliance with applicable building and housing codes that threaten the health and safety of Residential Households.

“Owner” means any person, persons, landlord, corporation, or any entity holding all or any part of the legal title to a property or their agent, successors or assigns. “Owner” does not include a Residential Household as defined herein, or any member thereof, that holds legal title to the Residential Unit in which they reside.

“Residential Household” means any person or group of people, whether related or unrelated, entitled to occupy a Residential Unit or portion of real property primarily for living or dwelling purposes under a written or oral rental agreement as tenants, subtenants, lessees or sublessees, including such persons’ personal property that is a normally and customarily contained within the Residential Unit. “Residential Household” does not include the Owner of a Residential Unit or members of the Owner’s immediate family, except as provided in Section 8.04.705 of this Article.

“Residential Unit” means a structure or that part of a structure which is used as a place of permanent or customary and usual abode of a Residential Household, including but not limited to a room in a single family home, hotel or motel, rooming house or apartment, single family home, mobile home or mobile home space, trailer or trailer space. “Residential unit” does not include any unit occupied pursuant to an innkeeper-guest relationship.

8.04.702. Contents and Service of Order to Vacate. At the time of the service of an order to vacate, the Enforcement Department shall determine if any Residential Household subject to the order may be entitled to displacement payments. The determination of entitlement to displacement payments, or the reason that any Residential Household may not be entitled to displacement payments, shall accompany

the order to vacate. The order to vacate shall also include, or be accompanied by, a summary of the provisions of this Article and an itemized accounting of the displacement payment due to the Residential Household. Failure to provide such summary or itemized accounting shall not relieve any person of the obligations imposed by this Article.

8.04.703. Displacement Payment. The amount of the displacement payment due to the Residential Household shall be determined as follows:

a. The displacement payment shall be made available by the Owner to the eligible Residential Household in an amount equal to two months of the periodically established Fair Market Rent for the Riverside-San Bernardino-Ontario, California Metropolitan Statistical Area as determined by the United States Department of Housing and Urban Development pursuant to Section 1437f of Title 42 of the United States Code, as amended from time to time. The Fair Market Rent for Residential Households shall be the amount established according to the number of unit bedrooms, except in cases in which the Residential Household owns the Residential Unit as set forth in Section 8.04.705 of this Article, in which case the Fair Market Rent shall be the amount established for manufactured home spaces. In addition, the displacement payment shall include an amount, as determined by the Enforcement Department, sufficient for utility service deposits. The displacement payment shall be paid by the Owner in addition to the return, as required by law, of any security deposits held by the Owner. The displacement payment shall be payable on a per Residential Household basis.

b. The displacement payment shall also include the fixed residential moving cost established by the Federal Highway Administration as set forth in Section 24.302 of Title 49 of the Code of Federal Regulations, amended from time to time.

8.04.704. Additional Displacement Payment for Moveable Residential Units on Rented Real Property. In the case of an order to vacate a portion of real property in which the Residential Household, or any member thereof, hold legal title to a moveable Residential Unit on the Owner's real property, the displacement payment shall include the reasonable cost of moving the Residential Household's Residential Unit to a comparable portion of real property within the City of Palm Springs, provided such Residential Unit is not subject to an order to vacate or otherwise not habitable or not moveable as determined by the Enforcement Department. If such Residential Unit is not habitable or not moveable and was allowed by the Owner to be placed upon the real property without the Owner complying with all applicable land use laws and regulations, then the Owner shall reimburse the Residential Household for the fair market value of the Residential Unit. If such Residential Unit is not habitable or not moveable, and if the Owner is in compliance with all applicable land use laws for the placing of the Residential Unit on the Owner's real property, then the Owner shall not be liable for reimbursing the Residential Household for any portion of the value of Residential Unit. An Owner's obligation to provide a displacement payment to a Residential Household that is required to vacate a portion of real property due to the Owner's conduct, as determined by the Enforcement Department, is limited only to the extent provided by this Section.

8.04.705. Timing of Displacement Payment.

a. The displacement payment required by this Article shall be paid by the Owner to the Residential Household within ten (10) days after the date that the order to vacate is first mailed to the Owner and posted on the premises, or at least twenty (20) days prior to the vacation date set forth in the order to vacate, whichever occurs later.

b. If there are fewer than ten (10) days between the first posting and mailing of the order to vacate and the vacation date, the displacement payment shall be paid by the Owner to the Residential Household within twenty-four (24) hours after the notice is posted and mailed. The Enforcement Department shall attempt to provide telephonic or written notice to the Owner to notify the Owner that the benefits are payable immediately. Failure to provide the notice as specified in this Section shall not relieve the Owner of any obligations imposed by this Article.

c. Any Owner who does not make a timely payment shall be liable to the Residential Household for an amount $1\frac{1}{2}$ times the displacement payments payable pursuant to 8.04.704 of this Article. No penalty shall apply when displacement payments are payable fewer than ten (10) days after the date the order to vacate is first mailed and posted, if the Owner makes payment no later than ten (10) days after the order is first mailed and posted.

8.04.706. Discretionary Displacement Payment by City Department. Any City Department may, at its discretion, advance displacement payments to displaced Residential Households, and shall be entitled to recovery of any advanced displacement payments. The Enforcement Department shall be entitled to recover on any City Department's behalf all displacement payments that were due and payable to the Residential Household by the Owner as determined by the Enforcement Department and were actually paid by the City Department. The Enforcement Department shall also be entitled to recover from the Owner an additional amount equal to the sum of one-half the amount so paid, but not to exceed ten thousand dollars (\$10,000), as a penalty for failure to make timely payment to the displaced Residential Household, and the City's actual costs, including direct and indirect costs, of administering the provision of displacement payments to the displaced Residential Household. Any amounts paid by the City Department and any applicable penalties and actual costs may also be placed as a lien against the property by the Enforcement Department by recording the lien in the City Clerk's office. Prior to instituting any action to collect from the Owner any displacement payments paid pursuant to this Section, or to impose a lien therefor, the Enforcement Department shall send to the Owner by first-class mail, postage prepaid, at the Owner's address as shown on the last equalized assessment roll, an itemized accounting of all payments paid by any City Department to the Residential Household, and any penalties or costs the Enforcement Department is seeking to recover on the City Department's behalf. Nothing herein shall be construed as requiring the City or any City Department to pay any displacement payments to any Residential Household, or assume any obligation, requirement, or duty of the Owner. Further, nothing herein shall be construed as limiting the City's remedies for recovering any advanced displacement payments.

8.04.707. Appeal of Determination of Displacement Payments.

a. If the Owner contends that not all of the payments deemed chargeable to the Owner by the Enforcement Department on the grounds that the intended or actual recipients were not displaced Residential Households, no displacement payments were payable pursuant to this Article, or on other grounds, the Owner shall be entitled to an administrative hearing before the Enforcement Department's Department Head by submitting a written appeal to the Department Head of the Enforcement Department within twenty (20) days after receipt by the Owner of an itemized accounting of displacement payments due the Residential Household or reimbursement due the City for advance displacement payments paid by any City Department to the Residential Household, including any costs and penalties provided herein. After providing at least ten (10) days written notice to the Owner, the Enforcement Department's Department Head shall hold the administrative hearing for the purpose of determining the amount chargeable to the Owner, including penalties and costs, if any. Notice may be delivered in person or may be mailed to the address listed by the Owner in the request for hearing. In determining the validity of any displacement payments, penalties or costs chargeable to the Owner, the Department Head shall consider whether the violations that led to the order to vacate were created by, or are the responsibility of, the Owner and shall also consider those exceptions set forth in Section 8.04.709 of this Article. In conducting the hearing, the Department Head shall not be limited by the technical rules of evidence. The decision of the Department Head shall be in writing and include notice of a right to appeal the decision to the City Council.

b. The decision of the Department Head may be appealed by filing a written notice of appeal with the Enforcement Department within ten (10) days after mailing the decision. The appeal shall be heard by the City Council which may affirm, amend or reverse the decision and may take any other action deemed appropriate. The Enforcement Department's Department Head shall give written notice of the time and the place of the hearing to the appellant. In conducting the hearing, the City Council shall not be limited by the technical rules of evidence.

c. The final decision of the City Council shall be subject to SECTION 1094.5 of the Code of Civil Procedure. If the Owner fails to obtain a more favorable decision than that set forth in the itemized accounting, the Owner shall be liable to the Enforcement Department for the costs of the administrative hearing and appeal, not to exceed five thousand dollars (\$5,000). The failure to receive the itemized accounting shall not relieve the Owner of any obligation under this Article.

8.04.708. Time for Owner to Reimburse City for Advance of Displacement Payments. If there are fewer than ten (10) days between the first posting and mailing of the order to vacate and the vacation date, and if the City advances displacement payments to any Residential Household, prior to the expiration of the 10-day period, the Owner shall not be required to reimburse the Enforcement Department for a charge identified on the itemized accounting if the Owner contests the charge within twenty (20) days after the itemized accounting is mailed to the Owner. The Owner shall pay any charges that were the subject of the appeal within thirty (30) days after an adverse decision by the Enforcement Department on the appeal is mailed to the Owner. In all

other cases, the Owner shall pay any charge identified on the itemized accounting within thirty (30) days after the itemized accounting is mailed to the Owner.

8.04.709. Exemptions. The following exemptions shall apply in the application of this Article:

a. No Owner shall be liable to any Residential Household or City Department for displacement payments if the Residential Household or any one of its members caused or substantially contributed to the condition giving rise to the order to vacate, nor shall any displacement payments be payable to a Residential Household if any guest or invitee of the Residential Household has caused or substantially contributed to the condition giving rise to the order to vacate.

b. No Owner shall be liable to any Residential Household or City Department for displacement payments if the unit or structure became unsafe or hazardous as the result of a fire, flood, earthquake, or other event beyond the control of the Owner, and the Owner did not cause or contribute to the condition.

c. No Owner shall be liable to any Residential Household or City Department for displacement payments provided the Owner provides a habitable replacement Residential Unit of comparable size and appurtenances to the vacated Residential Unit and provided the Owner pays all costs associated with moving the Residential Household to the replacement unit.

d. No Owner shall be liable to any Residential Household or City Department for displacement payments if the Residential Household is in default in payment of rent, unless rent is being lawfully withheld by the Residential Household.

e. No Owner shall be liable to any Residential Household or City Department for displacement payments if the vacated unit is operated as an emergency or temporary shelter for homeless persons (whether such persons have assigned rooms or beds, and regardless of duration of stay by any occupant) by a nonprofit organization or public department owning, leasing, or managing such unit.

f. No public entity, as defined in Government Code SECTION 7260, holding all or any part of the legal title to a Residential Unit occupied by a Residential Household otherwise subject to this Article, shall be liable for displacement payments.

8.04.710. Private Cause of Action. Any person who is a member of a Residential Household who is entitled to displacement payments from an Owner under this Article shall have the right to file an action for injunctive relief and/or damages against the Owner. Attorney fees and costs shall be awarded to the prevailing party in any such action. These remedies shall be in addition to those provided by any other law.

SECTION 2. The City Council finds that the purpose of this ordinance is to alleviate hardships associated with Residential Household displacements by requiring Owners to make payments to Residential Households displaced as a result of a determination by Enforcement Department authorities that the Residential Unit is unsafe for habitability

by the residents and to implement the administrative procedures set forth in Article 2.5 (commencing with SECTION 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code.

SECTION 3. This ordinance is adopted pursuant to Article 2.5 (commencing with SECTION 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code which provides that local enforcement agencies shall determine eligibility for payments to displaced tenants and shall implement an administrative appeals procedure for Owners found liable for such payments. This ordinance is also authorized by Health and Safety Code SECTION 17975.7 which provides that the remedies under Article 2.5 are not exclusive.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after its adoption.

PASSED, APPROVED, AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL, THIS _____ DAY OF _____, 2011.

STEPHEN P. POUQUET, MAYOR

ATTEST:

JAMES THOMPSON, CITY CLERK

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 _____ and adopted at a regular meeting of the City Council held on _____ by the following vote:

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

James Thompson, City Clerk
City of Palm Springs, California