



City Council Staff Report

DATE: September 5, 2012 CONSENT CALENDAR
SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE
NO. 1811, AMENDING THE PALM SPRINGS MUNICIPAL CODE
RELATING TO ENFORCEMENT OF THE CITY'S MEDICAL CANNABIS
REGULATORY ORDINANCE
FROM: David H. Ready, City Manager
BY: Office of the City Clerk

SUMMARY:

The City Council will consider adoption of Ordinance No. 1811 which requires unpermitted collectives and cooperatives to disclose their unpermitted status to the public and provides additional administrative enforcement options to the City in addressing violations of the City's Medical Cannabis Regulatory Ordinance, including posting of property, issuance of abatement orders, and the recordation of liens.

RECOMMENDATION:

Waive further reading and adopt Ordinance No. 1811, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTION 3.52.030 AND SUBSECTIONS K AND L OF SECTION 93.23.15 OF, AND ADDING SUBSECTION K TO SECTION 93.23.15 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO ENFORCEMENT OF THE CITY'S MEDICAL CANNABIS REGULATORY ORDINANCE."

STAFF ANALYSIS:

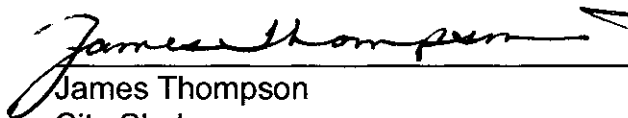
On July 11, 2012, Ordinance No. 1811 was introduced for first reading, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTION 3.52.030 AND SUBSECTIONS K AND L OF SECTION 93.23.15 OF, AND ADDING SUBSECTION K TO SECTION 93.23.15 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO ENFORCEMENT OF THE CITY'S MEDICAL CANNABIS REGULATORY ORDINANCE."

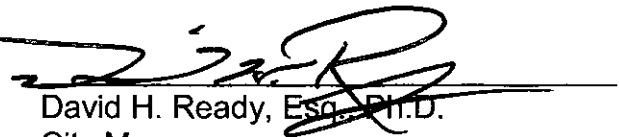
ACTION: Waive the reading of the full text of the Ordinance, and introduce by title Ordinance No. 1811, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTION 3.52.030 AND

Item No. **2.E.**

SUBSECTIONS K AND L OF SECTION 93.23.15 OF, AND ADDING SUBSECTION K TO SECTION 93.23.15 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO ENFORCEMENT OF THE CITY'S MEDICAL CANNABIS REGULATORY ORDINANCE." Motion Councilmember Lewin, seconded by Mayor Pro Tem Foat, and unanimously carried on a roll call vote.

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. 1811

ORDINANCE NO. 1811

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTION 3.52.030 AND SUBSECTIONS K AND L OF SECTION 93.23.15 OF, AND ADDING SUBSECTION K TO SECTION 93.23.15 OF, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO ENFORCEMENT OF THE CITY'S MEDICAL CANNABIS REGULATORY ORDINANCE.

City Attorney's Summary

This Ordinance requires unpermitted collectives and cooperatives to disclose their unpermitted status to the public and provides additional administrative enforcement options to the City in addressing violations of the City's Medical Cannabis Regulatory Ordinance, including posting of property, issuance of abatement orders, and the recordation of liens.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ORDAINS:

Section 1. Section 3.52 of the Palm Springs Municipal Code is amended to read:

3.52.030 Handling where legal impediments exist to conducting of business.

Whenever it appears to the collector that an application for a business license involves a proposed business activity for which other permit or licensing requirements are applicable under local or state or federal laws, ordinances or regulations before such business activity could lawfully be conducted in the city or at the particular location proposed, or involves a proposed business activity which could not lawfully be conducted in the city or at the particular location proposed, the collector shall so inform the applicant, and ascertain whether, in view of such circumstances, the applicant desires to withdraw the application pending removal of the legal impediments, if such removal be possible. In the event the applicant nonetheless insists upon submitting the application, the collector shall accept the proffered tax payment, and issue a receipt therefor which shall contain language clearly stating that such receipt is not to be deemed in any way an official sanction for the conducting of the proposed business. Every person, corporation, partnership, or association issued a receipt under the provisions of this Section shall display such receipt in a prominent place in its business where it is clearly visible to all members of the public entering the premises.

Section 2. Paragraphs 10 and 19 of Subsection K of Section 93.23.15 of the Palm Springs Municipal Code are amended to read:

10. Signage for the cooperative or collective shall be limited to name of business and its status as a permitted cooperative or collective pursuant to this Section only and no advertising of the goods and/or services shall be permitted. Each cooperative or collective shall post a sign or notice conspicuously at each point of public access into the cooperative or collective stating that the cooperative or collective is an permitted cooperative or collective under the provisions of this Section.
19. Fully comply with and meet all operating criteria required pursuant to the Compassionate Use Act, state law, the Attorney General Guidelines, the provisions of the Palm Springs Municipal Code, including without limitation, this Section, and any specific, additional operating procedures and measures as may be imposed as conditions of approval of the regulatory permit, and all requirements set forth in the covenant as described in Subsection J, in order to ensure that the operation of the cooperative or collective is consistent with the protection of the health, safety, and welfare of the community, qualified patients, and primary caregivers, and will not adversely affect surrounding uses.

Section 3. The title of Subsection L of Section 93.23.15 of the Palm Springs Municipal Code is amended to read: "Enforcement of Medical Cannabis Cooperative or Collective Permits." No other provision of Subsection L is affected by this amendment.

Section 4. Subsection N is added to Section 93.23.15 of the Palm Springs Municipal Code to read:

N. Abatement Orders and Civil Penalties.

1. Any person, partnership, association, corporation, fiduciary, or other entity that owns, leases, occupies, controls, or manages any building, property, or occupancy and causes, permits, or maintains a violation of the provisions of this Section, including without limitation the provisions of Subsections A and B hereof, or that falsely claims in any advertising of any kind, including without limitation, signs or handbills, that such person, association, corporation, fiduciary, or other entity is permitted as a medical cannabis cooperative or collective in the City, shall be subject to an abatement order issued pursuant to the provisions of this Subsection and shall be liable for administrative penalties as follows:
 - (a) Each party subject to an abatement order pursuant to this Subsection, as determined by the City Manager, shall pay an administrative penalty of one thousand (\$1,000.00) dollars.
 - (b) In the event that a violation of this Section addressed by an abatement order has not been abated, cured, remedied, and/or eliminated to the reasonable satisfaction the City Manager by the tenth (10th) day after the issuance of the abatement order, each party subject to said abatement order shall pay a

supplemental administrative penalty of two thousand five hundred (\$2,500.00) dollars.

(c) In the event that a violation of this Section addressed by an abatement order has not been abated, cured, remedied and/or eliminated to the reasonable satisfaction of the City Manager by the thirtieth (30th) day after the issuance of an abatement order, each party subject to said abatement order shall pay a second supplemental administrative penalty of five thousand (\$5,000.00) dollars for each calendar week, or portion thereof, the building and/or occupancy thereof is in violation of the provisions of this Section.

2. The City Manager may issue an Abatement Order for violations of the provisions of this Section. The Abatement Order shall contain:

(a) The street address and assessor's parcel number of the premises on which the building or structure is located, sufficient for identification;

(b) Reference to all code sections violated with a brief and concise description of the conditions found;

(c) A statement of the required action to permanently correct outstanding violations;

(d) A statement enumerating the action that can be taken by the City should the responsible party or parties fail to comply with the terms and deadlines as prescribed in the Abatement Order.

(e) A statement advising that any person having any record title or interest in the building may appeal Abatement Order served, provided the appeal is made in writing, pursuant to and within the time frames provided in this Subsection. Failure to file an appeal in accordance with this Subsection shall constitute a waiver of the right to an administrative hearing and adjudication of the Abatement Order or any portion thereof.

3. The Abatement Order, or any amended Abatement Order, shall be served on the following parties:

(a) The record owner of the property; and,

(b) The holder of a mortgage, deed of trust, or other lien on the property, if recorded or otherwise actually known to the City Manager at the time the Abatement Order is served.

- (c) If different than (1) or (2) above, the tenant of any building or structure or the operator of any marijuana or cannabis dispensary activity within such building or structure.
4. Service shall be completed in the following manner:
- (a) Posting of the Abatement Order conspicuously on or in front of the property and at each point of public access into the building or structure. It is a misdemeanor to remove or deface any Abatement Order posted on the property.
- (b) Simultaneously, the same notice shall be sent by regular mail and certified mail (return receipt requested). If a notice that is sent by certified mail is returned unsigned, then service shall be deemed effective pursuant to regular mail, provided the notice that was sent by regular mail is not returned. Service by certified or regular mail in the manner described above shall be effective on the date of mailing; or
- (c) Personal service;
- (d) If the City Manager is unable to effectively serve the Abatement Order as provided in this Subsection, the City Manager may publish the Abatement Order in a newspaper of general circulation (as defined in Govt. Code § 6000), published in this jurisdiction. Publication of the Abatement Order pursuant to this Subsection shall be for five (5) days. The period of notice commences upon the first day of publication and terminates at the end of the fifth day, including therein the first day. Publication shall be made on each day on which the newspaper is published during the period. Service is deemed complete on the last day of publication.
5. The failure of any person with an interest in the property to receive any notice served in accordance with this Subsection shall not affect the validity of any proceedings taken under this Section.
6. Proof of service of the Notice and Order shall be documented at the time of service by a declaration under penalty of perjury, executed by the person effecting service, declaring the time and manner in which service was made. If service is effectuated by certified mail, the declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the Notice and Order retained by the Building Official.
7. Upon receipt of an Abatement Order, each responsible party must take one of the following actions to avoid additional penalties:

- (a) Correct the violation, pay the corresponding fine(s), if any, and contact the City Manager to request a re-inspection, prior to the compliance date specified in the abatement order; or
 - (b) Request a hearing to appeal the Abatement Order pursuant to Paragraph 8 of this Subsection N.
- 8. A responsible party receiving an Abatement Order may appeal such order within seven (7) calendar days from the date the Abatement Order is deemed served.
 - (a) The appeal must be in writing and must indicate the appellant's full name and mailing address. It must be accompanied by the penalty amount and appeal fee which shall be set by resolution of the City Council, must specify the basis for the appeal in detail, and must be filed with the City Clerk's Office. If the appeal deadline falls on a day City Hall is closed, then the deadline shall be extended until the next regular business day.
 - (b) As soon as practicable after receiving the written notice of appeal, the City Manager shall fix a date, time, and place for the hearing before a hearing officer pursuant to the provisions of Section 1.06.060 of this Code. Written notice of the time and place for the hearing may be served by first class mail, at the mailing address indicated on the written appeal. Service of the appeal notice must be made at least seven (7) calendar days prior to the date of the hearing to the party appealing the administrative citation.
 - (c) The failure of any person with an interest in the property, or other responsible party, to receive such properly addressed notice of the hearing shall not affect the validity of any proceedings under this Section. Service by first class mail, postage prepaid shall be effective on the date of mailing.
 - (d) Failure of any responsible party to file an appeal in accordance with the provisions of this Section shall constitute a waiver of that responsible party's rights to administrative determination of the merits of the Abatement Order and the amount of the penalty. If no appeal is filed, the Abatement Order shall be deemed a final administrative order and a failure to exhaust the responsible party's administrative remedies.
- 9. At any time after the Abatement Order becomes final, the City Council may cause the Abatement Order and a notice of lien to be recorded with the County Recorder. The final Abatement Order and lien shall, at a minimum, identify the record owner and/or possessor of the property and set forth the last known address of the record owner and/or possessor, the date on which the penalty was imposed, a description of the real property subject to the lien, and the amount of the penalty.

10. This Subsection provides a civil penalty remedy that is in addition to all other legal remedies, criminal or civil, which may be pursued by the City Manager or the City Attorney to address any violation of this Section. The civil penalty imposed pursuant to the provisions of this section shall be in lieu of the administrative citation penalties imposed pursuant to the provisions of Section 1.06.040 of this Code.

Section 5. 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 _____ 2012.

STEPHEN P. POUCKET, MAYOR

ATTEST:

JAMES THOMPSON, CITY CLERK

APPROVED AS TO FORM:

DOUGLAS HOLLAND, CITY ATTORNEY