

ORDINANCE NO. \_\_\_\_\_

A ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, CALLING AND GIVING NOTICE OF THE HOLDING OF A SPECIAL MUNICIPAL ELECTION ON TUESDAY, APRIL 22, 2014, FOR THE SUBMISSION TO THE QUALIFIED VOTERS RESOLUTION NO. 23270 OF THE CITY OF PALM SPRINGS APPROVING A PRELIMINARY PLANNED DEVELOPMENT DISTRICT FOR A HOTEL OF APPROXIMATELY 185 ROOMS, RESTAURANTS, MEETING ROOMS, RETAIL USES, AND ANCIALLARY USES, WITHIN BLOCK C OF THE MUSEUM MARKET PLAZA SPECIFIC PLAN AT THE NORTHEAST CORNER OF WEST TAHQUITZ CANYON WAY AND BELARDO ROAD (A KIMPTON BRAND HOTEL).

***City Attorney Summary***

*This Ordinance calls and gives notice for a Special Municipal Election to be held on April 22, 2014, pursuant to the Charter of the City of Palm Springs, for consideration of Resolution No. 23270 approving a Kimpton Brand Hotel within Block C of the Museum Market Plaza Specific Plan.*

**THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA,  
FINDS:**

A. The City Council on December 19, 2012, duly adopted Resolution No. 23270, approving a Preliminary Planned Development District within Block C of the Museum Market Plaza Specific Plan for a hotel of approximately 185 rooms, restaurants, meeting rooms, retail uses, and ancillary uses. This hotel was identified as a Kimpton Brand Hotel.

B. On January 22, 2013, Frank Tysen, a qualified registered voter of the City of Palm Springs filed a petition for the Referendum of Resolution No. 23270, pursuant to California Elections Code § 9237.

C. The City Clerk examined or caused the examination of registration and declared the filed referendum petition as sufficient and executed a Certificate of Sufficiency.

D. On March 6, 2013, the City Council, pursuant to California Elections Code § 9237 reconsidered Resolution No. 23270.

E. On March 6, 2013, the City Council determined that Resolution No. 23270 was an administrative action and not a legislative action of the City Council and therefore was not subject to the referendum and the City Council declined to place the matter on the ballot.

F. The City Council has not repealed Resolution No. 23270.

G. On May 31, 2013, Frank Tysen and the Advocates for Better Community Development, filed a Summons for Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief, Riverside Superior Court, Indio Division, Case No. INC 1303538, challenging the decision of the Council to decline to place Resolution No. 23270 on the ballot. The City opposed the petition and writ.

H. A hearing on the writ and complaint was held on October 15, 2013. On December 10, 2013, the Superior Court, in a clear, succinct, direct, and reasoned decision, denied the Petition for Peremptory Writ of Mandate, upheld the action of the City Council to decline to place that matter on the ballot, and expressly found that the "City's adoption of Resolution No. 23270 was consistent with zoning under both the Municipal Code and the [Museum Market Plaza Specific Plan]. Moreover, such approval is not a legislative act because that approval affected an individual application and was determined by facts peculiar to the case."

I. Notwithstanding this decision of the Superior Court, on January 13, 2013, the City received notice that an appeal of the Superior Court's decision was filed on behalf of Frank Tysen and the Advocates for Better Community Development.

J. The City Council is concerned that completion of the appeal process is likely to take 12 to 18 months to complete and that this period of time will significantly delay the project and potentially impair the ability of the project developer to complete the project in the timely manner required under the agreements between the developer and the City. The City Council further finds that delays caused by litigation will jeopardize the ability and willingness of potential tenants to commit to the project and thereby potentially jeopardize the ability of the developer to complete the project.

K. The City Council opposes the use of meritless litigation as a delaying tactic to frustrate the ability of the City Council to implement adopted city policy and programs, that stalls and delays downtown revitalization, and economically damages the interests of developers, businesses, hoteliers, retail shop owners, and others who desire the opportunity to locate in the City and develop and use their property in a manner consistent with the City's adopted plans and policies.

L. The City Council reaffirms its March 6, 2013 determination that Resolution No. 23270 is not a legislative act, and specifically finds and reasserts its contention the City will prevail in any appeal of the Superior Court's decision finding that the City Council's decision was not a legislative act subject to the referendum.

M. Notwithstanding the above, the City Council wishes to avoid the delays to the project, and minimize the adverse effects that will occur as a result of the meritless appeal of the Superior Court filed Frank Tysen and the Advocates for Better Community Development. The City Council specifically finds that it is appropriate to submit Resolution No. 23270 to the voters solely for the purpose of avoiding delays and to staunch the financial bleeding that will occur if the developer is unable to proceed with the completion of the project due to the shroud of uncertainty that would engulf the project while the appeal process is fully adjudicated.

N. § 801 of Article VIII of the Charter of the City of Palm Springs, provides for the City Council to conduct Special Municipal Elections.

O. § 802 of Article VIII of the Charter of the City of Palm Springs, provides the City Council may by ordinance enact procedures for the conduct of municipal elections.

P. § 5(b) of Article XI of the California Constitution allows Charter Cities to provide for the conduct of city elections and recognizes regulations for the conduct of local elections is a matter of local concern.

Q. § 315 of Article III of the Charter of the City of Palm Springs, provides that an ordinance calling or otherwise relating to an election takes effect upon adoption and therefore consistent with § 312 of Article III of the Charter of Palm Springs, this ordinance will take effect upon adoption without introduction.

**THE CITY COUNCIL OF THE CITY OF PALM SPRINGS ORDAINS:**

**SECTION 1.** Pursuant to the requirements of the Charter of the City of Palm Springs and the laws of the State California pertaining to the conduct of elections, there is called and ordered to be held in the City of Palm Springs, California, on Tuesday, April 22, 2014, a Special Municipal Election for the purpose of submitting the following resolution and question:

Shall Resolution No. 23270, approving a Preliminary Planned Development District for hotel (a Kimpton brand) of approximately 185 rooms, restaurants, meeting rooms, retail uses and ancillary uses, located within Block C of the Museum Market Plaza Specific Plan at the Northeast corner of West Tahquitz Canyon Way and Belardo Road, be approved?	YES
	NO

**SECTION 2.** The text of the resolution submitted to the voters is attached hereto as Exhibit A.

**SECTION 3.** The ballots to be used at the election shall be in form and content as required by law.

**SECTION 4.** The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter, supplies, and equipment that may be necessary in order to properly and lawfully conduct the election.

**SECTION 5.** The Polls for the election shall be open at seven o'clock a.m. (7:00 AM) of the day of the election and shall remain open continuously from that time until eight o'clock p.m. (8:00 PM) of the same day when the polls shall be closed, except as provided in Section 14401 of the California Elections Code.

**SECTION 6.** In all matters not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

**SECTION 7.** Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

**SECTION 8.** Pursuant to § 315 of Article III of the Charter of the City of Palm Springs, this ordinance shall go into effect immediately upon adoption.

**PASSED, APPROVED, AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 17<sup>TH</sup> DAY OF JANUARY, 2014.**

\_\_\_\_\_  
STEPHEN P. POUCKET, MAY

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, hereby certify that Ordinance No. \_\_\_\_\_ is a full, true and correct copy, and was duly adopted at a special meeting of the City Council of the City of Palm Springs on January 17, 2014, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
JAMES THOMPSON, CITY CLERK  
City of Palm Springs, California