



## CITY COUNCIL STAFF REPORT

DATE: FEBRUARY 18, 2009 CONSENT CALENDAR

SUBJECT: SECOND READING AND ADOPTION OF PROPOSED ORDINANCE  
AMENDING THE PROCUREMENT AND CONTRACTING PROVISIONS  
ESTABLISHING A LOCAL BUSINESS PREFERENCE PROGRAM

FROM: David H. Ready, City Manager

BY: James Thompson, City Clerk

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### RECOMMENDATION:

Waive further reading and adopt Ordinance No. 1756 "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTIONS 7.01.040 AND 7.09.030 OF, AND ADDING SECTION 1.01.231 TO THE PALM SPRINGS MUNICIPAL CODE, ESTABLISHING A LOCAL BUSINESS PREFERENCE PROGRAM."

### STAFF ANALYSIS:

At its February 4, 2009, meeting proposed Ordinance No. 1756 was introduced by the following vote:

**ACTION:** 1) Waive the reading of the ordinance text in its entirety and read by title only; and 2) Introduce on first reading Ordinance No. 1756, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTIONS 7.01.040 AND 7.09.030 OF, AND ADDING SECTION 1.01.231 TO THE PALM SPRINGS MUNICIPAL CODE, ESTABLISHING A LOCAL BUSINESS PREFERENCE PROGRAM" *amending the second sentence in Section 7.090.030(4) to include subcontractors and subconsultants.*  
**Motion Mayor Pro Tem Mills, seconded by Councilmember 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.

  
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JAMES THOMPSON, City Clerk

  
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DAVID H. READY, City Manager

Attachments:  
Ordinance No. 1756

ITEM NO. 2.F.

ORDINANCE NO. 1756

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTIONS 7.01.040 AND 7.09.030 OF, AND ADDING SECTION 1.01.231 TO, THE PALM SPRINGS MUNICIPAL CODE, ESTABLISHING A LOCAL BUSINESS PREFERENCE PROGRAM.

***City Attorney Summary***

*This Ordinance establishes a preference program for businesses located in the Coachella Valley in the purchase of supplies, materials, equipment, and contractual services.*

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

SECTION 1. Section 7.01.040 is amended by adding the following definitions:

"Director" means the City Manager or the City Manager's designee.

"Coachella Valley" means the area between the Salton Sea on the south, the San Jacinto and Santa Rosa Mountains on the west, and the Little San Bernardino Mountains on the east and north. For the purposes of this definition, "Coachella Valley" includes the cities of Beaumont and Banning and the unincorporated areas between Banning and the City of Palm Springs.

"Local Business" means a vendor, contractor, or consultant who has a valid physical business address located within the Coachella Valley, at least six months prior to bid or proposal opening date, from which the vendor, contractor, or consultant operates or performs business on a day-to-day basis, and holds a valid business license by a jurisdiction located in the Coachella Valley. Post office boxes are not verifiable and shall not be used for the purpose of establishing such physical address.

"Solicitation" shall mean the City's process to obtain bids or proposals as provided in this Title for the purchase of goods or services.

SECTION 2. Section 7.09.030 of the Palm Springs Municipal Code is amended to read:

**7.09.030 Local Business Preference Program.**

(1) Findings.

(a) The City annually spends significant amounts on purchasing supplies, materials, and equipment, and contractual and professional services. The dollars used in making these purchases are derived in large measure from taxes and fees derived from Local Businesses and the City Council has determined that funds generated in the community should, to the extent possible, be placed back in the local economy. Therefore, the City Council has determined that it is in the best interest of the City to give a preference to Local Businesses in making such purchases whenever the

application of such a preference is reasonable in light of the dollar-value received in relation to such expenditure.

(b) The City Council further finds that the Coachella Valley is in a state of economic depression and many local businesses have been forced to close their doors due to severe financial losses. Many of these local business establishments have been doing business in the Coachella Valley for many years. The City Council finds that the City should promote and stimulate local businesses by requiring that purchases of supplies, materials, and equipment and contractual services be acquired from Local Businesses.

(c) The City Council further finds that this action is necessary to grow the local economy and preserve the local businesses that have diligently served the Coachella Valley for many years.

(d) Strategies that encourage people to buy locally are an important component of economic sustainability. Retaining local dollars within a community reduces economic export and increases the financial productivity of taxpayer dollars and increases the consumption of local goods and services while fostering a sustainable community. In working towards a sustainable economy, the City Council recognizes that sustainable procurement policies are an important early step on the Palm Springs Path to a Sustainable Community. By leveraging the purchasing power of the City to buy local products and services instead of products and services from outside the Coachella Valley it strengthens the local economic activity and employment as well as sets an example that helps foster and maintain a vital economic community for future generations.

(2) Statement of Policy. It is the policy of the City to promote employment and business opportunities for local residents and firms on all contracts and give preference to local residents, workers, businesses, contractors, and consultants to the extent consistent with the law and interests of the public.

(3) Local Preference in Purchasing. In the bidding of, or letting for procurement of, supplies, materials, and equipment, as provided in this Title, the City Council or the Director may give a preference to Local Businesses in making such purchase or awarding such contract in an amount not to exceed five (5%) percent of the Local Business' total bid price, or \$15,000.00, whichever amount is lower. Total bid price shall include only the base bid price but also adjustments to that base bid price resulting from alternates requested in the Solicitation. In order for a Local Business to be eligible to claim the preference, the business must request the preference in the Solicitation response and provide a copy of its current business license from a jurisdiction in the Coachella Valley.

(4) Local Preference in Services. In awarding contracts for services, including consultant services, preference to Local Business shall be given whenever practicable pursuant to this Title consistent with the Statement of Policy in subsection (2) above. The contractor or consultant will also, to the extent legally possible, solicit applications for employment and proposals for subcontractors and subconsultants for work associated with the proposed

contract from local residents and firms as opportunities occur and hire qualified local residents and firms whenever feasible. In order for a Local Business to be eligible to claim the preference, the business must request the preference in the Solicitation response and provide a copy of its current business license from a jurisdiction in the Coachella Valley.

(5) Local Preference in Public Works Contracts (Sub-Contracting). The prime contractor shall use good faith efforts to sub-contract the supply of materials and equipment to local business enterprises and to sub-contract services to businesses whose work force resides within the Coachella Valley. The prime contractor shall submit evidence of such good faith efforts at the time of submission of bids. Good faith efforts may be evaluated by placing advertisements inviting proposals in local newspapers, sending request for proposals to local sub-contractors, or by demonstrating that no local sub-contractors are qualified to perform the work or supply the materials or equipment. Any notice inviting bids which may require the use of sub-contractors shall include notification of this subsection. The City Council or Director may reject as non-responsive the bid of any contractor proposing to use sub-contractors that fail to comply with the requirements of this subsection.

(6) Exceptions to Local Business Preference Policy. The preference set forth in this Section shall not apply to the following purchases or contracts:

- (a) Goods or services provided under a cooperative purchasing agreement.
- (b) Purchases or contracts which are funded in whole or in part by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference.
- (c) Purchases made or contracts let under emergency or noncompetitive situations.
- (d) Purchases with an estimated cost of \$5,000.00 or less.
- (e) Application of the local business preference to a particular purchase, contract, or category of contracts for which the City Council is the awarding authority may be waived at the City Council's discretion.

(7) Quality and Fitness. The preferences established in this Section shall in no way be construed to inhibit, limit or restrict the right and obligation of the City Council and the Director to compare quality and fitness for use of supplies, materials, equipment, and services proposed for purchase and compare the qualifications, character, responsibility, and fitness of all persons, firms, or corporations submitting bids or proposals. In addition, the preferences established in this Section shall in no way be construed to prohibit the right of the City Council or the Director from giving any other preference permitted by law or this Title.

(8) Application. The Local Business Preference provided in this Section shall apply to new contracts for supplies, materials, equipment, and services first solicited on or after

March 1, 2009. This Section shall be implemented in a manner consistent with otherwise applicable provisions of this Title.

(9) Verification of Local Business Preference Eligibility. Any vendor or consultant claiming to be a Local Business, shall so certify in the bid, in writing to the Director. The Director shall not be required to verify the accuracy or any such certifications, and shall have sole discretion to determine if a vendor or consultant meets the definition of "Local Business." The decision of the Director declaring that any person or business is not a Local Business shall be subject to appeal pursuant to the provisions of Chapter 2.50 of this Code.

(10) Enforcement.

(a) The information furnished by each bidder requesting a Local Business Preference shall be under penalty of perjury.

(b) No person or business shall knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Local Business for the purpose of this Section.

(c) No person or business shall willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a City official or employee for the purpose of influencing the certification or denial of certification of any entity as a Local Business.

(d) A business which has obtained City certification as a Local Business by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded a contract to which it would not otherwise have been entitled, shall:

(i) Pay to the City any difference between the contract amount and what the City's costs would have been if the contract had been properly awarded;

(ii) In addition to the amount described in sub-section (i) above, be assessed a penalty in an amount of not more than ten percent (10%) of the amount of the contract involved; and

(iii) Be subject to debarment from future award of contracts from the City.

(e) The penalties identified in (d) above shall also apply to any business that has previously obtained proper certification and, as a result of a change in its status

would no longer be eligible for certification, fails to notify the Finance Department of this information prior to responding to a Solicitation or accepting a contract award.

(11) Promulgation of Administrative Rules. The Director is authorized to adopt administrative rules supplemental to the provisions of this Title as necessary or appropriate to implement the provisions of this Section. The provisions of this Section and the rules adopted by the Director shall be provided to potential bidders, vendors, and contractors to the widest extent practicable.

SECTION 3. Section 1.01.231 is added to the Palm Springs Municipal Code to read:

**1.01.231. Refund of Fees.**

A. Notwithstanding any other provision in this Code to the contrary, all claims against the City with respect to any fee required pursuant to this Code and claimed to have been overpaid, paid more than once, or collected, imposed or received by the City in a manner not permitted by law, including without limitation any claim that such fee was imposed in violation of constitutional or statutory law, shall be presented within the time and in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900) for the claims to which that Part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this Section. Such fees may be refunded as provided in this Section.

B. Except as expressly provided in this Code, no refund shall be paid unless the claimant, who actually paid the Fee for which a refund is sought produces written records that establish the right to the claimed refund.

C. Any claim made pursuant to this Section must be made in the manner and form prescribed by Chapter 3.16 of this Code.

SECTION 4. If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this ordinance shall remain valid. The City Council hereby declares that it would have adopted this Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

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 \_\_\_\_\_, 2009.

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MAYOR

ATTEST:

APPROVED AS TO FORM:

James Thompson, City Clerk

Douglas 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 \_\_\_\_\_ and adopted at a regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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