



CITY COUNCIL STAFF REPORT

DATE: MARCH 15, 2017

CONSENT

SUBJECT: REPEALING AND SETTING ASIDE APPROVAL OF RESOLUTION NO. 23415 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, RELATING TO AN AMENDMENT TO THE 2007 PALM SPRINGS GENERAL PLAN MODIFYING THE GENERAL PLAN'S TREATMENT OF RESIDENTIAL LAND USE DENSITIES

FROM: David H. Ready, City Manager

BY: Douglas Holland, City Attorney

SUMMARY

Due to a decision by the California Court of Appeal, the City Council will consider the adoption of a resolution rescinding Resolution No. 23415, which amended the 2007 Palm Springs General Plan by removing, in some places, minimum density requirements for each residential land use category.

RECOMMENDATION:

Adopt Resolution No. _____, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, RESCINDING AND OTHERWISE SETTING ASIDE APPROVAL OF RESOLUTION NO. 23415 RELATING TO AN AMENDMENT TO THE 2007 PALM SPRINGS GENERAL PLAN REVISING RESIDENTIAL LAND USE CATEGORIES BY ELIMINATING CLOSED RANGES.

STAFF ANALYSIS:

On September 4, 2013, the City Council adopted Resolution No. 23415 which modified how the Palm Springs General Plan referred to thresholds for residential densities in the various General Plan residential designations (the "Amendment"). In some places the General Plan referenced a range of anticipated residential densities with both a lower and upper threshold. By way of example, in some places in the General Plan the density range for areas designated "High Density Residential" provided for a range of "15.1—30 dwelling units per acre. In other places, the General Plan stated the range differently, i.e., "up to 30 dwelling units per acre", with no lower threshold. The Amendment eliminated the lower threshold in the range of densities in some places in the General Plan, but not all. The intent of the Amendment was simply to clarify that the General Plan did not mandate minimum residential densities as the General Plan itself describes the lower threshold as densities that are "anticipated."

ITEM NO. 1.N.

Subsequent to the City Council's adoption of the Amendment, a lawsuit was filed, contending in pertinent part that the Amendment had the potential for reducing residential densities and thus, the City's finding that adoption of the Amendment was categorically exempt from CEQA was inappropriate. The Superior Court found for the City, but the Court of Appeal, Fourth Appellate District, Division Two, reversed, entering judgment against the City and directed the Superior Court of Riverside County to issue a preemptory writ of mandate instructing the City to "vacate both its issuance of an exemption under CEQA concerning the Amendment, and its September 4, 2013, Resolution No. 23415 certifying and approving the Amendment." The Court of Appeal's opinion was initially published, but was ordered de-published by the California Supreme Court, the effect being that it cannot be cited as authority in other cases.

The decision by the Court of Appeal does not mean that the City Council cannot approve residential densities below the lower threshold. However, depending on the particular facts of the proposed development, if it proposes a residential density of less than the lower threshold, the City Council may need to make specified findings as to why the development nevertheless is consistent with the General Plan. Courts give significant discretion to city council determinations in this regard as long as findings are made and supported by evidence in the record.

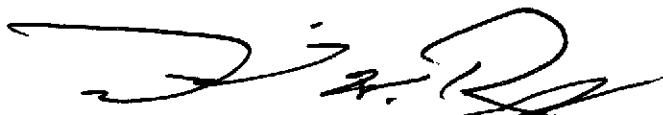
Once the City Council adopts the Resolution rescinding the Amendment, the City Attorney will submit the Resolution to the Superior Court to affirm compliance with the Court's order and the case will be dismissed.

FISCAL IMPACT

None anticipated.



Douglas Holland
City Attorney



David Ready, PhD., Esq.
City Manager

Attachment: Resolution

RESOLUTION No. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, RESCINDING AND SETTING ASIDE APPROVAL OF RESOLUTION NO. 23415 RELATING TO AN AMENDMENT TO THE PALM SPRINGS GENERAL PLAN WHICH MODIFIED THE GENERAL PLAN'S TREATMENT OF RESIDENTIAL LAND USE DENSITIES

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS FINDS:

A. On or about September 4, 2013, the City Council adopted Resolution No. 23415 amending the 2007 Palm Springs General Plan by modifying the General Plan's treatment of residential land use densities (the "Amendment") and finding that the adoption of the Amendment was categorically exempt under the California Environmental Quality Act ("CEQA") as a minor alteration in land uses.

B. Subsequent to the City Council's adoption of Resolution No. 23415, a lawsuit challenging the City's adoption of the Amendment was filed alleging that the Amendment had the potential to reduce residential densities in the City and as a result, it was not categorically exempt under CEQA. The Superior Court rendered judgment for the City, but the Court of Appeal, Fourth Appellate District, Division Two, reversed and entered judgment against the City, directing the Superior Court of Riverside County to issue a preemptory writ of mandate ordering the City to "vacate both its issuance of an exemption under CEQA concerning the Amendment, and its September 4, 2013, Resolution No. 23415 certifying and approving the Amendment."

C. As a result of the Court of Appeal decision, the City Council is required to rescind its approval of Resolution No. 23415, which contains both the Amendment and the CEQA finding.

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

SECTION 1. The City Council of the City of Palm Springs hereby rescinds and sets aside its approval of Resolution No. 23415 amending the Palm Springs General Plan and finding that the Amendment is categorically exempt under CEQA. City staff is hereby directed to make such revisions as are necessary in the General Plan document to reflect the action taken by the City Council.

SECTION 2. The City Attorney shall submit a copy of this resolution to the Superior Court of Riverside County in satisfaction of the requirements of the preemptory writ of mandate.

PASSED, APPROVED, AND ADOPTED THIS ____ DAY OF _____, 2017.

David H. Ready, City Manager

ATTEST

Kathie Hart, Interim City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, KATHIE HART, Interim City Clerk of the City of Palm Springs, California, do hereby certify that Resolution No. _____ is a full, true, and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on introduced at a regular meeting of the Palm Springs City Council on _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Kathie Hart, City Clerk
City of Palm Springs, California