

ORDINANCE NO. 1953

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADOPTING CHAPTER 2.60 OF THE PALM SPRINGS MUNICIPAL CODE, RELATING TO PUBLIC INTEGRITY.

City Attorney's Summary

This Ordinance adopts Chapter 2.60 of the City's Municipal Code relating to public integrity. The Ordinance expands the breadth of "conflicts of interest" in the City, and mandates disclosure by, and disqualification of officials from voting in City actions, beyond the realm of the financial interests addressed by state law. The Ordinance also requires new disclosures from applicants for City approvals, and provides a new timeline for action by the City's Planning Commission becoming final.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS ORDAINS:

SECTION 1. Title 2, Chapter 2.60 of the Palm Springs Municipal Code, PUBLIC INTEGRITY is hereby adopted, to read as follows.

Chapter 2.60 PUBLIC INTEGRITY

2.60.010 Findings and Purpose

- (A) The City recognizes service by public officials in community and non-profit organizations takes place, and has an interest in ensuring that when public officials provide such service, that they are insulated from a negative public perception and/or any allegation that a conflict of interest impairs their fulfillment of their duty to the City.
- (B) Not all interests that create a conflict for public officials are financial in nature. To limit the impact of non-financial conflicts of interest upon public service in the City, the City Council has proscribed participation in making of governmental decisions by officials who have non-economic conflicts of interest reflected in this Chapter.
- (C) Non-economic conflicts of interest arise when officials owe a legal duty to another person or organization and from rented or leased real property interests.
- (D) Applicants for City approvals are sometimes not natural persons. To ensure the avoidance of conflicts of interest by public officials, in the instance of an applicant that is not a natural person, the City should receive disclosure of the applicant's status and identity, including disclosure by the applicant of officers, directors, members, or managers.

(E) To further ensure against conflicts of interest, applicants for City approvals should disclose, and the City should receive information regarding the identities of all investors, whether natural persons or not, who have an ownership interest in the applicant entity with a value of two thousand dollars (\$2,000.00) or more.

(F) The City acknowledges that the interest of a public official who is a renter or lessor of real property, whether as a residence, a place of business or an investment, has the potential in many, if not all instances, to create a conflict of interest for that official with respect to applications involving a second real property that will arguably create impacts upon the vicinity of the property rented or leased by the official.

(G) The City's residents do not elect the members of the Planning Commission, and Planning Commission actions often do not attract the degree of attention in the community inherent to City Council consideration of a matter. That said, Planning Commission decisions are final in many matters of significance. A Planning Commission action should not become "final" before the public enjoys the benefit of City Council and public awareness of the Planning Commission action in question. Further, Planning Commission decisions being available for public review on the City's website supports a transparency of planning action that the City desires.

2.60.020 Definitions

As used in this Chapter, the following definitions shall apply:

"Act" means the Political Reform Act of 1974 as it has been and may be amended from time to time.

"Applicant" means a person or entity that applies for a City approval determined by a vote of City officials.

"Application" means the application filed or presented by an applicant to the City.

"Business Day" means a day of the week when city hall for the City of Palm Springs is open for public business.

"Form 700" means the statement of economic interests filed by an official with the California Fair Political Practices Commission and/or the city clerk, whether pursuant to Government Code Section 87200 or the local conflict of interest code.

"Material Change of Interest" means an official assumes, is assigned, resigns, is terminated, purchases or sells, or otherwise comes to possess or forfeit an interest identified in Section 2.60.040.

"Official" means every elected or appointed official who serves on the City Council or on any appointive board or commission of the City, whether under the Charter or this Code, the City Manager and the City Attorney. An official's elected or appointed status has no bearing upon the applicability of this Chapter except as specifically stated.

"Planning Commission" means the body defined by Section 607 of the charter of the City and Chapter 2.29 of this Code.

2.60.030 Application of Chapter

(A) The provisions of this Chapter shall apply generally to all applicants, officials, and to all actions by the Planning Commission.

(B) This Chapter supplements, complements, and is cumulative to state law, imposing duties of disclosure and disqualification upon officials beyond those codified in the Act and the regulations adopted pursuant thereto, and shall be strictly construed.

(C) When the requirements of this Chapter conflict with any other provision contained elsewhere in this Code, or any regulation or requirement adopted by the City, or in state law, the most restrictive, affirmatively demanding, or punitive requirement shall prevail.

2.60.040 Duties of Officials

(A) Every official shall disclose each and all of his/her interests, wherein he/she serves as a voting member of a board of directors of a non-profit entity without compensation, as a currently retained attorney or accountant for such an entity who provides *pro bono* services, or as the trustee of a charitable trust. The disclosure shall be on a written form prepared, maintained and amended as deemed appropriate by the city clerk. The disclosure of these interests shall be executed under penalty of perjury under the laws of the state, and shall be filed with the city clerk at or before the end of the first business day of the month of April.

(B) Every official shall disclose each and all of his/her rented or leased interests in real property located in the City. The disclosure shall be on a written form prepared, maintained and amended as deemed appropriate by the city clerk. The disclosure of rented or leased interests in real property shall be executed under penalty of perjury under the laws of the state, and shall be filed with the city clerk at or before the end of the first business day of the month of April.

(C) In the event that any official experiences a material change of interest after filing a form pursuant to subdivision (A) or (B) of this section 2.60.040, or as to any interest identified in that official's most recent Form 700, but before the upcoming

annual filing date of a new form, the official in question shall file an amendment to the form on file with the city clerk within thirty (30) days of the end of any quarter during which the official in question is subject to the material change of interest.

(D) In the event that an official serves an applicant as a voting member of a board of directors of a non-profit entity without compensation, as a currently retained attorney or accountant for such an entity who provides *pro bono* services, or as the trustee of a charitable trust, that official shall not vote upon, or advocate a particular result or outcome with respect to any application by that applicant. For purposes of this subdivision (D) and subdivision (E) of section 2.60.040, "advocating a particular result or outcome with respect to an application" means influencing, encouraging, or attempting to influence or encourage any other individual official to vote, or be more disposed to vote, in a particular manner with respect to an application. Such an official shall disclose the nature of his/her interest related to the applicant on the record of each proceeding before him/her in the action in question, and recuse himself/herself from voting with respect to said action.

(E) In the event that an official rents or leases real property located within five hundred (500) feet of any real property that is the subject of an application, that official has a non-financial conflict of interest under this Chapter, and shall not vote upon, or advocate a particular result or outcome with respect to the application in question. Neither the term, nor whether the lease or rental agreement is in writing has any bearing upon the applicability of this section 2.60.040(E). Any official with a conflict hereunder shall disclose the nature of his/her rented or leased real property interest on the record of each proceeding before him/her in the action in question, and recuse himself/herself from voting upon the action in question.

(F) There shall be no conflict of interest requiring disclosure or disqualification under this Chapter in relation to an official's service on any board, commission, or other body, provided that the official in question is appointed to the service in question by the City Council.

(G) An official who has a non-financial conflict of interest as defined in this section 2.60.040 does not have the duty to leave the room when an action wherein he/she has the conflict in question is considered.

2.60.050 Duties of Applicants

(A) Every applicant that is not an individual natural person, or comprised exclusively of natural persons with no outside investors, must disclose to the City the identity of each natural person who holds or occupies a significant position with respect to that applicant entity or any entity that owns an interest or derives profits with respect to the applicant entity, *i.e.*, a sub-entity. For purposes of this section 2.60.050(A), "significant position" shall be defined as follows: (i) officers and directors (in the instance of a corporation), (ii) members and managers (in the instance of a limited liability company), (iii) trustees and other fiduciaries (in the instance of a trust or

another organization), and (iv) investors who have an ownership interest in the applicant entity with a value of two thousand dollars (\$2,000.00) or more

(B) In the event that an applicant fails to comply with subdivision (A) of this section 2.60.050, the application of the applicant in question shall be deemed incomplete for all purposes, and the City shall not process or in any way consider the application of the applicant in question.

(C) A condition precedent to the initiation of any action by an aggrieved applicant pursuant to subdivision (D) of section 2.60.070 shall be the filing with the city clerk of a written notice of the aggrieved applicant's intent to file a petition for relief consistent therewith. The written notice shall state with particularity the nature of the violation of this Chapter alleged by the aggrieved applicant, and provide the City with not less than ten (10) business days during which the City may cure the alleged violation. No right pursuant to subdivision (D) of section 2.60.070 shall exist until the passage of the entire period to cure pursuant hereto.

2.60.070 Planning Commission Action, City Processing

(A) The City shall not deem "final" any action by the Planning Commission, which action represents the ultimate and determinative action by the City with respect to any application, and is not subject to mandatory review by the City Council unless and until the date that is ten (10) days after the date when (i) the City Council has received written notice of the Planning Commission action in question, and (ii) the City has posted written notice of the Planning Commission action in question on the City's website.

(B) The planning director and the city clerk shall at all times use and apply their best efforts to affect and ensure the City's prompt compliance with subdivision (A) of this section 2.60.070.

(C) No applicant may rely or make any application based upon a Planning Commission action as being "final" and binding upon the City unless and until the date that is ten (10) days after notice has been received by the City Council and posted on the City website pursuant to subdivision (A) of this section 2.60.070.

(D) Any applicant aggrieved and alleging a City failure to provide and/or post notice pursuant to subdivision (A) of this section 2.60.070, and a corresponding lack of finality with respect to a particular Planning Commission action, shall have the right, commencing on the ninetieth (90th) day after the Planning Commission action in question, to seek a writ of mandate in the Superior Court of the State of California, County of Riverside, Palm Springs courthouse, declaring the Planning Commission action to be final and binding upon the City.

2.60.080 Violations and Enforcement

(A) Upon verification by the City Attorney or his/her designee of an official failing to make a disclosure under this Chapter, an official shall have thirty (30) days, after notification by the city clerk in writing of any alleged failure to disclose, during which he/she may correct the violation related to that failure to disclose. The correction shall consist of a verbal disclosure at the next public meeting of the legislative body of which the official in question is a member. Provided that an official makes proper disclosure during that thirty (30) day period with respect to his/her first disclosure violation within any period of twelve (12) months, that official shall not be subject to any enforcement by the City, pursuant to subdivision (C) of this section 2.60.080, as to the violation in question.

(B) Upon verification by the City Attorney or his/her designee of an official failing to properly recuse himself/herself under this Chapter, and after notification by the city clerk in writing of any alleged failure to disqualify, the City Attorney or his/her designee shall prepare and present a staff report to the City Council, not less than thirty (30) days after such notification, which report shall describe with particularity the failure to disqualify in question. That staff report shall be received and filed at the City Council's first public meeting after the passage of this thirty (30) day post-notification period, as a consent calendar item. No official shall be subject to any enforcement by the City, pursuant to subdivision (C) of this section 2.60.080, with respect to his/her first disqualification violation within any period of twelve (12) months.

(C) An official who violates a provision of this Chapter and is subject to City enforcement pursuant to subdivision (A) or subdivision (B) of this section 2.60.080 is subject to administrative penalties pursuant to Chapters 1.01 and 1.06 of this Code, but not subject to any civil action or criminal penalty.

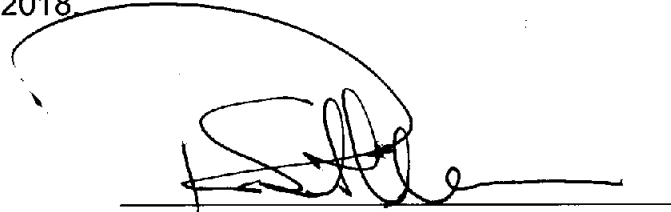
(D) An action upon an application taken by the City Council or any appointed board or commission, wherein an official has a non-financial conflict of interest under this Chapter but fails to disclose the existence and nature of that conflict, remains valid and enforceable for all purposes notwithstanding any violation of this Chapter.

SECTION 2. 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 3. Neither introduction nor adoption of this Ordinance represents a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378, because this Ordinance is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

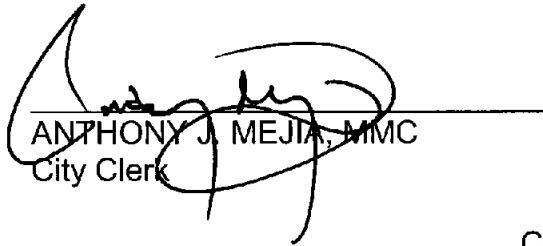
SECTION 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 7TH DAY OF MARCH, 2018.



ROBERT MOON, MAYOR

ATTEST:



ANTHONY J. MEJIA, MMC
City Clerk

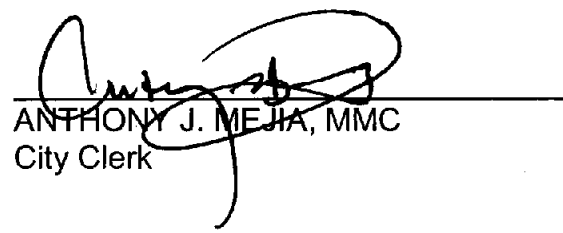
CERTIFICATION

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

I, ANTHONY J. MEJIA, City Clerk of the City of Palm Springs, California, do hereby certify that Ordinance No. 1953 is a full, true, and correct copy, and introduced by the City Council at a regular meeting held on Wednesday the 21st day of February, 2018, and adopted at a regular meeting of the City Council held on the 7th day of March, 2018 by the following vote:

- AYES: Councilmembers Holstege, Kors, Middleton, and Mayor Moon
- NOES: Mayor Pro Tem Roberts
- ABSENT: None
- ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Palm Springs, California, this 26th day of March, 2018.



ANTHONY J. MEJIA, MMC
City Clerk

