



City of Palm Springs Development Services Department Office of Sustainability

TO: Sustainability Commission

FROM: Patrick Tallarico, Manager

SUBJECT: Smoking Ordinance

MEETING DATE: July 20, 2021

The Office of Sustainability would like to provide this update on the Smoking Ordinance which was first discussed in 2019. This draft ordinance is a collaboration between the Sustainability Commission (Carl Baker) and the Human Rights Commission (Edwin Ramoran), each of which had its own draft ordinance in 2018 and 2019.

2021 Timeline

The attached draft of the Proposed Ordinance was revised in February 2021. It is based on the Human Rights Commission Version and reflects some of the elements of the Sustainability Commission's version as well.

At the April 20, 2021 Sustainability Commission meeting, Commissioner Baker reported the Human Rights Commission inquired if Councilmember Kors had spoken to the Restaurant and Hotel groups and Commissioner Baker confirmed he had.

At the June 15, 2021 Sustainability Commission meeting, Commissioner Baker reported the Human Rights Commission approved the Non-Smoking Ordinance as presented by the Commission with minor editorial changes.

Next Steps

Discuss current draft and address any additional comments by Sustainability Commissioners. Some of the concerns that may still need to be addressed that have been raised previously include concerns about imposing requirements on multi-family dwellings and addressing consistency with the Cannabis ordinance.

The group should also discuss next steps, including whether to discuss the draft with Councilmember Kors and/or to conduct a public meeting to get additional input.

PROPOSED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, TO AMEND THE MUNICIPAL CODE BY ESTABLISHING REGULATIONS APPLICABLE TO COMMERCIAL AND RESIDENTIAL CLEAN INDOOR AIR AND HEALTH PROTECTION TO REGULATE TOBACCO AND CANNIABUS PRODUCT USE
~~AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING THE MUNICIPAL CODE TO REGULATE CLEAN AIR, SMOKING AND TOBACCO PRODUCT USE~~

The City Council of the City of Palm Springs, California, does ordain as follows:

SECTION I. FINDINGS.

The City Council of the City of Palm Springs, California, hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation’s leading cause of preventable death;¹ and
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths;² and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;³ and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;^{4,5} and
- The California Environmental Protection Agency (EPA) included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm;⁶ and
- Secondhand cannabis smoke contains tetrahydrocannabinol (THC), the chemical responsible for most of cannabis’s psychological effects, and many of the same toxic

chemicals in smoked tobacco

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke occurs at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers;^{7,8} and
- Smoking cigarettes near building entryways can increase air pollution levels by more than two times background levels, with maximum levels reaching the “hazardous” range on the United States EPA’s Air Quality Index;⁸ and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 23 feet away from the source of the smoke, about the width of a two-lane road;^{8,9} and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;^{2,10} and
- Secondhand smoke is responsible for an estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States;¹⁰ and
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent¹¹ and increases the risk of stroke by 20 percent to 30 percent;¹² and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- Between 2009 and 2012, the total annual economic burden of smoking in the United States was between \$289 billion and \$332.5 billion;¹ and
- From 2005 to 2009, the average annual health care expenditures attributable to smoking were approximately \$132.5 billion to \$175.9 billion in direct medical care costs for adults and \$151 billion in lost productivity;¹ and
- The total annual cost of smoking in California was estimated at \$548 per resident or between \$2,262 and \$2,904 per smoker per year;¹³ and
- California’s Tobacco Control Program saved the state and its residents \$134 billion in

health care expenditures between the year of its inception, 1989, and 2008, with savings growing yearly;¹³ and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs with a review of over 80 peer-reviewed research studies showing that smoke-free policies effectively do the following:

- Reduce tobacco use: tobacco use is reduced by median of 2.7 percent;¹⁴ and
- Reduce exposure to secondhand smoke: air pollution is reduced by a median of 88 percent and biomarkers for secondhand smoke are reduced by a median of 50 percent;¹⁴ and
- Increase the number of tobacco users who quit by a median of 3.8 percent;¹⁴ and
- Reduce initiation of tobacco use among young people;¹⁴ and
- Reduce tobacco-related illnesses and death: there is a 5.1 percent median decrease in hospitalizations from heart attacks and a 20.1 percent decrease in hospitalizations from asthma attacks after such laws are passed;¹⁴ and

WHEREAS, laws restricting electronic smoking devices use also have benefits to the public as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,^{6, 15, 16, 17} such as formaldehyde, acetaldehyde, lead, nickel, and toluene;^{18,19, 20} and
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping;^{18,20,21} and
- The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment;²² and
- The State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of e-cigarettes in all areas where other tobacco products are banned;"²³ and

WHEREAS, smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease, as evidenced by the following:

- Smokeless tobacco use is associated with oral, esophageal, and pancreatic cancers;²⁴ and
- Smokeless tobacco is associated with increased risk for heart disease and stroke,^{25, 26, 27} stillbirth and preterm delivery,^{1, 28} and Parkinson's disease;¹ and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- In 2007, it was estimated that Americans consume 360 billion cigarettes each year;^{29, 30} and
- 55.7 percent of smokers admit to littering cigarettes in the last month;³¹ and
- In an observational study of nearly 10,000 individuals, after cigarettes were smoked, 45 percent of cigarettes ended up as litter;³⁰ and
- In 2011, 22.6 percent of all debris collected from beaches and coastal areas are smoking related products;³² and
- Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons, and ultimately the ocean;^{32, 33} and

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2012, American poison control centers received nearly 8,648 reports of poisoning by the ingestion of cigarettes, cigarette butts, and other tobacco products and 84.5 percent of these poisonings were in children ages five and younger;³⁴ and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;³⁵ and

WHEREAS, though widely perceived as a comprehensive smoke-free air law, exemptions and loopholes in the California Smoke-free Workplace Act³⁶ mean that one in seven Californians faces secondhand smoke exposure at work;³⁷ and

WHEREAS, exemptions and loopholes in the California Smoke-free Workplace Act³⁶ disproportionately impact low-income and communities of color as evidenced by the following:

- California Labor Code does not prohibit smoking in hotels, cabs of trucks, warehouses, long-term care facilities, outdoor places of employment, small businesses, tobacco shops,

and private smokers' lounges, which disproportionately employ individuals of low-income and individuals of color;^{38, 39, 40} and

- Male and Hispanic/Latino workers are the most likely to report being exposed to secondhand smoke at work;⁴¹ and

WHEREAS, California cities and counties have the legal authority to adopt local laws that make all indoor places of employment nonsmoking;⁴² and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions;⁴³ and

WHEREAS, the state smoke-free workplace law does not expressly prohibit the use of electronic smoking devices in enclosed workplaces;³⁶ and

WHEREAS, there is broad public recognition of the dangers of secondhand smoke and support for smoke-free air laws, as evidenced by the following:

- A 2008 survey of California voters found that 97 percent thought that secondhand smoke is harmful, 88 percent thought secondhand smoke was harmful even outdoors, 65 percent were bothered by secondhand smoke, and 73 percent support laws restricting smoking in outdoor public places;⁴⁴ and

WHEREAS, as of April 2015, there are at least 64 California cities and counties with local laws restricting smoking in workplaces not covered by the state smoke-free workplace law;⁴⁵ and

WHEREAS, as of April 2014, at least 131 local jurisdictions in California prohibit the use of electronic smoking devices in specific locations;⁴⁶ and

WHEREAS, as of January 2015, there are at least 348 California cities and counties with local laws restricting smoking in recreational areas, 129 with local laws restricting smoking in outdoor dining places, and 48 with local laws restricting smoking on sidewalks in commercial areas;⁴⁷ and

WHEREAS, there is no Constitutional right to smoke;⁴⁸

NOW THEREFORE, it is the intent of the Palm Springs, California City Council, in enacting this ordinance, to provide for cleaner air for the public health, safety, and welfare by

discouraging the inherently dangerous behavior of smoking and tobacco use around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they live, work, and play; by reducing the potential for children to wrongly associate smoking and tobacco use with a healthy lifestyle; and by affirming and promoting a healthy environment in the City of Palm Springs.

SECTION II. Article __ of the Palm Springs Municipal Code is hereby amended to read as follows:

Sec. ____ (*1) DEFINITIONS. The following words and phrases, whenever used in this article shall have the meanings defined in this section unless the context clearly requires otherwise:

~~(a)~~ ~~(a)~~ —“Business” means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes.

~~(a)~~(b) “Cannabis” means a dried preparation of the flowing tops or other parts of the cannabis plant, or a resinous extract of it (cannabis resin), typically smoked or “vaped,” transderman administration and/or orally consumed.

~~(c)~~ ~~(b)~~ “Common Area” means every Enclosed Area and Unenclosed Area of a Multi-Unit Residence that residents of more than one Unit of that Multi-Unit Residence are entitled to enter or use, including, for example, halls, paths, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, restrooms, laundry rooms, cooking areas, and eating areas.

~~(d)~~ ~~(c)~~ “Dining Area” means any area, including streets and sidewalks, that is available to or customarily used by the general public or an Employee, and that is designed, established, or regularly used, for consuming food or drink.

~~(e)~~ ~~(d)~~ “Electronic Smoking Device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic Smoking Device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

(fe) “Employee” means any Person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer.

(gf) ——— “Employer” means any Business or Nonprofit Entity that retains the service of one or more Employees.

(hg) “Enclosed Area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has

(1) any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or

(2) four (4) walls or other vertical constraints to airflow including, but not limited to, vegetation that exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

(i) “Landlord” means any person who owns property for rent for residential use, any person who rents residential property, and any person who manages such property, except that “landlord” does not include a master tenant who sublets a unit as long as the master tenant sublets only a single unit of a multi-unit residence.

(j) “Minor” shall mean any individual who is less than eighteen (18) years of age.

(kh) “Multi-Unit Residence” means property containing two (2) or more Units except the following specifically excluded types of housing:

(1) a hotel or motel that meets the requirements of California Civil Code section 1940(b)(2);

(2) a mobile home park;

(3) a campground;

~~(4) a marina or port;~~

~~(45)~~ a single-family home;

(56) a single-family home with a detached or attached in-law or second ~~u~~Unit.

(l) “No Smoking Sign” means a sign containing the words “No Smoking” or the international “No Smoking” symbol (a pictorial representation of a burning cigarette in a red circle with a red bar across it.)

(ni) “Nonprofit Entity” means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a Nonprofit Entity within the meaning of this article.

(o) “Patron” means a person who buys the goods or uses the services offered by an establishment.

(p) “Person” means any natural person, cooperative association, Employer, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.

(q) “Place of Employment” means any area under the legal or de facto control of an Employer that an Employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation.

(r) “Public Place” means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

(sm) “Reasonable Distance” means a distance of twenty-five (25) feet in any direction from an area in which Smoking is prohibited.

(tn) “Recreational Area” means any area, including streets and sidewalks, that is publicly or privately owned and open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement parks, and beaches.

(ue) “Service Area” means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more Persons to

receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term “Service Area” includes but is not limited to areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.

(~~v~~) “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine *and* the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, Electronic Smoking Device vapors, marijuana smoke, and crack cocaine smoke.

(~~w~~) “Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.

(~~x~~) “Tobacco Product” means:

(1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether Smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and

(2) Any Electronic Smoking Device (including, but not limited to Vape pens).

(3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

(~~y~~) “Unenclosed Area” means any area that is not an Enclosed Area.

(~~z~~) ——— “Unit” means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use Enclosed Area or Unenclosed Area, such as, for example, a private balcony, porch, deck, or patio. “Unit” includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in

a single room occupancy (“SRO”) facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit.

(AA) “Vape” means to inhale vapor through the mouth from a usually battery powered-operated electronic device that heats up and vaporizes a liquid or solid.

Sec. ____ (*2). PROHIBITION OF SMOKING AND TOBACCO PRODUCT USE IN ENCLOSED PLACES

(a) Smoking and the use of Tobacco Products is prohibited in the Enclosed Areas of the following places within the City of Palm Springs:

(1) Places of Employment;

(2) Other Businesses that have a common or shared air space with an Enclosed Area in which smoking is prohibited by law, such as, without limitation, openings, cracks, air ventilation systems, doorways, hallways, and stairways. Notwithstanding any other provision, the fact that Smoke enters one Enclosed Area from another Enclosed Area is conclusive proof that the areas share a common or shared air space;

(3) Public Places; and

(4) Common Areas of Multi-Unit Residences.

(b) Smoking and the use of Tobacco Products is prohibited by this article in all Enclosed Areas exempted by the California smoke-free workplace law (Labor Code section 6404.5(d), as that section may be amended from time to time) except as provided below.

(1) Smoking is not restricted by this subsection in up to ten percent (10%) of guestroom accommodations in a hotel, motel, or similar transient lodging establishment that meets the requirements of California Civil Code section 1940(b)(2) if the hotel or motel permanently designates particular guestrooms as nonsmoking rooms such that ninety percent (90%) or more of guestrooms are permanently nonsmoking and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent “No Smoking” signage shall be placed in nonsmoking guestrooms.

(2) Smoking inside a Tobacco Shop is not prohibited by this subsection if: (a) the Tobacco Shop does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises; (b) the Tobacco Shop

prohibits minors from entering the store at all times; and (c) the premises of the Tobacco Shop is an independent freestanding building unattached to any other building, establishment, or use. For the purposes of this exception, “Tobacco Shop” means any tobacco retailer that derives more than seventy-five percent (75%) of gross sales receipts from the sale or exchange of Tobacco Products and tobacco paraphernalia.

(3) Smoking in a theatrical production by the actors is not prohibited by this subsection if Smoking is an integral part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of Smoking in an effective way to a reasonable member of the anticipated audience.

Sec. ____ (*3). PROHIBITION OF SMOKING AND TOBACCO PRODUCT USE IN UNENCLOSED AREAS

(a) Smoking and the use of Tobacco Products is prohibited in the Unenclosed Areas of the following places within the City of Palm Springs:

(1) Recreational Areas;

(2) Service Areas;

(3) Dining Areas;

(4) Places of Employment;

(5) Common Areas of Multi-Unit Residences provided, however, that a Person with legal control over a Common Area may designate a portion of the Unenclosed Area of the Common Area as a designated Smoking area if the area meets all of the following criteria:

(i) the area must be located a Reasonable Distance from any Unit or Enclosed Area where Smoking is prohibited by this article or other law; by binding agreement relating to the ownership, occupancy, or use of real property; or by designation of a Person with legal control over the property. In the case of a nonsmoking area created by agreement or designation, this provision does not apply unless the Person designating the Smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A Person with legal control over a designated Smoking area may be obliged to modify, relocate, or eliminate that

as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established;

- (ii) the area must not include, and must be a Reasonable Distance from, Unenclosed Areas primarily used by children and Unenclosed Areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, school campuses, and sandboxes;
- (iii) the area must be no more than ten percent (10%) of the total Unenclosed Area of the Multi-Unit Residence for which it is designated;
- (iv) the area must have a clearly marked perimeter;
- (v) the area must be identified by conspicuous signs;
- (vi) the area must be completely within an Unenclosed Area; and
- (vii) the area must not overlap with any Enclosed or Unenclosed Area in which Smoking is otherwise prohibited by this article or other provisions of this Code, state law, or federal law; and

(6) Common Areas of Home Owner Associations, Planned Urban Developments, and Common Interest Community Spaces; and

(7) Other Public Places, when being used for a public event, including but not limited to a farmers' market, parade, craft fair, festival, or any other event open to the general public.

(b) Nothing in this article prohibits any Person, Employer, or Nonprofit Entity with legal control over any property from prohibiting Smoking and Tobacco Product use on any part of such property, even if Smoking or the use of Tobacco Products is not otherwise prohibited in that area.

(c) The Director of Community and Economic Development or his/her designee shall conduct an ongoing educational program to explain and clarify the purposes and requirements of this article, as well as to provide guidance to Persons, Employers, and Nonprofit Entities about compliance. However, lack of such education shall not be a defense to a violation of this article.

Sec. ____ (*4). REASONABLE SMOKING DISTANCE REQUIRED

- (a) Smoking in all Unenclosed Areas shall be prohibited within a Reasonable Distance from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited.
- (b) Smoking in Unenclosed Areas shall be prohibited within a Reasonable Distance from any Unenclosed Areas in which Smoking is prohibited under Sec. ____ (*3) of this article.
- (c) The prohibitions in subdivisions (a) and (b) shall not apply to Unenclosed Areas of private residential properties that are not Multi-Unit Residences.

Sec. ____ (*5). OTHER REQUIREMENTS AND PROHIBITIONS

- (a) No Person, Employer, or Nonprofit Entity shall knowingly permit Smoking or the use of Tobacco Products in an area which is under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law.
- (b) No Person, Employer, or Nonprofit Entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that Person, Employer, or Nonprofit Entity and in which Smoking or the use of Tobacco Products is prohibited by law, including, without limitation, within a Reasonable Distance required by this article from any area in which Smoking or the use of Tobacco Products is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any provision of this article.
- (c) No Person shall dispose of used Smoking or Tobacco Product waste within the boundaries of an area in which Smoking or Tobacco Product use is prohibited, including within any Reasonable Distance required by this article.
- (d) A Person, Employer, or Nonprofit Entity that has legal or de facto control of an area in which Smoking and the use of Tobacco Products is prohibited by this article shall post a clear, conspicuous and unambiguous “No Smoking” and “No Use of Tobacco Products” or “Smoke-free” and “Tobacco-Free” sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less

than one inch in height and shall include the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). Signs shall also indicate the maximum fines allowable. Signs posted on the exterior of buildings to comply with this section shall include the Reasonable Distance requirement set forth in Sec. ___ (*4). At least one sign with the City of Palm Springs phone number to which complaints can be directed must be placed conspicuously in each place in which Smoking is prohibited. For purposes of this section, the City Manager or his / her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City of Palm Springs.

Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of Smoking or the use of Tobacco Products in violation of any other provision of this article.

- (e) No Person, Employer, or Nonprofit Entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another Person who seeks to attain compliance with this article.
- (f) Each instance of Smoking or Tobacco Product use in violation of this article shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this article shall constitute a separate violation.

Sec. ___ (*6). PENALTIES AND ENFORCEMENT.

(a) (a) The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.

(b) It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to refuse to comply with any of its provisions, or to permit any Employee or Patron to violate this chapter.

(a)(c) It shall be unlawful for any person to Smoke in any area where smoking is prohibited under this chapter.

- (b) Each incident of Smoking or use of Tobacco Products in violation of this article is an infraction subject to a fine of up to five hundred dollars (\$500) and/or up to twenty-five (25) hours of monitored community service work or completion of a smoking cessation program or otherwise punishable pursuant to section ___ of this code. Other violations of this article may, at the discretion of the City Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require. Enforcement of this chapter shall be the responsibility of the City Attorney. In addition, any peace officer or code enforcement official also may enforce this chapter.

- (c) Violations of this article are subject to _____ ~~a civil action~~ brought by the City of Palm Springs, punishable by a civil fine not exceeding five hundred dollars (\$500) per violation and/or up to twenty-five (25) hours of monitored community service work or completion of a smoking cessation program.
- (d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this article shall also constitute a violation of this article.
- (e) Any violation of this article is hereby declared to be a nuisance.
- (f) In addition to other remedies provided by this article or by other law, any violation of this article may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- (g) Any Person acting for the interests of itself, its members, or the general public (hereinafter "Private Enforcer") may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this article against any Person who has violated this article two or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment. If there is insufficient or no proof of actual damages for a specific violation, the court shall award one-hundred and fifty dollars (\$150) for each violation as statutory damages.
- (h) Notwithstanding any other provision of this article, a Private Enforcer may bring a civil action to enforce this article only if the following requirements are met:
- (1) The Private Enforcer's civil action is begun more than sixty (60) days after the Private Enforcer has given written notice of the alleged violations of this article to the City Attorney and to the alleged violator; and
 - (2) On the date the Private Enforcer's civil action is filed, no other Person acting on behalf of the City of Palm Springs or the state has commenced or is prosecuting an administrative, civil, or criminal action based upon, in whole or in part, any violation which was the subject of the Private Enforcer's notice; and
 - (3) A Private Enforcer shall provide a copy of his, her, or its action to the City Attorney within seven (7) days of filing it.

(i) Upon a settlement or judgment based upon, in whole or in part, any violation that was the subject of the Private Enforcer’s notice, the Private Enforcer shall give the City Attorney notice of the settlement or judgment and final disposition of the case within thirty (30) days of the date of the settlement or judgment. No settlement by a Private Enforcer of a violation of this article shall be valid or enforceable if, within thirty (30) days of receiving notice of the settlement, the City Attorney determines the settlement to be unreasonable in light of the purposes of this article. Any settlement or judgment that does not meet the requirements of this subsection may be set aside upon motion to a court of competent jurisdiction by the City Attorney.

(j) Except as otherwise provided, enforcement of this article is at the sole discretion of the City. Nothing in this article shall create a right of action in any Person against the City or its agents to compel public enforcement of this article against private parties.

Sec. ____ (*7). OTHER LAWS.

It is not the intention of this article to regulate any conduct where the regulation of such conduct has been preempted by the State of California.

SECTION III. STATUTORY CONSTRUCTION & SEVERABILITY

It is the intent of the City Council of the City of Palm Springs, California, to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any Person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other Person or circumstance. The City Council of the City of Palm Springs, California, hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof independently, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

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