

# HUMAN RIGHTS COMMISSION CITY OF PALM SPRINGS, CALIFORNIA

[www.palmspringsca.gov](http://www.palmspringsca.gov)

## AGENDA

Monday  
December 20, 2021



5:30 p.m.  
Special Meeting

### Mission Statement

*Palm Springs is an inclusive world-class city dedicated to providing excellent and responsive public services to enhance the quality of life for current and future generations.*

Pursuant to Assembly Bill 361, this meeting will be conducted by teleconference and there will be no in-person public access to the meeting location.

- To view/listen/participate in the meeting live, please use the following link:

<https://us02web.zoom.us/j/89755392815?pwd=V2N3bFBjc2pGK3J5Rnh0cUhuajZvQT09>  
or call (669) 900-6833 **Zoom Meeting ID** 897 5539 2815, **Passcode** 346998

- Written public comment may also be submitted to [cityclerk@palmspringsca.gov](mailto:cityclerk@palmspringsca.gov). Transmittal prior to the meeting is required. Any correspondence received during or after the meeting will be distributed to the Board/Commission as soon as practicable and retained for the official record.
- The meeting will be recorded and the audio file will be available from the Office of the City Clerk and will be posted on the City's YouTube channel, as soon as practicable.

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1. **CALL TO ORDER:** Chair Ron deHarte
  2. **ROLL CALL:** Board Members: Hugo Loyola, David Vignolo, Oliver Cleary, Kalina Robles, Terrie Andrade, Glenn Flood, Edwin Ramoran, Vice Chair Donna Shepherd, and Chair Ron deHarte  
  
Student Representative Lilly Hanner

3. **MISSION STATEMENT & GOALS:**

*"The Mission of the Palm Springs Human Rights Commission is to promote and protect the diversity of our community and to improve human relations through education and community awareness."*

Human Rights Commission Goals:

- *To develop community education programs;*
- *To investigate and mediate instances of discrimination of groups or individuals;*
- *To bring persons and groups together in common support of human rights issues;*
- *To acquire the fiscal and human resources necessary to support and accomplish the work of the Commission;*
- *To provide management and coordination for the Commission;*
- *To promote diversity through the appointment of candidates to all city boards and commissions to proportionately reflect the diversity of the population of the City of Palm Springs;*
- *The Commission and each Committee shall develop goals and objectives annually, for adoption by the commission;*
- *The Commission shall work closely with the Mayor, City Council, and City Cabinet and with all other City Commissions and Boards in joint endeavors that support the Commission's mission statement and City's goals and objectives.*

**4. QUORUM:**

**5. PUBLIC COMMENTS:** This time has been set aside for members of the public to address the Human Rights Commission on agenda items; and items of general interest within the subject matter jurisdiction of the Commission. Three (3) minutes is allowed for each speaker. Although the Commission values your comments, pursuant to the Brown Act, it generally cannot take any action on items not listed on the posted agenda. Commissioners will not enter into discussion with speakers, but during Commission Comments, may refer the matter to staff for report and recommendation at a future Commission meeting.

**6. CHAIR COMMENTS:**

**7. APPROVAL OF MINUTES:** Approve minutes from the meeting of November 8, 2021.

**8. ITEMS FOR DISCUSSION/ACTION:**

A. Reports

Executive Report Standing Committee (Chair deHarte, Vice Chair Shepherd)

a. Retreat

Community Relations /Budget/Personnel Report

- a. PSPD LGBT Outreach Liaison (deHarte)
- b. Master Calendar Liaison (Ramoran)
- c. Main Street Liaison (deHarte)
- d. Organized Neighborhoods of Palm Springs Liaison (Vignolo)

Cultural Affairs Report

Desert Highland Gateway Estates Community Association Liaison (Andrade, Flood, Shepherd)

Seniors/People with Disabilities Veterans Affairs Report

- a. Veterans Issues Liaison (Flood,Vignolo)

Youth/Education Affairs Standing Committee

- a. Student Representatives (Hanner, Robles, Shepherd, Vignolo)

Commission Development/Mediation Report

- a. Mediation Liaison (Andrade, Vignolo)

- B. Ad Hoc Committee - Review and approve draft “Smoking Ordinance” (AKA Clean Indoor Air and Health Protection Draft Ordinance (Ramoran).

- C. Community Service Awards Selection

- D. Commissioner, Staff, and Student Comments

- E. Topical Newsworthy Items

**9. AGENDA ITEMS FOR THE NEXT HRC MEETING:**

**10. ANNOUNCEMENTS:**

**11. ADJOURNMENT:** The Commission will adjourn to an adjourned regular meeting Monday, January 10, 2022.

**PUBLIC NOTICES**

Pursuant to G.C. Section 54957.5(b)(2) the designated office for inspection of records in connection with the meeting is the Office of the City Clerk, City Hall, 3200 E. Tahquitz Canyon Way.

It is the intention of the City of Palm Springs to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, or in meetings on a regular basis, you will need special assistance beyond what is normally provided, the City will attempt to accommodate you in every reasonable manner. Please contact the Office of the City Clerk, (760) 323-8204, at least 48 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible.

**AFFIDAVIT OF POSTING**

I, Jay Virata, Director of Community & Economic Development, of the City of Palm Springs, California, hereby certify this Agenda was posted at City Hall before 5:00 p.m., December 16, 2021, and posted on the City’s website as required by established policies and procedures.

/S/ Jay Virata  
Jay Virata  
Community & Economic Development

**Human Rights Commission  
CITY OF PALM SPRINGS, CALIFORNIA**



**FOR APPROVAL**

**MINUTES  
Regular Meeting**

Monday, November 8, 2021  
Virtual Zoom Meeting

1. **CALL TO ORDER:** Commissioner Vignolo called the meeting to order at 5:35p.m.
2. **ROLL CALL:**  
**Present:** Commissioners Andrade, Flood, Loyola, Ramoran, Robles, Vignolo and Student Representative Hanner  
  
**Absent:** Commissioners Clearly, Shepherd, deHarte  
  
**Staff Present:** Jay Virata, Director, Community & Economic Development
3. **MISSION STATEMENT & GOALS:** Commission consensus to proceed with the order of the Agenda without reading the Mission Statement and Goals out loud.
4. **QUORUM:** YES.
5. **PUBLIC COMMENTS:** NONE.
6. **CHAIR COMMENTS:** NONE.
7. **APPROVAL OF MINTUES:** OCTOBER 11, 2021
  - **MOTION BY:** Commissioner Andrade, Second by Commissioner Loyola to accept the minutes as presented.
  - **DISCUSSION:** None.
  - **MOTION CARRIED. 6 YES - 0 NO**
8. **ITEMS FOR DISCUSSION/ACTION:**
  - A. Reports
    - Executive Report Standing Committee (deHarte, Shepherd)
      - a. Retreat – No Report.
  
    - Community Relations Committee/Budget/Personnel Report
      - a. PSPD LGBT Outreach Liaison (deHarte) No Report.
      - b. Master Calendar Liaison (Ramoran)
        - Commissioner Ramoran thanked everyone who walked in the Palm Springs Pride Parade and represented the Human Rights Commission. Congratulations were given to Chair deHarte and Greater Palm Springs Pride for organizing an amazing weekend.
        - Commissioner Ramoran reminded everyone that November is Native American Heritage Month and made a special recognition to the Native American Community everywhere.
        - Suggested the Master Calendar as an opportunity to identify proclamations and communities that have been under or overlooked.
        - Veterans Day and Veterans Day Parade are on Thursday, November 11, 2021 we are requesting volunteer participation to walk in the parade and honor all Veterans on behalf of the Human Rights Commission.
        - The Transgender Day of Remembrance is on Saturday, November 20, 2021. Event details and call for Commissioner commitments will be emailed prior to the 20<sup>th</sup>.

- Commissioner Ramoran confirmed that the Master Calendar is the City Event Calendar online.
- c. Main Street Liaison (deHarte) No Report.
- d. Organized Neighborhoods of Palm Springs Liaison( Vignolo)
- Commissioner Vignolo attended the monthly meeting held on October 12, reported Councilmember Woods announced the City will be holding a Strategic Planning Retreat.
  - Director Virata stated a Planning Session is planned for November 20<sup>th</sup> that might be a closed session meeting and the second meeting is planned for November 30<sup>th</sup> and that may be the public meeting. If Commissioners want to participate in the Strategic Planning Session on November 30<sup>th</sup>, Director Virata emphasized being careful with distinguishing the message being as an individual or saying they represent the Human Rights Commission because that would be something the entire Commission would have taken a position on. He further clarified the Matrix exercise they completed was for the Strategic Planning Session.

#### Cultural Affairs Report

- a. Desert Highland Gateway Estates Community Association (Andrade, Flood, Shepherd)
- Commissioner Flood attended the monthly community meeting. Residents in the Community were not in favor with the City Council vote of 4 to 1 to locate the Homeless Navigation Center close to their neighborhood. Councilmember Garner (District 1) voted No. The Neighborhood Association Secretary asked if there was anything the Human Rights Commission can do regarding the Council Action.
  - As a resident of District 1, Commissioner Flood is concerned with the City Council vote.

#### Seniors/People with Disabilities Veterans Affairs Report

- a. Veterans' issues (Flood, Vignolo)
- Echoed Commissioner Ramoran's comments regarding the Veterans Day Parade and plans to participate with him.

#### Youth/Education Affairs Standing Committee

- a. Student Representatives (Hanner, Robles, Shepherd, Vignolo)
- Commissioner Vignolo reported the Committee had their first inaugural Standing Committee Meeting at 4:30pm today via Zoom. Commissioners Robles, Vignolo, Director Virata and Student Representative Hanner were present; Committee identified areas to focus on, encouraged Commissioners and public to participate during the public comments sections of future meetings.

#### Commission Development/Mediation Report

- a. Mediation Liaison (Andrade, Vignolo)
- Commissioner Andrade received her Mediation Certification; Commissioners Andrade, Flood and Ramoran were identified as the qualified persons who are now able to serve as Mediators should the need arise to serve in that capacity.
- B. Ad Hoc Committee Assignments
- a. Clean Indoor Air and Health Protection Draft Ordinance with Sustainability Commission Update (Ramoran)
- Commissioner Ramoran reported Chair deHarte asked the draft Ordinance item be pulled from the Commission's review. A brief update on the actions Sustainability Commission took last month was shared. It was clarified that no action was needed from the Commission today. Comments and questions ensued among the Commission regarding the update.
- C. Community Service Awards Application Process
- Director Virata introduced the Community Service Awards Nomination Application. Deadline is December 1. Everyone is invited to submit nominations.
  - Ad Hoc Committee was formed to review the recommendations and present at the December meeting. Commissioners Andrade and Robles volunteered to serve on the Ad Hoc Committee.
- D. Commissioner, Staff and Student Comments
- Commissioner Ramoran reminded everyone to get involved with Palm Springs Redistricting 2021. Echoed Commissioners Flood's comments regarding the City Council action impacting

District 1. Would like to see the topic of class disparities brought up into their Agenda.

- Commissioner Andrade commented on the funding opportunity available through the Measure J Community Initiated Projects Application.
- Director Virata clarified that a Special Meeting is required for the Commission to vote on any Measure J Community Initiated Projects Application submissions they would like to submit to by the application deadline.
- **MOTION:** By Commissioner Andrade, Second by Commissioner Ramoran to establish an Ad Hoc Committee to discuss possible submissions for the Measure J Community Initiated Projects Application and present them for vote at a special meeting.
- **DISCUSSION:**
  - Commissioner Andrade, Ramoran and Commissioner Vignolo volunteered to serve on the Ad Hoc Committee.
- It was agreed the Special Meeting date would be November 29 at 5:30p.m.
- **MOTION CALLED TO VOTE:** MOTION: By Commissioner Andrade, Second by Commissioner Ramoran to establish an Ad Hoc Committee consisting of Commissioners Andrade, Ramoran and Vignolo to discuss possible submissions for the Measure J Community Initiated Projects Application and present them for vote at a special meeting. **MOTION CARRIES. 6 YES 0 NO.**

E. Topical Newsworthy Items –

- Commissioner Andrade welcomed the City's new Police Chief Andrew Mills.

9. **AGENDA ITEMS FOR THE NEXT HRC MEETING:** None.

10. **ANNOUNCEMENTS:** NONE.

11. **ADJOURNMENT:**

**MOTION:** By Commissioner Vignolo, Second by Commissioner Robles to adjourn the meeting to a Special Meeting on Monday, November 29, 2021 at 5:30 PM via teleconference. 6 YES 0 No.

**MOTION CARRIES.** Meeting adjourned at 6:35 p.m.

Respectfully submitted,

Annie Rodriguez  
Housing Program Assistant

ORDINANCE NO.

PROPOSED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING CHAPTER 6.10 OF THE PALM SPRINGS MUNICIPAL CODE REGULATING TOBACCO AND CANNABIS PRODUCT USE IN THE CITY

**City Attorney's Summary**

*This ordinance amends the City of Palm Springs Municipal Code smoking regulations to expand the areas in the City where smoking is prohibited, including the smoking of cannabis, and broadens the prohibition on smoking to include, among other things, residential units in multi-unit residences.*

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge; and

WHEREAS, exposure to secondhand smoke has been identified as a health hazard, has negative health impacts, and exposure to secondhand smoke occurs at significant levels outdoors; and

WHEREAS, exposure to secondhand smoke causes death and disease; and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs; and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs with based on review of over 80 peer-reviewed research studies showing that smoke-free policies reduce tobacco use, reduce exposure to secondhand smoke, increase the number of tobacco users who quit, reduce initiation of tobacco use among young people, and reduce tobacco-related illnesses and death; and

WHEREAS, laws restricting electronic smoking devices use have benefits to the public; and

WHEREAS, smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease; and

WHEREAS, cigarette butts are a major and persistent source of litter and pose a health threat to young children; and

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

WHEREAS, exemptions and loopholes in the California Smoke-free Workplace Act disproportionately impact low-income and communities of color; and

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

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

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

WHEREAS, there is broad public recognition of the dangers of secondhand smoke and support for smoke-free air laws; 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; and

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

WHEREAS, there is no Constitutional right to smoke.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES ORDAIN AS FOLLOWS:



SECTION 1. Findings. That the findings and determinations reflected above are true and correct, and are incorporated by this reference herein as the cause and foundation for the action taken by and through this Ordinance.

SECTION 2. Code Amendment. Chapter 6.10 of the Palm Springs Municipal Code is hereby amended to read, in its entirety, as follows:

## **Chapter 6.10 SMOKING PROHIBITED IN CERTAIN AREAS**

### **6.10.010 Purpose of Chapter**

Because smoking of tobacco or cannabis is a danger to health and a cause of material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined places, and in order to serve public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco or cannabis in certain areas.

### **6.10.020 Definitions**

- (a) “Business” means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes.
- (b) “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *cannabis indica*, or *cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from Cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this Chapter, “Cannabis” does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.”
- (c) “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) “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) “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.
- (f) “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.
- (g) “Employer” means any Business or Nonprofit Entity that retains the service of one or more Employees.
- (h) “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.

- (k) “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 single-family home;
  - (5) a single-family home with a detached or attached in-law or second 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.)
- (n) “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 chapter.
- (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.
- (s) “Reasonable Distance” means a distance of twenty-five (25) feet in any direction from an

area in which Smoking is prohibited.

- (t) “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.
- (u) “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, including Cannabis, 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.

#### **6.10.030 Prohibition of Smoking and Tobacco Product use in Enclosed Areas**

(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;

(4) Common Areas in Multi-Unit Residences (common interest and rental); and

(5) Residential Units in Multi-Unit Residences (common interest and rental).

(b) Smoking and the use of Tobacco Products is prohibited by this chapter in all Enclosed Areas exempted by the California smoke-free workplace law (Labor Code section 6404.5(e), 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.

#### **6.10.040 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 chapter 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 chapter 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 chapter 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 chapter, 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 chapter.

#### **6.10.050 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 section 6.10.040 of this chapter.
- (c) The prohibitions in subdivisions (a) and (b) shall not apply to Unenclosed Areas of private residential properties that are not Multi-Unit Residences.

#### **6.10.060 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 chapter 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 chapter.

(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 chapter.

(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 chapter 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 chapter.

(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 chapter.

(f) Each instance of Smoking or Tobacco Product use in violation of this chapter shall constitute a separate violation. For violations other than for Smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

#### **6.10.070 Penalties and Enforcement.**

(a) The remedies provided by this chapter 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.
- (c) It shall be unlawful for any person to Smoke in any area where Smoking is prohibited under this chapter.
- (d) Each incident of Smoking or use of Tobacco Products in violation of this chapter is an infraction subject to: (i) a fine not to exceed five hundred dollars (\$500); (ii) up to twenty-five (25) hours of monitored community service work; (iii) or completion, to the City's satisfaction, of a smoking cessation program. Other violations of this chapter may, at the discretion of the City Attorney, be prosecuted misdemeanors when the interests of justice so require or be subject to an infraction and fine not to exceed five hundred dollars (\$500). 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.
- (e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter subject to an infraction and fine not to exceed five hundred dollars (\$500).
- (f) Any violation of this chapter is hereby declared to be a nuisance.
- (g) In addition to other remedies provided by this chapter or by other law, any violation of this chapter 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.
- (h) Except as otherwise provided, enforcement of this chapter is at the sole discretion of the City. Nothing in this chapter shall create a right of action in any Person against the City or its agents to compel public enforcement of this chapter against private parties.

SECTION 3. Severability. It is the intent of the City Council of the City of Palm Springs, California, to supplement applicable state and federal law, not to duplicate or contradict such law, and not to regulate any conduct regulation of such conduct has been preempted by the State of California. 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.

SECTION 4. Environmental Review. In accordance with the California Environmental Quality Act, the City Council finds that the adoption of this ordinance is exempt from CEQA pursuant to Sections 15308, and 15061(b)(3) of the CEQA Guidelines.

SECTION 5. Effective Date. This ordinance shall become effective 30 days after its adoption.

SECTION 6. Certification. 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.