

RESOLUTION NO. 2014- _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF DESERT HOT SPRINGS ON NOVEMBER 4, 2014, REGARDING A BALLOT MEASURE ASKING: SHALL AN ORDINANCE IMPLEMENTING AN ANNUAL TAX OF _____ DOLLARS (\$_____) PER SQUARE FOOT OF SPACE UTILIZED IN CONNECTION WITH THE CULTIVATION OF MARIJUANA FOR CASUAL/RECREATIONAL USE, FOR THE PURPOSE OF RAISING REVENUE TO FUND GENERAL MUNICIPAL SERVICES, BE ADOPTED?

WHEREAS, due to a confluence of the circumstances as described in the following recitals, the City of Desert Hot Springs ("City") has suffered from significant financial hardship in the last few years; and

WHEREAS, as of February 1, 2012, the State of California officially dissolved all redevelopment agencies within the State, including the former Desert Hot Springs Redevelopment Agency, thereby eliminating redevelopment funds that were used for economic development purposes that formerly produced revenue for the City to pay for general municipal services and developing, installing and maintaining public improvements; and

WHEREAS, the elimination of funding of redevelopment funding for economic development coincided with the national economic "Great Recession"; and

WHEREAS, the City Council previously declared a "Fiscal Emergency" on November 19, 2013, after which employee benefits and holidays were reduced, City staff positions were and continue to be eliminated, with City Hall staff now reduced by more than 70%, most employee salaries were reduced 22% - 35%, several consulting contracts were reduced or eliminated and non-essential spending was cut; and

WHEREAS, since the declaration of the November 2013 Fiscal Emergency, there have been increased costs relating to the California Public Employees' Retirement System (CalPERS), the Skyborne Fire Station and the Police Officers Association lawsuit and other ongoing litigation costs; and

WHEREAS, the City has been awaiting State approval to sell certain properties owned by the Successor Agency to the Former Desert Hot Springs Redevelopment Agency, which has prohibited the influx of revenue from the proceeds of the sale of the subject properties and development of the subject properties which has in turn hindered feasible efforts by the City to generate economic development to increase tax revenue to pay for general municipal services and the development, installation and maintenance of public improvements; and

WHEREAS, the evaluation of property taxes by the County of Riverside has negatively affected tax revenue due to the Successor Agency; and

WHEREAS, it became necessary for the City Council to identify a \$1,600,000.00 in cuts in Fiscal Year 2014-15 in order to maintain the minimum acceptable level of general fund cash of \$1,500,000.00 as of June 30, 2015, which is necessary to make payroll and pay the City's bills between July 1, 2015 and late January 2016 and which without, the City will become fiscally insolvent; and

WHEREAS, the City's need for additional revenue is immediate and will become ever more pressing during this 2014/15 Fiscal Year and in the next fiscal year; and

WHEREAS, in order to mitigate the threat to the public health, safety and welfare, the City Council finds the conditions necessary to warrant the declaration of a fiscal emergency for all legal purposes, including, without limitation, Section 2(b) of Article XIIC of the California Constitution to ensure the City has the resources and opportunities necessary to preserve and protect public health, safety and welfare for the benefit of the residents, property owners, business owners, and visiting public; and

WHEREAS, based on the August 5, 2014, Resolution No. ____ Staff Report prepared by the City Manager, the Administrative Services Director, and City Attorney, input from various City staff and members of the public at the City Council meeting held on August 5, 2014, and the recitals, findings and conclusions set forth in Resolution No. ____, the City Council unanimously determined and declared the existence of a "Fiscal Emergency" within the City of Desert Hot Springs; and

WHEREAS, in Resolution No. ____, the City Council directed City staff to investigate and recommend to the City Council further actions staff believes are necessary to increase revenue and mitigate revenue losses; and

WHEREAS, pursuant to the direction provided to staff in Resolution No. ____, staff recommended that the City Council consider an annual tax on the cultivation of marijuana for casual/recreational use, should such be legalized or decriminalized in California, within the City of Desert Hot Springs for the purpose of raising revenue to pay for the cost of providing general municipal services; and

WHEREAS, under Section 1(a) of Article XIIC of the California Constitution a "general tax" is defined as any tax imposed for general governmental purposes; and

WHEREAS, Section 63742 (a) of the California Government Code requires general taxes to be proposed by ordinance or resolution; and

WHEREAS, both Article XIIC of the California Constitution and Section 53723 of the Government Code require that general taxes be approved by a majority of voters; and

WHEREAS, pursuant to Section 2(b) of Article IIIC of the California Constitution, the election to approve a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government, which may be placed on the regularly scheduled general election ballot by a simple majority vote of the city council of a charter city, such as the City of Desert Hot Springs, pursuant to the holding in the case Traders Sports, Inc. v City of (2001) 93 CA4th 37; and

WHEREAS, the next regularly scheduled general election for the City of Desert Hot Springs is not until November 2015; and

WHEREAS, the November 4, 2014, election would be considered a special election should the City Council vote to add a general tax measure to the November 4, 2014 election ballot; and

WHEREAS, the election to approve a general tax may be consolidated with a non-regularly scheduled general election such as the November 4, 2014 election in cases of emergency declared by unanimous vote of the members of the governing body present when the vote is taken, pursuant to Section 2(b) of Article XIII C of the California Constitution and 75 Op's Cal Atty Gen 47 (1992), citing *Tidewater Southern Ry., Co. v Jordan* (1912) 163 C 105; and

WHEREAS, as set forth above and in Resolution No. _____, the City Council unanimously determined and declared the existence of a fiscal emergency within the City of Desert Hot Springs for all legal purposes, including, without limitation, Article XIII C, section 2(b) of the California Constitution; and

WHEREAS, based on all of the information presented at the August 5, 2014 meeting of the City Council, both written and oral, including the staff reports, minutes, and other relevant materials, the City Council finds that under CEQA Guidelines 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this proposed general tax does not constitute a project under CEQA and therefore review under CEQA is not required.

NOW, THEREFORE, be it resolved by the City Council of the City of Desert Hot Springs as follows:

Section 1. ELECTION

Pursuant to the applicable provisions and holdings, as the case may be, under Sections 1(a) and 2(b) of Article XIII C of the California Constitution, Sections 53720-53730 of the California Government Code; Santa Clara County Local Transp. Auth. v Guardino (1995) 11 C4th 220; Traders Sports, Inc. v City of San Leandro (2001) 93 CA4th 37; Fielder v City of Los Angeles (1993) 14 CA4th 137; Fisher v County of Alameda (1993) 20 CA4th 120; and Tidewater Southern Ry., Co. v Jordan (1912) 163 C 105 and 75 Ops Cal Atty. Gen 47 (1992), the City Council of the City of Desert Hot Springs hereby calls and orders to be held in the City of Desert Hot Springs, a special municipal election of the qualified electors of the City of Desert Hot Springs on November 4, 2014, regarding a ballot measure asking: Shall an ordinance implementing an annual tax of _____ dollars (\$_____) per square foot of space utilized in connection with the cultivation of marijuana, for casual/recreational use, for the purpose of raising revenue to fund general municipal services, be adopted?

Section 2. BALLOT MEASURE

That a ballot measure ("Measure") shall be submitted to the voters on the November 4, 2014, election ballot in the form of the following question:

Medical Marijuana Cultivation Tax. Shall an ordinance implementing an annual tax of _____ dollars (\$_____) per square foot of space utilized in connection with the cultivation of marijuana for casual/recreational use, if legalized or decriminalized in California, for the purpose of raising revenue to fund general municipal services, be adopted?

Section 3. PUBLIC INSPECTION

That the City Clerk shall maintain a copy of the Measure and proposed ordinance and shall make the same available for public inspection upon request.

Section 4. **DEADLINE FOR SUBMISSION OF ARGUMENTS**

That arguments in Favor or Against the Measure shall be filed with the City Clerk of the City of Desert Hot Springs on or before August 18, 2014, after which no arguments for or against the Measure may be submitted to the City Clerk.

Section 5. **ARGUMENTS IN FAVOR**

That the Mayor is hereby authorized to prepare a written argument in favor of the Measure, not to exceed 300 words, for presentation and approval by a majority of the City Council. At the Mayor's discretion, the argument may also be signed by bona fide associations or by individual voters who are eligible to vote.

Section 6. **REBUTTALS**

That rebuttal arguments shall be filed with the City Clerk by August 28, 2014, and shall not exceed 250 words in length.

Section 7. **CITY ATTORNEY ANALYSIS**

That the City Clerk is hereby directed to transmit a copy of the Measure and proposed ordinance to the City Attorney, who shall prepare an impartial analysis of the Measure showing the effect of the Measure on the existing law and the operation of the Measure in accordance with Section 9280 of the Elections Code.

Section 8. **PUBLIC INSPECTION**

(a) That during the period commencing August 19, 2014 and ending on August 28, 2014, the City Clerk shall make available for public inspection the arguments filed For or Against the Measure and the impartial analysis.

(b) That during the period commencing August 29, 2014 and ending September 7, 2014, the City Clerk shall make available for public inspection the rebuttals to the arguments filed For or Against the Measure.

Section 9. **ELECTION RETURNS**

That the County Election Department is hereby authorized to canvass the returns of the election.

Section 10. **PARTY RESPONSIBLE FOR MANAGING ELECTION**

That the Board of Supervisors of the County of Riverside is hereby requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the election.

Section 11. **REIMBURSEMENTS**

That the City of Desert Hot Springs recognizes that costs will be incurred by the County of Riverside in connection with the election and agrees to reimburse the County for any such costs.

Section 12. **CITY CLERK DUTIES**

That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the Election Department of the County of Riverside.

Section 13. **EFFECTIVE DATE**

That this Resolution shall take effect upon its adoption.

Section 14. **CERTIFICATION**

That the City Clerk shall certify to the passage of this Resolution and enter it into the book of original resolutions.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

PASSED, APPROVED AND ADOPTED BY THE DESERT HOT SPRINGS CITY COUNCIL THIS 5TH DAY OF AUGUST, 2014.

Adam Sanchez, Sr., Mayor

Attest:

I, Jerryl Soriano, City Clerk of the City of Desert Hot Springs, do hereby certify that the foregoing Resolution No. 2014-_____ was duly adopted at a regular meeting of the City Council of the City of Desert Hot Springs held on the 5th day of August, 2014, by the following roll call votes:

Councilmembers:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jerryl Soriano, CMC, City Clerk

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney

REVIEWED:

Martin Magana, City Manager

ATTACHMENT
PROPOSED ORDINANCE