Planning Commission
STAFF REPORT

DATE: **June 14, 2016**

TITLE: Discussion on Medical Marijuana Ordinance
PREPARED BY: Jennifer Mizrahi, Assistant City Attorney

I. STAFF RECOMMENDATION

That the Planning Commission discuss items that they would like to see in the Medical Marijuana Ordinance

II. DISCUSSION

a. History of Certain State Laws re Medical Marijuana

On November 5, 1996, California voters approved Proposition 215, the "Compassionate Use Act" of 1996, codified at California Health and Safety Code section 11362.5, the intent of which was to enable persons who are in need of marijuana for medical purposes to obtain and to use it under limited, specified circumstances. The Compassionate Use Act is limited in scope in that it merely provides a defense from criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers.

On January 1, 2004, Senate Bill 420, also known as the "Medical Marijuana Program Act" and codified as California Health and Safety Code section 11362.7 *et seq.*, became law. Pursuant to California Health and Safety Code Section 11362.77(a), a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per patient. In addition, a qualified patient or primary caregiver may maintain no more than six mature or twelve immature marijuana plants per qualified patient unless a doctor authorizes an additional amount. California Health and Safety Code section 11362.71 of the Medical Marijuana Program Act requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. The Medical Marijuana Program Act is also limited in scope in that it establishes a statewide identification program and affords qualified patients and their primary caregivers an affirmative defense to certain enumerated criminal sanctions which would otherwise apply to transporting, processing, administering or distributing marijuana;

On October 9, 2015, Governor Brown signed into legislation the Medical Marijuana Regulation and Safety Act ("MMRSA"), which consists of three pieces of legislation (SB 643, AB 243, and AB 266). MMRSA, which went into effect on January 1, 2016, generally governs the licensing and control of medical marijuana businesses in California.. MMRSA creates a comprehensive statewide licensing system for the commercial cultivation, manufacture, retail sale, transportation, distribution, delivery, and testing of medical cannabis. All licenses must also be approved by local governments. The state has said it will need until January 2018 to set up the necessary agencies, information systems, and regulations to actually begin issuing licenses. In the interim, local governments may choose to adopt new ordinances to permit or license local businesses in preparation for state licensing. Facilities currently operating in

accordance with state and local laws may continue to do so until such time as their license applications are approved or denied.

Neither the Compassionate Use Act, the Medical Marijuana Program Act, nor MMRSA require or impose an affirmative duty or mandate upon local governments to allow, authorize or sanction the establishment or operation of facilities for distribution, cultivation, manufacturing or processing medical marijuana within their jurisdiction. However, without sufficient regulations and standards in effect which are enforceable pursuant to an adopted ordinance, there is a current and immediate threat to the public health, safety, and welfare.

b. Chapter 17.180 of the Desert Hot Springs Municipal Code ("DHSMC")—As Currently Written

Currently, the City of Desert Hot Springs ("City") regulates medical marijuana facilities as they relate to land uses and zoning, in Chapter 17.180 ("Chapter 17.180"). As it stands, medical marijuana facilities include dispensaries and medical marijuana **cultivation** facilities that are owned and operated by bona fide non-profit organizations such as a cooperative or a collective, subject to state law. Chapter 17.180 requires that cultivation and dispensaries obtain a conditional use permit. However, Chapter 17.180 is silent with respect to manufacturing, extraction, distribution, etc. of medical marijuana.

c. Proposed Ordinance to amend Chapter 17.180 of the DHSMC

The proposed Ordinance would create regulations pertaining to medical marijuana dispensaries, cultivation facilities, and manufacturing and distribution facilities (including extraction, testing, etc.). The ordinance would do the following:

1. Create Definitions for terms such as, but not limited to "cultivation," manufacturing", "delivery, "distribution, "dispensary" and "marijuana facility."
2. Create Development Standards
    a. Cultivation would still be restricted to interior only, but specific regulations could be created to allow for cultivation in greenhouses.
    b. Require a sign program.
    c. For Manufacturing Facilities:
        i. Such uses are limited to certain equipment and methods;
        ii. Only Type 6 license (from state) shall be allowed;
        iii. Extraction to be performed from aerial portion of plant;
        iv. Use of propylene glycol or any kind of Class 1 or 11 solvents shall be prohibited;
        v. Control/limit extraction methods, which are CO2, butane, propane or other solvents;
        vi. Extraction must be done in a professional manner only;
        vii. Ventilation systems and ignition controls shall be required;
        viii. Equipment shall exceed applicant state and federal requirements and regulations relating to air, water, health, safety;
        ix. Employment of at least one person with a PhD in chemical sciences to supervise the design, installation and operation of the facility's systems and manufacturing processes shall be mandatory.
    d. Distribution Facilities — Labor Peace Agreements
        i. Any applicant shall enter into a labor peace agreement as defined in California Business & Professions Code Section 19300.5(v).

e. Distribution Facilities – Public Safety.
    i. Owners and/or operators shall be required to Install and maintain security systems and equipment to prevent trespassing, theft and diversion of medical marijuana for unlawful purposes; such systems shall include exterior lighting, an alarm system, and 24-hour, on-site security personnel, tag and trace protocols and video surveillance, and shall be maintained in a working and operative mode at all times.

3. Obtaining and maintaining a CUP and regulatory permit shall continue to be required for ALL medical marijuana cultivation; a Development Agreement shall be required for development of raw land.
4. Cultivation will continue to be restricted to industrial zones only.
5. All applicants must not necessarily be non-profits/collectives.