

ORDINANCE NO. _____

EXTENSION OF AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF ANY MEDICAL MARIJUANA FACILITY, AS DEFINED IN CHAPTER 17.180 OF THE DESERT HOT SPRINGS MUNICIPAL CODE, OR ANY USE OR ACTIVITY RELATED THERETO, FOR PROPERTIES WITH A LAND USE DESIGNATION OF L-I (LIGHT-INDUSTRIAL) AND LOCATED IN THE 207 ACRE AREA NORTH OF THE I-10 FREEWAY, AND WEST OF PALM DRIVE, AND SOUTH OF VARNER ROAD

WHEREAS, pursuant to the authority granted the City of Desert Hot Springs ("City") by Article XI, Section 7 of the California Constitution, the City has the police power to regulate the use of land and property within the City in a manner designed to promote public convenience and general prosperity, as well as public health, welfare and safety; and

WHEREAS, adoption and enforcement of comprehensive zoning regulations and other land use regulations lies within the City's police power; and

WHEREAS, the City currently regulates Medical Marijuana Facilities, as allowed by the Desert Hot Springs Municipal Code ("Municipal Code") Chapter 17.180; and

WHEREAS, Chapter 17.180 currently defines "Medical Marijuana Facility" as collectively any medical marijuana dispensary, medical marijuana cultivation facility, medical marijuana distribution facility, medical marijuana testing facility or medical marijuana manufacturing facility, as those terms are defined therein ("Medical Marijuana Facility" or "Medical Marijuana Facilities" in the plural); and

WHEREAS, current State law which regulates marijuana expressly protects local licensing practices, zoning ordinances, and other local actions taken pursuant to the City's constitutional police power; and

WHEREAS, the local police power includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders; and

WHEREAS, the City Council amended Title 17 "Zoning" of the Municipal Code adding Chapter 17.180 for the purpose of imposing reasonable regulations pertaining to Medical Marijuana Facilities to ensure that qualified patients and their caregivers are afforded safe and convenient access to medical marijuana and medical marijuana products, while at the same time ensuring that such uses do not conflict with the City's General Plan and are not detrimental to public health, safety and welfare; and

WHEREAS, the City Council has yet to adopt an ordinance to regulate any prospective Medical Marijuana Facilities that intend to engage in any activity related to recreational marijuana; and

WHEREAS, Chapter 17.180 allows (with certain entitlements, permits, and licenses) Medical Marijuana Facilities, other than dispensaries, in the City's designated Industrial Districts and no other zoning districts; and

WHEREAS, several people and business entities have expressed an interest in applying for entitlements, permits and licenses for Medical Marijuana Facilities for properties with a land

use designation of I-I (Light-Industrial) and located in the 207 acre area north of the I-10 Freeway, and west of Palm Drive, and south of Varner Road (the "Subject Area"); and

WHEREAS, although Medical Marijuana Facilities are currently allowed (with certain entitlements, permits, and licenses) within Industrial Districts of the City, the Subject Area may not be suited for Medical Marijuana Facility use since the Subject Area, or portions thereof: 1) is a prominent gateway to the City, and 2) could be used for a different land use that depends on convenient freeway access; and

WHEREAS, the City Council anticipates that some may be seeking to establish additional Medical Marijuana Facilities in the Subject Area before a non-urgency ordinance would become effective; and

WHEREAS, if Medical Marijuana Facilities were permitted to be established in the Subject Area without appropriate regulation, such uses might be established in areas that could conflict with the policies of the General Plan (which was made available for review by the City Council by the office of the City Clerk and a copy of which was made available for review), be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding Medical Marijuana Facilities; and

WHEREAS, City staff needs time to develop appropriate zoning regulations, uses, and development standards for the Subject Area; and

WHEREAS, the City Council desires, on an urgency basis, to temporarily prohibit Medical Marijuana Facilities of any kind whatsoever in the Subject Area of the City; and

WHEREAS, California Government Code Section 65858 provides the statutory authority and time limits for interim ordinances prohibiting any uses which may be in conflict with a contemplated general plan, specific plan or a zoning proposal which the City plans to consider, study or intends to study within a reasonable time; and

WHEREAS, Government Code section 36937 provides that the City may adopt an ordinance that takes effective immediately when adopted for the immediate preservation of the public peace, health or safety, providing the ordinance contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the city council; and

WHEREAS, on June 20, 2017, after a duly noticed public hearing, the City Council adopted an Ordinance titled "AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS ADOPTING A MORATORIUM ON THE ESTABLISHMENT OF ANY MEDICAL MARIJUANA FACILITY, AS DEFINED IN CHAPTER 17.180 OF THE DESERT HOT SPRINGS MUNICIPAL CODE, OR ANY USE OR ACTIVITY RELATED THERETO, FOR PROPERTIES WITH A LAND USE DESIGNATION OF L-I (LIGHT-INDUSTRIAL) AND LOCATED IN THE 207 ACRE AREA NORTH OF THE I-10 FREEWAY, AND WEST OF PALM DRIVE, AND SOUTH OF VARNER ROAD ("Underlying Ordinance"); and

WHEREAS, the Underlying Ordinance is set to expire on August 4, 2017; and

WHEREAS, on July 18, 2017, the City Council held a duly noticed public hearing on the this current Ordinance with would extend the Underlying Ordinance 22 months and 15 days from August 4, 2017; and

WHEREAS, pursuant to Government Code Section 65858(d), ten days prior to the expiration of this interim ordinance or any extension, the City Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance ("65858(d) Report"); and

WHEREAS, the 65858 Report is adopted, which is attached to the Staff Report on this item.

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

Section 1. RECITALS

That the above recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. EVIDENCE

That the City Council has considered all of the evidence at its meeting, which includes, but is not limited to, the following:

- (a) The City's General Plan, including updates;
- (b) The City's Municipal Code;
- (c) The staff report; and
- (d) The public comments, both written and oral, received and/or submitted at, or prior to the City Council's consideration of this urgency interim ordinance.

Section 3. FINDINGS

That based on the foregoing recitals and evidence, the City Council finds as follows:

- (a) Current State law which regulates marijuana expressly protects local licensing practices, zoning ordinances, and other local actions taken pursuant to the City's constitutional police power.
- (b) The local police power includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders.
- (c) Several people and business entities have expressed an interest in applying for entitlements, permits and licenses for Medical Marijuana Facilities for properties with a land use designation of I-I (Light-Industrial) and located in the 207 acre area north of the I-10 Freeway, and west of Palm Drive, and south of Varner Road.
- (d) Although Medical Marijuana Facilities are currently allowed (with certain entitlements, permits, and licenses) within Industrial Districts of the City, the Subject Area may not be suited for Medical Marijuana Facility use since the Subject Area, or portions thereof: 1) are prominent gateways to the City, and 2) could be used for a different land use that depends on convenient freeway access.

- (e) The City Council anticipates that some may be seeking to establish additional Medical Marijuana Facilities in the Subject Area before a non-urgency ordinance would become effective.
- (f) If Medical Marijuana Facilities were permitted to be established in the Subject Area without appropriate regulation, such uses might be established in areas that could conflict with the policies of the General Plan (which was made available for review by the City Council by the office of the City Clerk) be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding Medical Marijuana Facilities.
- (g) The City needs to properly plan and develop the zoning, uses, regulations, and development standards that will be within the Subject Area.

Section 4. CONCLUSIONS

That based on the foregoing recitals, evidence and findings, the City Council concludes as follows:

- (a) It is necessary to temporarily suspend the processing of any application or approval of any permit, entitlement or license, for any kind of Medical Marijuana Facility to allow adequate time for the City to consider, study, and enact regulations for Medical Marijuana Facilities for the Subject Area, so that the City Council can properly consider the best uses and proper development standards for the Subject Area.
- (b) That a temporary moratorium will provide the City with time to consider, study, draft, and adopt proper zoning, uses, development standards and regulations regarding the Subject Area in a manner that are consistent with the General Plan and Municipal Code, compatible with surrounding neighborhoods, and in the best interests of the residents of the City.

Section 5. INTERIM MORATORIUM IMPOSED

For a period of Twenty-Two (22) months and Fifteen (15) days from August 4, 2017, commencing on the date of adoption of this Extension of the Underlying Ordinance, or until such time as this ordinance may expire subject to any extension of this ordinance that the City Council may adopt and approve pursuant to Section 65858 of the Government Code, no use permit, variance, building permit, or any other entitlement for use shall be accepted, processed, approved or issued for the establishment or operation of, and no person shall otherwise establish, a "Medical Marijuana Facility" or a use or facility whatsoever related to medical or recreational marijuana within the Subject Area.

Section 6. URGENT NEED

Based on the foregoing recitals, evidence, findings and conclusions which are all deemed true and correct, this interim ordinance is urgently needed for the immediate preservation of the public safety, health, and welfare.

Section 7. ENVIRONMENTAL FINDINGS

The City Council finds that adoption of this Extension to the Underlying Ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Title 14

California Code of Regulations section 15061, subsection (b)(3), in that the proposed ordinance involves a proactive measure to prohibit Medical Marijuana Facilities or any use or facility whatsoever related to medical or recreational marijuana within the Subject Area and does not have the potential to significantly impact the environment. Further, the City Council finds that adoption of this Extension to the Underlying Ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Title 14 California Code of Regulations section 15262 (Feasibility and Planning Studies, inasmuch as the City will be performing studies on the Subject Area.

Section 8. **SEVERABILITY**

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 9. **AMENDING OF BAIL SCHEDULE**

The City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 10. **EFFECTIVE DATE**

This Extension of the Underlying Ordinance is an urgency ordinance for the immediate preservation of the public health and safety and it shall be passed and become effective immediately upon its introduction pursuant to California Government Code Section 36937.

Section 11. **EXPIRATION**

Unless extended in accordance with California Government Code Section 65858, this ordinance shall be of no further force or effect after June 19, 2019, which is Twenty Two (22) months and Fifteen (15) days from August 4, 2017, which is the date of when the Underlying Ordinance would have expired.

The foregoing urgency interim Ordinance was approved by at least four-fifths of the City Council and adopted at a meeting of the City Council held on July 18, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Jerryl Soriano, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

EXHIBIT A

REPORT