

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, AMENDING CHAPTER 17.180 TO INCLUDE RECREATIONAL (ADULT USE).

WHEREAS, the City of Desert Hot Springs ("City") is a charter city organized pursuant to Article XI of the California Constitution; and

WHEREAS, the City adopted an ordinance to allow for manufacturing, testing, and distribution of medical marijuana, in addition to cultivation and dispensing; and

WHEREAS, the City would like to allow similar provisions for adult use/recreational Marijuana Facilities; and

WHEREAS, the Planning Commission held a duly noticed hearing on this Ordinance and recommended that the City Council adopt same; and

WHEREAS, the City Council finds that the adoption of this ordinance is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

WHEREAS, this Chapter is compatible with the general objectives of the General Plan and any applicable specific plan; and

WHEREAS, this Ordinance protects the public health, safety and welfare.

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

Section 1. RECITALS.

The Recitals are hereby incorporated by this reference.

Section 2. AMENDING CHAPTER 17.180 OF THE DESERT HOT SPRINGS MUNICIPAL CODE

Chapter 17.180 of the Desert Hot Springs Municipal Code shall be amended to read as follows:

Chapter 17.180

MARIJUANA FACILITIES OPERATION AND LOCATION

17.180.010. Purpose and Intent.

The intent of this chapter is to regulate all Marijuana Facilities within the City for the purpose of protecting the public health, safety, and welfare, and additionally, to mitigate the cost and burden on the City stemming from local control, oversight, and regulation of Marijuana Facilities.

Nothing in this Chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; or (2) allow any activity relating to the cultivation, manufacturing, testing, distribution or consumption of marijuana that is otherwise illegal under California state law.

17.180.020. Interpretation and Applicability.

Operation of Marijuana Facilities within the City shall be permitted upon the application and approval of both a City-issued Conditional Use Permit pertaining to the location of the facility and a City-issued regulatory permit pertaining to the operation of the facility in accordance with the criteria and procedures set forth in this Ordinance and the City's Municipal Code, upon application and subject to such additional regulations as may be promulgated pursuant to this Chapter.

- a. The cultivation, processing and distribution of marijuana in the City is controlled by the provisions of this Chapter.
- b. Nothing in this Chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution otherwise afforded by California law.
- c. Nothing in this chapter is intended to preclude or otherwise affect the rights of a lessor of real property or any interest therein to restrict, limit, or prohibit any or all marijuana activity by a lessee.
- d. Any Marijuana Facility that has 1) submitted an application to the State licensing authority for a state license, once applications become available, or 2) is in good standing and compliance and/or has been in operation and good standing on or before January 1, 2018, may continue operations until its state license has been approved or denied by the state licensed agency.
- e. Nothing in this chapter is intended to authorize, legalize, or exempt any activity arising out of or conducted in furtherance of the operation of a Marijuana Facility from any law, rule, or regulation that may be applicable to such activity including but not limited to rules and regulations pertaining to environmental, electrical, plumbing, building, construction, land use, labor or employment.

- f. Marijuana Facility business entity organizational status, such as it being a corporation or limited liability company or otherwise, must be compliant with applicable State law.
- g. Nothing in this chapter is intended to authorize, legalize, or exempt any activity arising out of or conducted in furtherance of the operation of a Marijuana Facility from compliance with California law applicable to such activity.
- h. All Marijuana Facilities and any activity arising out of or conducted in furtherance of the operation of a Marijuana Facility shall be subject to the provisions of this chapter regardless of whether the Marijuana Facility or activity existed or occurred prior to adoption of this chapter or any subsequent amendments hereto. The City hereby expressly reserves the right to supplement, modify, amend, repeal, or otherwise alter this chapter, and such changes shall be immediately binding on all Marijuana Facilities operating within the City regardless of when such facility began to operate or when such changes were adopted. Any reference in this chapter to California statutes shall include any regulations promulgated thereunder, and is hereby deemed to include any successor or amended version of the referenced statute or regulation promulgated thereunder.

17.180.030 Definitions.

Words and phrases not specifically defined in this chapter shall have the meanings ascribed to them as follows: in the case of marijuana, the word or phrase shall have the meaning ascribed to it under California Business and Professions Code, pursuant to MAUCRSA.

When used in this Chapter, the following words shall have the meanings ascribed to them in this section. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regulatory provision. Words and phrases not specifically defined in this Chapter shall have the meanings ascribed to them by the following sources:

- a. The CUA of 1996 (California Health and Safety Code Section 11362.5), and as may be amended from time to time;
- b. The MMPA (California Health and Safety Code Sections 11362.7 through 11362.83);
- c. The MAUCRSA (Medicinal and Adult Use Cannabis Regulation and Safety Act), enacted on June 27, 2017, as may be amended from time to time.

“Cannabis or Marijuana” 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” 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 division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis and Marijuana shall be used interchangeable in this Chapter.

“Cannabis concentrate” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

“Cultivator” shall mean shall mean Marijuana Facilities licensed as a Cultivation Site or as a Cultivator pursuant to California Business and Professions Code section 19300 et seq. or pursuant to California Business and Professions Code section 26000 et. seq.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the commercial transfer of cannabis or cannabis products from a state licensed distributor or retailer wherever located, to an adult twenty one years of age or older, qualified patient, or primary caregiver located in the City of Desert Hot Springs, and shall include the use of any technology platform that enables adults twenty one years of age or older, qualified patients, or primary caregivers located in Desert Hot Springs to arrange for or facilitate the commercial transfer of marijuana or marijuana products.

“Dispensary” shall mean Marijuana Facilities licensed as a Dispensary pursuant to California Business and Professions Code.

“Distribution” means the procurement, sale, or transport of marijuana cannabis or cannabis marijuana products either within the City limits, or to and from the City from a place outside the City limits, from a permitted business location of a licensed entity to a permitted business location of another licensed entity marijuana subject to State laws and regulations and subject to the provisions of this Chapter and the City’s Municipal Code.

“Legal parcel” means a parcel of land for which one (1) legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels may at the option of the property owner be counted as a single parcel for purposes of this Chapter.

“Manufacturer” means a person or entity that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or

by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Medicinal cannabis” or **“medicinal cannabis product”** means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

“Marijuana Cultivation Facility” means a facility wherein marijuana is propagated, planted, grown, harvested, dried, cured, graded, labeled, tagged for tracking, or trimmed, or wherein all or any combination of those activities takes place.

“Marijuana Distribution Facility” means any facility or location, the primary function of which is the procurement, sale, and/or transport of marijuana and/or marijuana products between entities operating in strict accordance with State law, as may be amended from time to time, and subject to the provisions of this Chapter and the City’s Municipal Code.

“Marijuana Facility” means collectively any marijuana dispensary, marijuana cultivation facility, marijuana distribution facility, marijuana testing facility or marijuana manufacturing facility, as those terms are defined in this Chapter.

“Manufacturing Facility” means a facility where the production of marijuana concentrate, and/or the preparation, propagation, or compounding of manufactured marijuana, either directly or indirectly or by extraction methods or independently by means of chemical synthesis, or the packaging or repackaging of marijuana or marijuana products, or the labeling or relabeling of its containers, occurs, provided the facility holds a valid marijuana Manufacturing Facility license, a marijuana Regulatory Permit, and a Conditional Use Permit all issued in accordance with this Chapter and the City’s Municipal Code, and provided that the facility will qualify for a valid state when the State of California begins issuing state licenses to marijuana Manufacturers.

“Marijuana Testing Facility” shall mean a facility where test of marijuana includes research and development, product safety, diagnostics, and potency, including laboratory testing.

“Microbusiness,” for the cultivation of cannabis on an area less than 10,000 square feet and to act as a state licensed distributor, Level 1 manufacturer, and retailer under state law, provided such state licensee can demonstrate compliance with all requirements imposed by state law on state-licensed cultivators, distributors, Level 1 manufacturers, and retailers to the extent the state licensee engages in such activities. Microbusiness licenses that authorize cultivation of cannabis shall include the license conditions described in subdivision (b) of Section 26060.1.

17.180.040 Marijuana Dispensaries

- a. **Permitted Locations.** Marijuana Dispensaries shall only be located in any Commercial District in the City.
- b. **Number of plants.** Dispensaries shall not cultivate more than 99 mature flowering marijuana plants on site at any one time.
- c. **Conditional Use Permit/Regulatory Permit Required.** Dispensaries shall obtain both a City-issued conditional use permit and regulatory permit.

17.180.050 Marijuana Cultivation Facilities

- a. **Permitted Locations.** Marijuana Cultivation Facilities involving the cultivation of more than 99 mature flowering marijuana plants shall only be located in any Industrial District in the City.
- b. **Interior Only.** Marijuana cultivation shall be conducted only in the interior of fully enclosed structures, facilities, buildings, or other fully enclosed spaces consistent with the purpose and intent of this Chapter. No marijuana cultivation operations, including harvesting and growing plants at any stage, shall be visible from any public right of way.
- c. **Permits.** Marijuana Cultivation Facilities shall obtain a City-issued conditional use permit and regulatory permit.

17.180.060 Marijuana Manufacturing Facilities

- a. **Permitted Locations.** Marijuana Manufacturing Facilities shall only be located in any Industrial District in the City, subject to the regulations set forth in this Chapter and any additional regulations as may be promulgated hereunder by an ordinance or resolution of the City Council or otherwise pursuant to this Chapter.
- b. **Permits.**
 - 1. Marijuana Manufacturing – Administrative Approval. A duly approved Marijuana Cultivation Facility, with a duly approved Conditional Use Permit, regulatory permit, ~~and a Development Agreement, if applicable,~~ may request modification of the already approved Conditional Use Permit to operate a Marijuana Manufacturing Facility provided the Director of Community Development, or his or her designee, finds all of the following:
 - A. There are no impacts or changes to the following:
 - i. On-site circulation and parking, loading and landscaping;
 - ii. Placement and/or height of walls, fences, and structures;
 - iii. Exterior architectural features, including colors, and/or modification of finished materials that do not alter or compromise the previously approved theme;
 - iv. The density or intensity of a development project;
 - v. Size of structure(s) or expansion of use, other than the use of manufacturing;
 - vi. Existing or approved grade elevations;
 - vii. Paving; and

viii. Hours of operation.

B. The Marijuana Cultivation Facility and its manufacturing use is consistent with the goals, objectives, policies and programs of the general plan;

C. The Marijuana Cultivation Facility and its manufacturing use complies with all applicable zoning and other regulations;

D. The Marijuana Cultivation Facility and its manufacturing use will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity;

E. The location, design and operation of the Marijuana Cultivation Facility and its manufacturing use will be compatible with existing and planned land uses in the vicinity.

Applications for a modification of a Conditional Use Permit under this Section shall be on a form proscribed by the Director and shall be filed with the Department, pursuant to Chapter 17.68 (Applications and Fees) and must be approved by the Director, or his or her designee, who may establish additional conditions to further the intent of this Section. Any modification request which exceeds the prescribed limitations outlined in this Section shall comply with requirements set forth in Section 17.180.060(b)(2). Minor modifications shall not apply when a nonconforming use, structure or site is involved. Marijuana Manufacturing Facility applications under this section may be referred to the planning commission at the discretion of the Director.

2. Marijuana Manufacturing Facilities Not Operating within a duly Existing Marijuana Cultivation Facility. Marijuana Manufacturing Facilities which are not operated within an existing and duly approved Marijuana Cultivation Facility or which results in any additional impact or expansion of use or structure(s) shall obtain a City-issued Conditional Use Permit and regulatory permit.

c. Interior Only. Marijuana manufacturing shall be conducted only in the interior of fully enclosed structures, facilities, buildings, or other fully enclosed spaces consistent with the purpose and intent of this Chapter. No marijuana manufacturing shall be visible from any public right of way.

d. Operational Requirements.

1. Manufacturers are limited to certain equipment, methods, solvents, gases and mediums when creating marijuana extracts.

2. Medical Manufacturing Facilities with a state license of a Type-6 (non-volatile) or a Type 7 (volatile) classification may be allowed to operate under this Chapter.

3. All other methods of extraction shall be conducted in an environment appropriate to the solvent being used, with consideration to proper ventilation and ignition source controls.

4. All equipment, systems and manufacturing processes must meet or exceed all applicable state and federal requirements and regulations regarding air, water, health and safety, and handling, processing and storage of hazardous materials, solvents, gases and waste. No manufacturing facility shall commence operations or be issued any form of certificate of occupancy without first obtaining all required fire, environmental, health and safety,

planning, and building certificates, permits and approvals required under City's Municipal Code and all other applicable county, state and federal regulations.

- e. **PhD Chemist.** As a condition of obtaining a City-issued marijuana regulatory permit and conditional use permit, a licensee of a manufacturing facility desiring to operate under this ordinance shall first verify that the licensee employs or contracts with a person who has a PhD in chemical sciences who shall supervise the design, installation and operation of the facility's systems and manufacturing processes. Such person shall inspect the premises on a quarterly basis and provide such inspection report to the City. The licensee shall submit to the City a written statement that he or she certifies under penalty of perjury that the name of the employee/contractor is true and correct. The employee/contractor shall also submit a written statement that he or she certifies under penalty of perjury his or her educational qualifications and verifying that the supervisor is employed or contracted to supervise the design, installation and operation of the facility's systems and manufacturing processes.

g. **State Regulations.** In the event the State of California implements health and safety regulations applicable to marijuana Manufacturing Facilities, upon implementation of such state regulations, all marijuana Manufacturing Facilities operators shall immediately implement the state regulations. Should there be a conflict between the provisions of this Chapter and the state regulations, the state regulations shall control.

17.180.070 Marijuana Testing Facilities

- a. **Permitted Locations.** Marijuana Testing Facilities shall only be located in any Industrial District in the City.
- b. **Interior Only.** Marijuana testing shall be conducted only in the interior of fully enclosed structures, facilities, buildings, or other fully enclosed spaces consistent with the purpose and intent of this Chapter. No marijuana testing operations shall be visible from any public right of way.
- c. **Permits.** Marijuana Testing Facilities shall obtain a City-issued conditional use permit and regulatory permit.

17.180.080 Marijuana Distribution Facilities

- a. **Permitted Locations.** Marijuana Distribution Facilities shall only be located in Industrial Districts in the City, upon issuance of a conditional use permit and a marijuana regulatory permit issued pursuant to the City's Municipal Code.
- b. **Permits.** Marijuana Distribution Facilities shall obtain a City-issued conditional use permit and regulatory permit.
- c. **Interior Only.** Other than loading, unloading and transportation, all Distribution of marijuana and marijuana products shall be conducted only in the interior of enclosed structures, facilities, or buildings.
- d. **Labor Peace Agreements.** All applicants for a conditional use permit pursuant to this Chapter shall demonstrate that it has already entered

into, and will abide by the terms of a labor peace agreement, as defined in California Business & Professions Code Section 26000 prior to issuance of Certificate of Occupancy

- e. **Public Safety.** All applicants for conditional use permit to operate a marijuana Distribution Facility under this Chapter shall: (a) demonstrate that such facility will be equipped with adequate security installations and systems to prevent trespassing, theft and diversion of marijuana for unlawful purposes, including exterior lighting, an alarm system, and 24-hour, on-site security personnel, tag and trace protocols and video surveillance; and (b) shall maintain such security installations and systems while in operation.

17.180.090 Marijuana Microbusiness

- a. **Permitted Locations.** Marijuana Microbusinesses shall only be located in any Industrial District in the City.
- b. **Interior Only.** Marijuana cultivation for a microbusiness shall be conducted only in the interior of fully enclosed structures, facilities, buildings, or other fully enclosed spaces consistent with the purpose and intent of this Chapter. No marijuana cultivation operations, including harvesting and growing plants at any stage, shall be visible from any public right of way.
- c. **Conditional Use Permit/Regulatory Permit Required.** Microbusinesses shall obtain both a City-issued conditional use permit and regulatory permit.

17.180.100 Marijuana Facilities—Required License and Permits.

- a. In addition to those other requirements which may be imposed pursuant to this Chapter, no person or entity shall engage in marijuana activity or open or operate a Marijuana Facility without possessing and obtaining the following:
 - i. A marijuana regulatory permit issued by the City pursuant to Chapter 5.50 of the City's Municipal Code; and
 - ii. A Conditional Use Permit, pursuant to the conditions set forth in this Chapter and the City's Municipal Code; and
 - iii. Any applicable State-required permit.

The fact that a person or entity possesses other types of state or municipal permits or licenses does not exempt the person or entity from the requirement of obtaining a City-issued conditional use permit to operate a Marijuana Facility.c.

. Notwithstanding any provision of this chapter to the contrary, Marijuana Facilities that do not qualify as one of the Marijuana Facility types expressly regulated by the provisions of this chapter are prohibited from operating anywhere within the City.

17.180.110 Licenses and Permits Applicable to Location.

No person or entity shall locate or operate a marijuana Facility under the authority of a license or permit at any place other than the address of the marijuana Facility as stated in the marijuana regulatory permit issued by the City and the conditional use permit issued pursuant to this Chapter.

17.180.110 Signage and Notices.

In addition to the requirements otherwise set forth in this Chapter, business identification signage for all marijuana Facilities shall conform to the requirements of the City's Municipal Code, including, but not limited to, issuance of a City sign permit.

17.180.120 Compliance with Laws.

- a. It is the responsibility of the owners and operators of all Marijuana Facilities to ensure that such facilities are, at all times, operating in compliance with all applicable federal (not dealing with marijuana) state and local laws and regulations and any additional operating procedures or requirements which may be imposed as conditions of approval of a given marijuana Facility. Nothing in this Chapter shall be construed to authorize any action which violates federal (not dealing with marijuana), state law or local law with respect to the operation of a commercial marijuana business.
- b. Marijuana Facilities shall be permitted only as provided in this Chapter and if not expressly permitted by this Chapter, shall be prohibited.
- c. Any person or entity operating a marijuana Facility shall at all times remain in compliance and operate in accordance with the applicable provisions of this Chapter, the City's Municipal Code, and all applicable State laws and regulations, as may be amended pertaining to marijuana facilities.
- d. Failure to abide by any laws mentioned in this subsection shall constitute a public nuisance and shall subject the marijuana facility to revocation of any and all entitlements, licenses and permits.

17.180.130 Administration and Enforcement.

- a. In addition to the administration of the permitting requirements under this Chapter and the City's Municipal Code, the City Council or its designee may require, as a condition to granting or renewing permits, any information reasonably necessary to implement the intent of this Chapter to ensure that all marijuana is grown, processed, manufactured and distributed in a manner not in conflict with this Chapter, and to ensure that any and all related city taxes are being properly reported and paid.
- b. A conditional use permit, and any modifications thereto as provided in Section 17.180.060, approved for a marijuana Facility may be suspended or revoked for any violation of this Chapter and pursuant to the procedures generally applicable to Conditional Use Permits as set forth in the City's Municipal Code. Violations of this Chapter are subject to administrative, civil, and/or criminal penalties, as set forth in the City's Municipal Code, and remedies for such violations include but are not limited to civil injunctive relief, civil or administrative nuisance abatement actions or proceedings, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies. This Ordinance is adopted to address public health and safety issues, and as such, is expressly intended to be interpreted strictly and enforced rigorously in a manner such as to deter further violations.

Section 3.

SEVERABILITY

That 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 4. **AMENDING OF BAIL SCHEDULE**

That 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 5. **EXECUTION AND CERTIFICATION**

That the City Clerk is directed to do all things necessary to cause the execution of this ordinance immediately upon its adoption and shall thereafter certify to the passage of this ordinance and cause the same to be published according to law.

Section 6. **AMENDMENT**

That this ordinance may be amended from time to time by the City Council and that in the event the State of California passes an adult use marijuana initiative, that the City Council can amend this Ordinance to address said use in the City of Desert Hot Springs.

Section 7. **EFFECTIVE DATE**

That this ordinance shall take effect thirty (30) days after its second reading by the City Council.

That the foregoing Ordinance was approved and adopted at a meeting of the City Council held on _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Scott Matas, Mayor

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

By:

N:\DHSO\0001-01 General\Doc\6056