

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, AMENDING CHAPTER 5.50 "MEDICAL MARIJUANA FACILITIES REGULATORY PERMIT" OF TITLE 5 "BUSINESS LICENSES AND REGULATIONS" OF THE DESERT HOT SPRINGS MUNICIPAL CODE

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

WHEREAS, Chapter 5.50 "Medical Marijuana Facilities Regulatory Permit," of the Desert Hot Springs Municipal Code ("DHSMC") establishes standards for granting permits to Marijuana Facilities within the City; and

WHEREAS, Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), repealed the Medical Marijuana Regulation and Safety Act (California Business and Professions Code sections 19300-19360), and incorporated certain provisions of that act into the Adult Use of Marijuana Act (California Business and Professions Act sections 26000-26211); and

WHEREAS, as a result of the passage of the MAUCRSA, the State of California effectively combined regulations for the use of medical and adult use marijuana into one regulatory scheme located under California Business and Professions Code sections 26000 to 26211; and

WHEREAS, the City adopted an ordinance, codified in Chapter 17.180 of the Desert Hot Springs Municipal Code ("DHSMC") to allow for manufacturing, testing, and distribution of both medical and recreational marijuana, in addition to cultivation and dispensing; and

WHEREAS, DHSMC Chapter 5.50, as currently worded, does not take into account the recent changes to Chapter 17.180 of the DHSMC; and Marijuana Facilities; and

WHEREAS, the City desires to harmonize chapter 5.50 with Chapter 17.180 of the DHSMC to allow, subject to all laws and regulations, Marijuana Facilities that provide marijuana products for medicinal and/or adult (recreational) use purposes and to update DHSMC Chapter 5.50 to set standards for issuing regulatory permits to such Marijuana Facilities; and

WHEREAS, the City intends to update DHSMC Chapter 5.50 to set standards for issuing regulatory permits to Marijuana Facilities that is consistent with the MAUCRSA and all other pertinent laws and regulations; 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 Ordinance protects the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. **RECITALS**

That the foregoing recitals are true and correct and are herein adopted by this reference.

Section 2. **AMENDMENT OF DESERT HOT SPRINGS MUNICIPAL CODE
CHAPTER 5.50**

That Chapter 5.50 ("Medical Marijuana Facilities Regulatory Permit") of Title 2 ("Business Licenses and Permits") of the Desert Hot Springs Municipal Code shall be amended to read as follows:

Chapter 5.50

MEDICAL MARIJUANA FACILITIES REGULATORY PERMIT

5.50.010 Purpose and intent.

Medical Marijuana Facilities shall be permitted, upon application and approval of a regulatory permit in accordance with the criteria and procedures set forth in this code, which include the need to obtain and maintain a conditional use permit validly issued by the City per the code.

5.50.020 **Medical Marijuana Facilities.**

Medical Marijuana Facilities permitted under this chapter include **those facilities that are defined as Marijuana Facilities in Chapter 17.180. 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.**

5.50.030 Definitions.

Words and phrases not specifically defined in this code shall have the meaning ascribed to them as defined in the following sources:

A. The Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5);

B. The Medical Marijuana Program Act (California Health and Safety Code Sections 11362.7 through 11362.83); and

C. The California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008~~2~~.

D. Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code Sections 26000 through 26211).

E. When used in this chapter, the defined terms in Chapter 17.180 of Municipal Code shall have the same meanings for this Chapter 5.50. F.

F. When used in this chapter, references to State law include the laws as may be amended.

G. "Applicant" means any responsible person applying for a permit pursuant to this chapter.

H. "Responsible Person" means any officer, board member, person who will participate in the direction, control or management of, or any person with an ownership stake in, a Marijuana Facility.

I. "Permittee" means any person or entity holding a regulatory permit pursuant to this chapter.

5.50.040 Permits required.

Prior to initiating operations and as a continuing requisite to operating a **medical Marijuana Facility**, the legal representative of the persons wishing to operate a **medical Marijuana Facility** shall first obtain a conditional use permit pursuant to the applicable provisions of this code and then obtain a regulatory permit from the City Manager or designee under the terms and conditions set forth in this chapter. The **applicant or his/her** legal representative shall file an application with the City Manager or designee upon a form provided by the City and shall pay an application fee as established by resolution adopted by the City Council as amended from time to time. An application for a regulatory permit shall include, but shall not be limited to, the following information:

A. An estimate of the size of the group of primary caregivers, ~~and/or~~ **or members of a cannabis cooperative association, if applicable,** who will be served by the **medical Marijuana Facility**.

B. Whether delivery service of **medical** marijuana to any location outside the **medical Marijuana Facility** will be provided and the extent of such service.

C. The address of the location of the **medical Marijuana Facility**.

D. A site plan and floor plan of the **medical Marijuana Facility** denoting all the use of areas of the **medical Marijuana Facility**, including storage, cultivation, exterior lighting and dispensing.

E. A security plan that addresses how the following measures shall be implemented or complied with:

1. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 240 concurrent hours of digitally recorded documentation in a format approved by the City Manager or designee. The cameras shall be in use 24 hours per day, seven days per week. The areas to be covered by the security cameras shall include, but are not limited to, the public areas, storage areas, employee areas, all doors and windows, and any other areas as determined to be necessary by the City Manager or designee.

2. The **medical Marijuana Facility** shall be alarmed with an audible interior and exterior alarm system, unless waived for extenuating circumstances by the City Manager or designee, that is operated and monitored by a recognized security company, deemed acceptable by the City Manager or designee. Any change in the security company shall be subject to the approval of the City Manager or designee. All current contact information regarding the **medical Marijuana Facility**'s security company shall be provided to the City Manager or designee.

3. Entrance to the dispensing, ~~or~~ cultivation, manufacturing, testing, or distribution areas and any storage areas shall be locked at all times, and under the control of medical Marijuana Facility staff.

4. All medical marijuana shall be securely stored, and a reliable, commercial alarm system shall be installed and maintained where the medical marijuana is secured.

5. A licensed security guard, licensed by the California Department of Consumer Affairs, shall be present at the medical Marijuana Facility twenty-four hours a day. If the security guard is to be armed, then the security guard shall possess at all times a valid Security Guard Card and Firearms Permit issued by the California Department of Consumer Affairs.

F. The name and address of the owner and lessor of the real property upon which the medical Marijuana Facility is to be operated. In the event the applicant is not the legal owner of the property, the application must be accompanied with a notarized acknowledgement from the owner of the property that a ~~medical-marijuana collective or cooperative medical Marijuana Facility~~ will be operated on his or her property.

G. Authorization for the City Manager or designee to seek verification of the information contained within the application.

H. Evidence that the organization operating the Marijuana Facility-is duly organized under the applicable laws of the State of California.

H.I. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

I.J. Any such additional and further information as is deemed necessary by the City Manager or designee to administer this section.

5.50.050 Background check.

As allowed under State law, all applicants, responsible persons, and permittees for a regulatory permit for a medical Marijuana Facility, including any management personnel who are responsible for the day-to-day operations and activities of the medical Marijuana Facility shall be required to submit to all information, including fingerprints, required for a Fingerprint-Based criminal history records check conducted by the Desert Hot Springs Police Department.

Any responsible persons and management personnel who will be responsible for the day-to-day operations and activities of the Marijuana Facility hired after a regulatory permit was issued must submit, prior to starting their employment, all information, including fingerprints, required for a criminal history records check conducted by the Desert Hot Springs Police Department.

The City shall request from the State Department of Justice subsequent notification service, pursuant to Section 11105.2 of the Penal Code, for all applicants and management personnel.

5.50.060 Grounds for denial **of a regulatory permit.**

1. The City Manager or designee shall *deny* a *regulatory permit for a Marijuana Facility* upon making any of the following findings:

A. The applicant made one or more false or misleading statements or omissions on the application or during the application process;

B. The *medical Marijuana Facility's is not properly organized under applicable state law, including the Compassionate Use Act, of 1996, if applicable.*

D. The *medical Marijuana Facility* is not permitted in the proposed area; or

E. *The applicant, responsible person, or permittee, is a licensed physician making patient recommendations for marijuana pursuant to Health and Safety Code Section 11362.7.*

F. *The applicant, responsible persons, or permittees has been convicted for an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made. A conviction means a plea of guilty, entry of judgment upon a finding of guilty, or a plea of nolo contendere. An offense is substantially related to the qualifications, functions, or duties of the business for which the application is made includes but is not limited to the following:*

i. A violent felony conviction as defined under Section 667.5(c) of the Penal Code.

ii. A serious felony conviction as defined under Section 1192.7 of the Penal Code.

iii. A felony conviction involving fraud, deceit, or embezzlement.

iv. A felony conviction for the hiring, employing, or using a minor in transporting, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor.

v. A felony conviction for the selling, offering to sell, furnishing, offering to furnish, administering, or giving away any controlled substance to a minor.

vi. A felony conviction for drug trafficking with enhancements pursuant to Health and Safety Code Section 11370.4 or 11379.8.

vii. The applicant or any responsible person or permittee have been sanctioned by the state, a city, a county, or a city and county for unauthorized commercial cannabis activity or had its state license suspended or revoked within the previous three years.

G. *Notwithstanding subsection (F), the City Manager or designee may conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant and management personnel to determine whether the applicant and management personnel are otherwise suitable to be issued a regulatory permit and whether issuing such permit would not compromise public safety.*

H. An applicant shall not be denied a permit if denial is solely based on either of the following:

i. A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or permittee has obtained a certificate of rehabilitation pursuant to Penal Code Section 4852.01 et. seq.

ii. A conviction that was subsequently dismissed pursuant to section 1203.4, 1203.4a, or 1203.41 of the Penal Code or any other provision allowing for dismissal of a conviction.

I. Except as to number vi and vii under subsection (F), where the sentence, including any term of probation, incarceration, or supervised release, is completed for a conviction of possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, such conviction is not considered substantially related, and shall not be the sole ground for denial of a permit. Conviction for any controlled substance felony subsequent to issuance of the permit shall be grounds for revocation of a permit or denial of the renewal of a permit.

J. Any violation of this municipal code.

K. Any other condition specified by law.

5.50.070 Limitations on City's liability.

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any regulatory permit pursuant to this chapter or the operation of any **medical Marijuana Facility** approved pursuant to this chapter. As a condition of approval a regulatory permit as provided in this chapter, the applicant or its legal representative shall:

A. Execute an agreement indemnifying the City from any claims, damages, etc., associated with the operation of the **medical Marijuana Facility**;

B. Maintain insurance in the amounts and of the types that are acceptable to the City Manager or designee;

C. Name the City as an additionally insured on all City required insurance policies;

D. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a regulatory permit; and

E. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a regulatory permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

5.50.080 Additional terms and conditions.

Based on the information set forth in the application, the City Manager or designee may impose reasonable terms and conditions on the proposed operations of the **medical Marijuana Facility** in addition to those specified in this chapter.

5.50.090 Compliance with State law.

All **medical Marijuana Facilities** shall comply fully with all of the applicable restrictions and mandates set forth in State law and Federal law **(excepting those Federal laws dealing with marijuana)**, including without limitation **Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code Sections 26000 through 26211)**, the Compassionate Use Act of 1996, the Medical Marijuana Program Act and the 2008 Attorney General Guidelines.

5.50.100 Hours.

All **medical Marijuana Facilities** may only be open between the hours of 8:00 a.m. and 10:00 p.m. and may operate as many as seven days per week.

5.50.120 Consumable marijuana products.

If consumable **medical** marijuana products (including, but not limited to, lollipops, brownies, cookies, ice cream, etc.) are present on-site or offered for distribution, then the **medical Marijuana Facility** shall secure any approval from the County of Riverside Department of Health Services required for handling food products.

5.50.130 Sales taxes.

All **medical Marijuana Facilities** must pay any applicable sales tax pursuant to Federal, State, and local law.

5.50.140 Point of sale system.

Medical Marijuana Facilities shall have an electronic point of sale system that produces historical transactional data for review by the City Manager or designee for auditing purposes.

5.50.150 Odor control.

Medical Marijuana Facilities shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the **medical Marijuana Facility** that is distinctive to its operation is not detected outside the **medical Marijuana Facility**, anywhere on adjacent property or public rights-of-way, on or about any exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the **medical Marijuana Facility**. As such, **medical Marijuana Facilities** must install and maintain the following equipment or any other equipment which the City Manager or designee determines has the same or better effectiveness:

A. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or

B. An air system that creates negative air pressure between the **medical Marijuana Facility**'s interior and exterior so that the odors generated inside the **medical Marijuana Facility** are not detectable outside the **medical Marijuana Facility**.

5.50.160 Records.

All **medical Marijuana Facilities** shall perform an inventory on the first business day of each month and shall record the total quantity of each form of marijuana on the premises. These records shall be maintained for two years from the date created and shall be made available to the City Manager or designee upon request.

5.50.170 Community relations.

Each **medical Marijuana Facility** shall provide the City Manager or designee with the name, phone number, facsimile number, and email address of an on-site community relations or staff person or other representative to whom the City can provide notice if there are operating problems associated with the **medical Marijuana Facility** or refer members of the public who may have any concerns or complaints regarding the operation of the **medical Marijuana Facility**. Each **medical Marijuana Facility** shall also provide the above information to its business neighbors located within 100 feet of the **medical Marijuana Facility** as measured in a straight line without regard to intervening structures, between the front doors of each establishment.

5.50.180 Compliance.

All **medical Marijuana Facilities** shall fully comply with all the **applicable** provisions of the **Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code Sections 26000 through 26211)**, Compassionate Use Act of 1996, the Medical Marijuana Program Act, the 2008 Attorney General Guidelines, all applicable provisions of this code, and any specific, additional operating procedures and measures as may be imposed as conditions of approval of the regulatory permit.

5.50.190 Inspections and enforcement.

A. Recordings made by security cameras at any **medical Marijuana Facility** shall be made immediately available to the City Manager or designee upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.

B. The City Manager or designee shall have the right to enter all **medical Marijuana Facilities** from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter.

C. Operation of the **medical Marijuana Facility** in non-compliance with any conditions of approval or the provisions of this chapter shall constitute a violation of the municipal code and shall be enforced pursuant to the provisions of this code.

D. The City Manager or designee may summarily suspend or revoke a **medical** marijuana regulatory permit if any of the following, singularly or in combination, occur:

1. The City Manager or designee determines that the **medical Marijuana Facility** has failed to comply with this chapter, **any other applicable provision of the municipal code**, or any condition of approval or a circumstance or situation has been created that would have permitted the City Manager or designee to deny the permit under Section 5.50.030;

2. Operations cease for more than 90 calendar days, including during change of ownership proceedings;

3. Ownership is changed without securing a regulatory permit;

4. The **medical Marijuana Facility** fails to maintain 240 continuous hours of security recordings; or

5. The **medical Marijuana Facility** fails to allow inspection of the security recordings, the activity logs, or the premises by authorized City officials.

5.50.210 Cessation of operations.

In the event a qualified **medical Marijuana Facility** that receives a regulatory permit ceases to operate for any reason, the City Manager or designee shall consider the next qualified applicant on the waiting list placed in order of application and provide an opportunity for new applicants to be considered for a permit.

5.50.230 Violations.

A. Any violation of any of the provisions of this chapter is unlawful and a public nuisance.

B. Any violation of any of the provisions of this chapter shall constitute a misdemeanor violation and upon conviction thereof any violation shall be punishable by a fine not to exceed \$1,000, or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

C. In lieu of issuing a misdemeanor citation, the City may issue an administrative citation, and/or assess an administrative fine of up to \$1,000 for each violation of this chapter pursuant to the procedures set forth in Title 14.

D. A separate offense occurs for each day any violation of this chapter is continued and/or maintained.

E. The prevailing party in any action, administrative proceeding, or special proceeding conducted pursuant to this chapter and associated with the abatement of a public nuisance shall be entitled to recovery of attorney's fees incurred in such action or proceeding. In no action, administrative proceeding, or special proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the city in the action or proceeding.

E.-F. The remedies provided herein are not to be construed as exclusive remedies, and in the event of violation, the City may pursue any proceedings or remedies otherwise provided by law.

Section 3.

SEVERABILITY

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.

REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 5.

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 6.

EFFECTIVE DATE

That this ordinance shall take effect thirty (30) days after its adoption.

Section 7.

CERTIFICATION

That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the ____ day of _____, 2017 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

[SIGNATURES FOLLOW ON THE NEXT PAGE]

ATTEST:

Jerryl Soriano, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

DRAFT