

REPORT TO THE CITY COUNCIL



DATE: February 20, 2018

TITLE: An Ordinance Amending Chapter 17.180 to Include Special Dispensary Entitlements in Certain Circumstances

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RECOMMENDATION

- 1) Staff Report;
- 2) Entertain Questions from the City Council to Staff;
- 3) Open the Public Hearing;
- 4) Take Testimony of those in Favor;
- 5) Take Testimony of those Opposed;
- 6) Take Testimony of those in a neutral position;
- 7) Close the Public Hearing;
- 8) City Council discussion; and
- 9) The Planning Commission unanimously recommends to City Council that the City Council introduce and read by title only, "An Ordinance of the City Council of the City of Desert Hot Springs, California, amending Chapter 17.180 to include special dispensary entitlements in certain circumstances."

DISCUSSION:

Background

The City adopted several ordinances over the past few years to allow for a comprehensive permit and entitlement process for both recreational and medicinal uses of marijuana, including manufacturing, testing, dispensing, cultivation and distribution. All marijuana related uses require that the applicant obtain certain entitlements and permits from the City. In particular, cultivation facilities located in industrial areas, and dispensaries located in commercial areas need both a conditional use permit and regulatory permit to operate in the City.

Proposed Ordinance

Currently, the Desert Hot Springs Municipal Code ("DHSMC") prohibits dispensing marijuana in any zone other than the commercial district, and further prohibits manufacturing of marijuana in a commercial zone. The proposed Ordinance proposes to amend the DHSMC as follows:

1. Allows a Special Dispensary Conditional Use Permit for **Cultivation Facilities with Tasting Rooms** in certain circumstances and pursuant to certain standards. To highlight some of the circumstances in the proposed Ordinance, the Cultivation Facility, among other things would need to meet the following:
 - A. Obtain a Special Dispensary Conditional Use Permit
 - B. Have a separate and designated tasting room
 - C. On-site sales are prohibited
 - D. Off-site sales are allowed to a direct consumer;
 - E. Comply with all state and local law.

2. Allows a Special Dispensary Conditional Use Permit for **Hotels** in certain circumstances and pursuant to certain standards. To highlight some of the circumstances in the proposed Ordinance, the Hotel, among other things would need to meet the following:
 - A. Obtain a Special Dispensary Conditional Use Permit
 - B. No cultivation whatsoever
 - C. Off-site sales are prohibited
 - D. On-site sales are allowed to a direct consumer;
 - E. Comply with all state and local law.
3. Allows a Special Dispensary Conditional Use Permit for **Light Manufacturing** (e.g. - bakeries, infusion uses) in certain circumstances and pursuant to certain standards. To highlight some of the circumstances in the proposed Ordinance, the Light Manufacturing Facility, among other things would need to meet the following:
 - A. Obtain a Special Dispensary Conditional Use Permit
 - B. No cultivation or extraction whatsoever
 - C. On-site sales are prohibited
 - D. Off-site sales are allowed to a direct consumer;
 - E. Comply with all state and local law.
4. Includes a streamlined process for marijuana facilities that have already undergone an entitlement process
5. Creates and defines Light Manufacturing as a land use
6. Creates and defines a Special Dispensary Conditional Use Permit
7. Adds definitions for a more comprehensive marijuana program

The Ordinance provides yet another mechanism for applicants to become engaged in the regulated marijuana industry.

State Licensing

The State has a comprehensive licensing scheme, where the licenses are primarily set forth in the Business and Professions Code. The State licenses include several types, including licenses for cultivation, manufacturing and distribution. For illustration purposes, the following State licenses would be required for applicants should they wish to obtain a Special Dispensary Conditional Use Permit:

- A. Cultivation Facility with Tasting Room. Depending, a Cultivation Facility with a Tasting Room would likely need to obtain the following State licenses 1) a Cultivation License (Type 1 through 5B, depending on the size and kind of cultivation, 2) Type 10-Retailer, and a 3) Type 11 (Distributor for sending their product out to be tested)
- B. Hotel. Depending, a Hotel would likely need to obtain the following State licenses 1) Type 10-Retailer.

- C. Light Manufacturing Facility. Depending, a Light Manufacturing Facility would likely need to obtain the following State licenses 1) a Type 10-Retailer, and a 2) Type N for non-extraction Manufacturing, Type 11 (Distributor for sending their product out to be tested)

EXHIBIT:

- 1) State License Types
- 2) Ordinance

EXHIBIT 1
STATE LICENSE TYPES

Business and Professions Code Section 26050 provides for the following types of licenses.

(a) The license classification pursuant to this division shall, at a minimum, be as follows:

- (1) Type 1—Cultivation; Specialty outdoor; Small.
- (2) Type 1A—Cultivation; Specialty indoor; Small.
- (3) Type 1B—Cultivation; Specialty mixed-light; Small.
- (4) Type 1C—Cultivation; Specialty cottage; Small.
- (5) Type 2—Cultivation; Outdoor; Small.
- (6) Type 2A—Cultivation; Indoor; Small.
- (7) Type 2B—Cultivation; Mixed-light; Small.
- (8) Type 3—Cultivation; Outdoor; Medium.
- (9) Type 3A—Cultivation; Indoor; Medium.
- (10) Type 3B—Cultivation; Mixed-light; Medium.
- (11) Type 4—Cultivation; Nursery.
- (12) Type 5—Cultivation; Outdoor; Large.
- (13) Type 5A—Cultivation; Indoor; Large.
- (14) Type 5B—Cultivation; Mixed-light; Large.
- (15) Type 6—Manufacturer 1.
- (16) Type 7—Manufacturer 2.
- (17) Type 8—Testing laboratory.
- (18) Type 10—Retailer.
- (19) Type 11—Distributor.
- (20) Type 12—Microbusiness.

- 1. (b) With the exception of testing laboratory licenses, which may be used to test cannabis and cannabis products regardless of whether they are intended for use by individuals who possesses a physician's recommendation, all licenses issued under this division shall bear a clear designation indicating whether the license is for commercial adult-use cannabis activity as distinct from commercial medicinal cannabis activity by prominently affixing an "A" or "M," respectively. Examples of such a designation include, but are not limited to, "A-Type 1" or "M-Type 1." Except as specifically specified in this division, the requirements for A-licenses and M-licenses shall be the same. For testing laboratories, the bureau shall create a license that indicates a testing laboratory may test both adult-use and medicinal cannabis.
- 2. (c) A license issued pursuant to this division shall be valid for 12 months from the date of issuance. The license may be renewed annually.
- 3. (d) Each licensing authority shall establish procedures for the issuance and renewal of licenses.

For **Manufacturing**, the licenses are set out in California Code of Regulations Section 40118 below:

§40118. Manufacturing License Categories and Types.

(a) Manufacturing licenses may be issued for either the adult-use market or the medicinal-use market.

(b) The following license types are available from the Department:

(1) "Type 7," for extractions using volatile solvents as defined by Section 40100. A Type 7 licensee may also:

(A) Conduct extractions using nonvolatile solvents or mechanical methods on the licensed premises provided that the extraction process is noted on the application form and the relevant information is provided to the Department pursuant to subsection (b) of Section 40128.

(B) Conduct infusion operations on the licensed premises, provided that the infusion method is noted on the application form and that the relevant information is provided to the Department pursuant to subsection (b) of Section 40128.

(C) Conduct packaging and labeling of cannabis products on the licensed premises.

(2) "Type 6," for extractions using mechanical methods or nonvolatile solvents as defined by Section 40100. A Type 6 licensee may also conduct infusion operations and packaging and labeling of cannabis products on the licensed premises provided that the DPH-17-010E Cannabis Manufacturing Licensing infusion method is noted on the application form and that the relevant information pursuant to subsection (b) of Section 40128 is provided to the Department.

(3) "Type N," for manufacturers that produce edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, but that do not conduct extractions. A Type N licensee may also package and label cannabis products on the licensed premises.

(4) "Type P," for manufacturers that only package or repackage cannabis products or label or relabel the cannabis product container. Manufacturers that engage in packaging or labeling of cannabis products as part of the manufacturing operation do not need to hold a separate Type P license.

Authority: Sections 26012, subdivision (a)(3); 26013 and 26130, Business and Professions Code. Reference: Sections 26012, subdivision (a)(3); 26050, subdivision (a); and 26130, Business and Professions Code.