

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, AMENDING CHAPTER 4.36 "PERMIT AND LICENSE SUSPENSION, MODIFICATION AND REVOCATION PROCEDURES" OF TITLE 4 "CODE ENFORCEMENT" OF THE DESERT HOT SPRINGS MUNICIPAL CODE TO UPDATE THE PROCEDURES FOR THE SELECTION OF HEARING OFFICERS**

**WHEREAS**, the City of Desert Hot Springs ("City") is a municipal corporation and a charter city; and

**WHEREAS**, the City may grant permits and licenses to authorize various businesses and activities within the City; and

**WHEREAS**, such permits and licenses may be suspended, modified, or revoked under the procedures in the Desert Hot Springs Municipal Code ("DHSMC"); and

**WHEREAS**, Chapter 4.36 of the DHSMC describes the general procedures for suspensions, modification, or revocation of licenses and permits, including the selection of hearing officers by contacting the Desert Bar Association to obtain three randomly selected names from a panel of local attorneys and judges willing to serve as hearing officers; and

**WHEREAS**, it has come to the City's attention that the Desert Bar Association no longer maintains a panel of hearing officers or other pool of potential hearing officers; and

**WHEREAS**, in order to protect the due process rights of any person or entity that appeals a suspension, modification, or revocation of a license or permit, Chapter 4.36 of the DHSMC should be amended to ensure the timely and adequate selection of impartial hearing officers and ensure the adequacy of the entire appeals procedure.

**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 CHAPTER 4.36 "PERMIT AND LICENSE SUSPENSION, MODIFICATION AND REVOCATION PROCEDURES" OF TITLE 4 "CODE ENFORCEMENT" OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

Chapter 4.36 ("Permit And License Suspension, Modification And Revocation Procedures") of Title 4 ("Code Enforcement") of the Desert Hot Springs Municipal Code is hereby amended as follows:

**4.36.010 Application.**

The procedures set forth in this chapter apply only to those permits and licenses which are not specifically governed by any other procedures which may be applicable pursuant to any provision of the municipal code, and/or statute, rule, code or regulation.

#### 4.36.020 Duty to prepare and serve notice of action recommendation.

Upon reaching the determination that a specific violation of the municipal code and/or applicable statute, rule, code or regulation warrants suspension, modification or revocation of a permit or license, the City Manager or his or her designee shall prepare and serve a written notice of action recommendation upon the subject permit or license holder.

#### 4.36.030 Contents of notice of action recommendation.

The notice of action recommendation should include all of the following information:

- A. The name of the subject permit or license holder;
- B. The street address or definite location where the violation(s) occurred;
- C. The code section(s) violated;
- D. A description of the conditions or actions which warrant suspension, modification or revocation of the subject permit or license;
- E. The action proposed (i.e., suspension, modification or revocation of the subject permit or license);
- F. A description of any prior action taken by the City to gain compliance with the code with regards to the subject violation(s);
- G. A description of the procedures involved in taking the proposed action, including the license or permit holder's right to attend the hearing on the proposed action; and
- H. The name, title and telephone number of the official making the recommendation.

#### 4.36.040 Service of notice of action recommendation.

The City Manager or his or her designee shall cause a copy of the notice of action recommendation to be provided to the subject permit or license holder by causing a copy of the notice of action recommendation to be delivered to the permit or license holder personally or by causing a copy to be delivered to the permit or license holder by certified mail, postage prepaid, return receipt requested, and addressed to permit or license holder at the address shown on the permit or license.

#### 4.36.050 Proof of service of notice of action recommendation.

Proof of service of the notice of action recommendation shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the notice and retained by the City Manager or his or her designee.

#### 4.36.060 Administrative Hearing Officer.

The Administrative Hearing Officer shall act as the Hearing Officer and conduct all hearings pursuant to the procedures set forth in this chapter, unless otherwise provided under any other applicable provision of the municipal code and/or any applicable statute, rule, code or regulation.

#### 4.36.070 Duties of the Hearing Officer.

The Hearing Officer shall review all evidence, documents, and written testimony and hear all oral testimony submitted by all interested parties at or before the scheduled

administrative hearing and render all decisions and findings in writing to the permit or license holder with a duplicate copy to the issuing official officer. The Hearing Officer may accept, modify or reject the findings and determinations supporting the recommendation.

#### 4.36.080 Limitations on authority of Hearing Officer.

The Hearing Officer's authority to hear and consider the notice of action recommendation shall be limited to only those matters within his or her subject matter jurisdiction. The Hearing Officer shall consider at the administrative hearing only those issues which are relevant to the issues of the hearing. The Hearing Officer shall not have the authority to waive any requirements of the municipal code and/or any applicable statutes, rules, codes or regulations.

#### 4.36.090 ~~Submission to Hearing Officer. Selection of Hearing Officer~~

~~As soon as practicable after service of the notice of action recommendation, the City official responsible for issuing the notice of action recommendation (issuing official) shall provide written notice by first class mail or facsimile to the Desert Bar Association requesting a Hearing Officer.~~

~~The City Manager, or his/her designee, shall select the Hearing Officer to conduct the administrative hearing and ensure the Hearing Officer is an impartial third party who does not possess any interest in the proceeding over which he or she is presiding, nor any pecuniary interest in the outcome thereof.~~

#### ~~4.36.100 Selection of Hearing Officer. Notice to Hearing Officer.~~

~~A. The Desert Bar Association will provide to the issuing official and the subject permit or license holder, a notice listing three randomly selected names of Hearing Officers, who are practicing and retired attorneys and judges who have agreed to join a panel from which Hearing Officers are selected by the Desert Bar Association.~~

~~B. Each party shall have the opportunity to reject one of the three proposed Hearing Officers provided by the Desert Bar Association. In the event that two out of the three listed Hearing Officers are rejected by the parties to the hearing by the deadline stated in the notice, the remaining Hearing Officer shall become the selected Hearing Officer for purposes of presiding over that particular hearing. In the event that only one or none of the three listed Hearing Officers are rejected by the parties to the hearing by the deadline stated in the notice, the first Hearing Officer on the top of the list who has not been rejected shall become the selected Hearing Officer for purposes of presiding over that particular hearing.~~

~~C. Once the Hearing Officer is selected, the City shall contact the Officer to schedule a date, time, and location for the hearing within the time periods required by the municipal code or other law or regulation.~~

#### ~~4.36.100-4.36.110~~ Exceptions.

The procedures adopted in this chapter by the City for the selection of Hearing Officers shall not replace, substitute for, or in any way affect the Administrative Hearing Board processes created by the uniform and national codes adopted by the City and the administrative hearings provided by the uniform and national codes shall be treated separate and apart from the administrative hearing procedures adopted herein.

**4.36.110-4.36.120** Scheduling of administrative hearing—Notice of administrative hearing.

As soon as practicable, but allowing sufficient time for providing notice of the hearing, the Hearing Officer shall fix a date, time and place for the hearing of the appeal and shall instruct the issuing official of the same. The issuing official shall prepare a notice of administrative hearing (hearing notice), which shall be in substantially the same form as follows:

You are hereby notified that a hearing will be held before the Administrative Hearing Officer at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ at the hour of \_\_\_\_ upon the Notice of Action Recommendation served upon you. You may be present at the hearing. You may be, but need not be, represented by an attorney. You may present any relevant evidence at the hearing and you will be given a full opportunity to cross-examine all witnesses testifying against you.

**4.36.120 4.36.130** Service of hearing notice.

The issuing official shall cause a copy of the hearing notice to be provided to the subject permit or license holder either by causing a copy of the notice to be delivered to such person(s) personally or by causing a copy of the notice to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to the permit or license holder at the address shown on the subject permit or license.

**4.36.130 4.36.140** Proof of service of hearing notice.

Proof of service of the hearing notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the hearing notice and retained by the issuing official.

**4.36.140 4.36.150** Issuing ~~official's~~ **officer's** report.

The issuing ~~official~~ **officer** shall prepare an administrative hearing packet for the Hearing Officer to review prior to the hearing. The packet shall include a copy of the notice of action recommendation and a staff report, which should include a description of the violations and any actions taken by the subject permit or license holder subsequent to the service of the notice, a record of conversations or correspondence between the City and the permit or license holder concerning the violations and/or the notice of action recommendation.

**4.36.150 4.36.160** Admissibility of evidence at hearing.

The Hearing Officer shall hear any evidence offered in support of or in protest of the proposed action provided such evidence is relevant to the issues of the hearing. The Hearing Officer has the authority to determine the relevance of any evidence to the hearing and the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy. **The Hearing Officer shall not be limited by the technical rules of evidence.**

**4.36.160 4.36.170** Rights of parties at hearing.

Any party with a legal interest in the subject license or permit who appears at the hearing shall have the following rights:

- A. To call and examine witnesses;
- B. To introduce documentary and physical evidence;

- C. To cross-examine opposing witnesses;
- D. To impeach any witness regardless of which party first called the witness to testify;
- E. To rebut evidence; and
- F. To be represented by anyone who is lawfully permitted to do so.

**4.36.170 ~~4.36.180~~** Failure to attend hearing.

If the subject permit or license holder fails to attend the scheduled hearing, the hearing will proceed without the permit or license holder and he or she will be deemed to have waived his or her rights to be orally heard at the hearing.

**4.36.180 ~~4.36.190~~** Duty to prepare and serve notice of decision—Final decision.

The Hearing Officer shall cause to be prepared and served a written notice of decision upon the subject permit or license holder following the hearing. The decision of the Hearing Officer shall be final.

**4.36.190 ~~4.36.200~~** Form of notice of decision.

The notice of decision shall contain a brief summary of the evidence considered, findings of fact, a determination of the issues presented, and the effective date of the decision.

**4.36.200 ~~4.36.210~~** Time for and method of service of notice of decision.

The notice of decision shall be served upon the subject permit or license holder within 30 days from the date the hearing is deemed closed. The notice of decision shall be served either by causing a copy of the notice to be delivered to the permit or license holder personally or by causing a copy of the notice to be delivered to permit or license holder via certified mail, postage prepaid, return receipt requested, and addressed to permit or license holder at the address shown on the subject permit or license.

**4.36.210 ~~4.36.220~~** Proof of service.

Proof of service of the notice of decision shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the notice of decision and shall be retained by the issuing **official officer**.

**4.36.220 ~~4.36.230~~** Effective date.

The effective date of the decision and order of the Hearing Officer shall be as stated therein.

**4.36.230 ~~4.36.240~~** Expedited judicial review.

Any appeal of an administrative determination by the Hearing Officer involving the suspension, modification or revocation of a permit, license or other entitlement pertaining to expressive conduct protected by the state or federal constitution is eligible for expedited administrative review by the City Council.

**4.36.240 ~~4.36.250~~** Form of appeal.

Any appeal to the City Council of an administrative determination by a Hearing Officer involving the suspension, modification or revocation of a permit, license or other entitlement pertaining to expressive conduct protected by the state or federal Constitution shall be in writing and shall contain the following information:

- A. Name(s) of each appellant;
- B. A brief statement in ordinary and concise language of the specific items protested, together with any material facts claimed to support the contentions of the appellant;
- C. A brief statement in ordinary and concise language of the relief sought;
- D. The reasons why the administrative determination by the Hearing Officer should be rescinded, modified or otherwise set aside; and
- E. The signatures of all parties named as appellants and their mailing addresses.

**4.36.250 ~~4.36.260~~ Processing and scheduling of appeal.**

A. Any appeal to the City Council of an administrative determination by the Hearing Officer involving the suspension, modification or revocation of a permit, license or other entitlement pertaining to expressive conduct protected by the state or federal Constitution (administrative appeal) shall be filed with the City Clerk.

B. The administrative appeal shall be heard and decided by the City Council in a prompt and expedited way at the next regularly scheduled City Council meeting and in no event later than 15 days from the date the written request for appeal was filed with the City Clerk. In the event that the next regularly scheduled City Council meeting will not be conducted within 15 days from the date the written request for appeal was filed with the City Clerk, the City Council shall schedule a special City Council meeting to hear and decide the administrative appeal.

**4.36.260 ~~4.36.270~~ City Council's administrative determination is final.**

Administrative determinations by the City Council to suspend, modify, or revoke a permit, license or other entitlement involving expressive conduct protected by the state Constitution or the First Amendment to the United States Constitution are deemed to constitute final determinations by the City Council which determinations are eligible for expedited judicial review by the Superior Court of California pursuant to the Writ of Mandate procedures set forth in California Civil Procedure Code Sections 1084 et seq.

**4.36.270. Attorney's Fees**

**The prevailing party in any 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 any such proceeding. In no 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 proceeding.**

**Section 4. 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 5.**

**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 6.**

**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 7.**

**EFFECTIVE DATE**

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

**Section 8.**

**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 \_\_\_\_\_, 2018 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