

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, AMENDING CHAPTERS 3.34 AND 3.37 TO ADD SECTIONS 3.34.045 AND 3.37.065 STATING THAT THAT MARIJUANA MANUFACTURING FACILITIES, AS DEFINED BY DESERT HOT SPRINGS MUNICIPAL CODE SECTION ("DHSMC") 17.180.030 AND REGULATED PURSUANT TO DHSMC SECTION 17.180.060, ARE NOT SUBJECT TO THE TAXES AS CONTEMPLATED IN CHAPTERS 3.34 AND 3.37

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

WHEREAS, it has come to the City's attend that various developers and business people have inquired into various local laws and issues related to whether Marijuana Manufacturing Facilities, as defined by Desert Hot Springs Municipal Code Section ("DHSMC") 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, are subject to local taxation; and

WHEREAS, DHSMC Section 3.34.005 as it relates to recreational marijuana imposes taxes as follows, "In the event the casual/recreational use of marijuana is legalized or decriminalized in California, any person or entity legally selling or providing marijuana for casual/recreational use within the City shall pay to the City a monthly tax of 10 percent of its proceeds from such sales or provision;" and

WHEREAS, arguably the terms "or providing" could be held to encompass Marijuana Manufacturing Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, since manufacturing activities are included in the chain of production of marijuana; and

WHEREAS, on March 6, 2018, the City Council agenized an action item as to whether Marijuana Manufacturing Facilities, , as defined by Desert Hot Springs Municipal Code Section ("DHSMC") 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, applicable to both recreational and medical marijuana, are subject to taxation pursuant to Chapters 3.34 and 3.37; and

WHEREAS, the City Council deemed by a majority vote that Marijuana Manufacturing Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, as applicable to both recreational and medical marijuana should not at the time be subject to taxes contemplated in Chapters 3.34 and 3.37 respectively; and

WHEREAS, DHSMC Section 3.34.040 provides in part that the City Council can amend the recreational marijuana tax in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein, without further voter approval; and

WHEREAS, if the City Council repeals any provision of Chapter 3.34, it may subsequently reenact it without voter approval, as long as the reenacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein; and

WHEREAS, DHSMC Sections 3.34.050 and 3.37.070 provide, among other things that the City Manager, or designee, and/or the City Council by ordinance may promulgate regulations to implement Chapter 3.34 and 3.37; and

WHEREAS, DHSMC Section 3.37.005 as it relates to medical marijuana imposes taxes as follows, "Every medical marijuana collective, cooperative, dispensary, operator,

establishment, provider or other type of entity legally selling or providing medical marijuana within the City, consistent with the provisions of the Medical Marijuana Program Act (California Health and Safety Code Section 11362.5 et seq.) shall pay to the City a monthly tax of 10 percent of its proceeds from such sales or provision.”; and

WHEREAS, arguably the terms “or providing” could be held to encompass Marijuana Manufacturing Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, since manufacturing activities are included in the chain of production of marijuana; and

WHEREAS, DHSMC Section 3.37.060 provides in part that the City Council can amend the medical marijuana tax in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein, without further voter approval; and

WHEREAS, if the City Council repeals any provision of Chapter 3.37, it may subsequently reenact it without voter approval, as long as the reenacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein;

WHEREAS, at this time, the City Council desires to amend Chapter 3.34 and 3.37 to explicitly provide that Marijuana Manufacturing Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, are not subject to the taxes in Chapters 3.34 and 3.37, respectively; and

WHEREAS, the equal dignity rule would suggest that the non-implementation of taxes as proposed by this Ordinance be adopted by ordinance;

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, the City Council finds that this ordinance is good for 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 CHAPTER 3.34 “MARIJUANA TAX” OF THE
DESERT HOT SPRINGS MUNICIPAL CODE, TO ADD SECTION
3.34.045**

Section 3.34.045 shall be added to Chapter 3.34 (“Marijuana Tax”) of the Desert Hot Springs Municipal Code as follows:

3.34.045. Marijuana Manufacturing Facilities.

Marijuana Manufacturing Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, and as amended, are not subject to the taxes of this Chapter 3.34.

Section 3.

AMENDMENT OF CHAPTER 3.37 "MEDICAL MARIJUANA TAX" OF THE DESERT HOT SPRINGS MUNICIPAL CODE, TO ADD SECTION 3.37.065

Section 3.37.065 shall be added to Chapter 3.37 ("Medical Marijuana Tax") of the Desert Hot Springs Municipal Code as follows:

3.37.065. Marijuana Manufacturing Facilities.

Marijuana Manufacturing Facilities, as defined by DHSMC Section 17.180.030 and regulated pursuant to DHSMC Section 17.180.060, and as amended, are not subject to the taxes of this Chapter 3.37.

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 immediately pursuant to Government Code Section 36937(d), which is for ordinances related to taxes for the usual and current expenses of the City.

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, CMC, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

DRAFT