

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, AMENDING TITLE 17 TO AMEND VARIOUS SECTIONS OF THE DESERT HOT SPRINGS MUNICIPAL CODE RELATED TO HOUSING, INCLUDING SUPPORTIVE AND TRANSITIONAL HOUSING, EMERGENCY SHELTERS, ACCESSORY DWELLING UNITS, AND OTHER AMENDMENTS TO HARMONIZE WITH STATE LAW.

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

WHEREAS, Title 17 "Zoning," of the Desert Hot Springs Municipal Code ("DHSMC") establishes regulations that define how property in specific geographical zones can be used within the City, and regulates development, within the City's general police powers, as set forth in the California Constitution; and

WHEREAS, while charter cities enjoy additional constitutional freedom to govern their "municipal affairs," and land use and zoning decisions have been consistently classified as a municipal affair, in enacting the legislations referenced below, the legislature found that such matters were a matter of statewide concern, and therefore charter cities were subject to such laws; and

WHEREAS, pursuant to 17.88.020 of the Desert Hot Springs Municipal Code, the City Council directs itself to have a hearing on the proposed Ordinance; and

WHEREAS, the City desires to amend Title 17 (Zoning) of the municipal code to comport with state law pertaining to emergency shelters and supportive and transitional housing; and

WHEREAS, the Governor approved Senate Bill 2 ("SB 2") in 2007, which became effective in January of 2008, which amended Sections 65582, 65583, and 65589.5 of the Government Code; and

WHEREAS, SB 2 amended California's housing element law (Government Code Sections 65582 and 65583) and California's Housing Accountability Act ("HAA") (Government Code Section 65589.5) to require local governments to take specific

zoning actions to encourage the development of emergency shelters and transitional and supportive housing; and

WHEREAS, SB 2, defines “transitional housing” as buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance (Government Code Section 65582(h)); and

WHEREAS, SB 2 defines “supportive housing” as housing with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community (Government Code Section 65582(f)); and

WHEREAS, SB 2 defines “emergency shelter” as housing with minimal supportive services for homeless persons that is limited to occupancy for six (6) months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay; and

WHEREAS, SB 2 clarified that under the HAA, a jurisdiction cannot deny applications for emergency shelters and transitional and supportive housing without making specific evidence-based findings; and

WHEREAS, as amended by SB 2, the purpose of the HAA is to ensure that a local government not reject or make infeasible housing developments, including emergency shelters that contribute to meeting the regional housing need; and

WHEREAS, SB 2 requires transitional and supportive housing to be considered a residential use subject only to those restrictions that apply to other residential dwellings of the same type in the same zone; and

WHEREAS, the City desires to amend and add definitions to Title 17 (Zoning) to comport with SB 2 requirements, which includes amending zones to specifically allow transitional and supportive housing in residential districts as required by State law; and

WHEREAS, the City additionally desires to amend Title 17 (Zoning) of the municipal code to comport with state law pertaining to Accessory Dwelling Units; and

WHEREAS, recent legislation updated regulations associated with Accessory Dwelling Units (“ADU”) (Senate Bill 229, Assembly Bill 4949, Senate Bill 1069, Assembly Bill 229, and Assembly Bill 2406) (collectively, “Recent ADU Laws”), intended to address barriers, streamline approval and expand potential capacity for ADUs, recognizing their unique important in addressing California’s housing needs; and

WHEREAS, an ADU (formerly called a “second unit”) is a secondary dwelling unit with complete independent living facilities for one or more persons and generally takes three forms: (1) detached from primary structure; (2) attached to primary structure; or (3) space within primary residence converted into independent living unit

WHEREAS, among the numerous updates, the Recent ADU Laws make numerous revisions to state law with respect to parking requirements, fire sprinklers, ministerial approval of certain ADU applications, prohibits cities from adopting an ordinance precluding ADUs, and addresses conversions into ADUs; and

WHEREAS, this ordinance updates Title 17 to comport with Recent ADU Laws; and

WHEREAS, the City is required to submit their revised regulations with respect to ADUs to the California Department of Housing and Community development within 60 days after they become effective; and

WHEREAS, the City additionally desires to amend Title 17 (Zoning) of the municipal code to comport with state law pertaining to providing reasonable accommodations to zoning and land use rules, policies or practices; and

WHEREAS, Federal and State law place an affirmative duty on local governments to provide persons with disabilities reasonable accommodations to zoning and land use rules, policies, or practices when such accommodations may be necessary to afford such persons equal opportunity to housing, and Housing Element Law further requires local governments to provide reasonable accommodations for housing for persons with disabilities; and

WHEREAS, federal law defines a person with a disability as any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment; and

WHEREAS, California law applies a broader definition of disability that includes any physical or mental impairment that limits one or more major life activities; and

WHEREAS, both the Fair Housing Act and Fair Employment and Housing Act prohibit discrimination through land use decisions that make housing opportunities for such individuals unavailable; and

WHEREAS, the City desires to add Chapter 17.220 (Reasonable Accommodation) to Title 17 (Zoning) to provide individuals with disabilities reasonable accommodation in rules, policies, practices and procedures that may be necessary to ensure equal access to housing; and

WHEREAS, the City additionally desires to amend Title 17 (Zoning) of the municipal code to comport with state law pertaining to density bonuses; and

WHEREAS, State law pertaining to density bonuses, as set forth in Government Code Section 65916, et seq., has been amended subsequent to the adoption of Municipal Code Section 17.08.080, thus requiring the City to amend the Section to comport with state law; and

WHEREAS, the laws respecting density bonus are a mechanism which allows developers to obtain more favorable local development requirements in exchange for offering to build or donate land for affordable or senior units; and

WHEREAS, a “density bonus” is an amount over and above the maximum allowable residential density under a zoning ordinance or land use element of a city general plan, and all cities must adopt ordinances to facilitate compliance with the density bonus laws; and

WHEREAS, under the statutes, when a developer agrees to construct the requisite percentage of affordable housing units or child care facilities, the city must grant a density bonus or other specified incentive(s) or concession(s) to the developer; and

WHEREAS, the amount of density bonus is set as a sliding scale, based upon the percentage of affordable units at each income level; and

WHEREAS, with some limited exceptions, in addition to required density bonus, cities are also required to provide one or more incentives or concessions to each project which qualifies for density bonus, unless it makes certain findings; and

WHEREAS, a development project qualifying for a density bonus may also be eligible for a waiver or reduction of development standards or maximum parking requirements as cities may not apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives; and

WHEREAS, density bonus law also sets forth certain requirements of (1) affordable rental units and for-sale units, including a requirement that rental units be restricted by an agreement which sets maximum income and rents for such units for a term of 55 years (previously 30 year restriction) on very low or lower income units, and (2) affordable for-sale units must be sold to initial buyer at an affordable housing cost, as defined in the statutes, and such income and affordability requirements are not binding on resale purchaser; and

WHEREAS, the attached ordinance amends Title 17 (Zoning) to comport with state density bonus law; 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 sections 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance in question may have a significant effect on the environment and Section 15282(h); and

WHEREAS, with respect to amendment to Section 17.08.080 pertaining to density bonus law, this action is not a project within the meaning of CEQA as it is an organizational structure change that will not result in any direct or indirect physical change in the environment.

WHEREAS, on _____, 2019, in accordance with Government Code Section 65856, upon receipt of the Planning Commission recommendation, the legislative body held a public hearing to consider this ordinance; 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 Section 17.04.050 OF THE DESERT HOT SPRINGS MUNICIPAL CODE

a. Section 17.04.050 of the Desert Hot Springs Municipal Code shall be amended to add the following definitions to comply with State Law, and demonstrate that transitional housing is permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone, as required by law, and to read as follows:

“Accessory dwelling unit” means an attached or a detached residential dwelling unit, which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

 An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

 A manufactured home, as defined in Section 18007 of the Health and Safety Code.”

Day Care Center. "Day care center" means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers.

"Supportive Housing" means housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community, or as may be amended via Health and Safety Code Section 50675.14. Supportive housing shall be considered a residential use of property.

"Transitional Housing" means buildings configured as rental housing developments, but operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time which shall be no less than six months, or as may be amended via Health and Safety Code section 50675.2. Transitional housing shall be considered a residential use of property.

"Emergency Shelter" means housing with minimal supportive services for homeless persons that is limited to occupancy for six (6) months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay, or as may be amended via Health and Safety Code section 50801.

b. Section 17.04.050 of the Desert Hot Springs Municipal Code shall be amended to amend the following definitions to comply with State Law, as follows:

"Boarding house" means a structure where lodging and meals for 7 or more boarders is provided for compensation. Boarding House shall not include "Supportive Housing" or "Traditional Housing."

"Community care facility" means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes the following: residential care facility, adult day program, therapeutic day services facility, foster family agency, foster family home, small family home social rehabilitation facility, community treatment facility, full-service adoption agency, noncustodial adoption agency, transitional shelter care facility, transitional housing placement provider, group home, runaway and homeless youth shelter, enhances behavioral supports home, community crisis home, crisis nursery, short-term residential therapeutic program, private alternative boarding school, private alternative outdoor program, and children's crisis residential program, all as defined in Health and Safety Code Section 1502. For purposes of clarity, this definition shall not be inclusive of transitional or supportive housing, as defined elsewhere in this Section. See definition of Residential Facility, below.

Day Care–Facility, Child. “Child day care facility” means a facility which provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes.

Day Care Home, Family. “Family day care home” means a home that regularly provides care, protection, and supervision for 14 or fewer children, in the provider’s own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family day care home or a small family day care home. Day care homes include:

1. “Small Family Day Care Home” means a home that provides family day care for up to six children, or for up to 8 children if the criteria in Section 102416.5(b) are met, including children under the age of 10 years who reside at the home, pursuant to Health and Safety Code 1597.44.
2. “Large Family Day Care Home” means a home that provides family day care to 7 to 14 children, inclusive, including children under the age of 10 years who reside at the home, pursuant to Health and Safety Code 1597.465.

“Family” means a group of individuals living together in a dwelling unit as a single housekeeping unit under a common housekeeping management plan based on an internally structured relationship providing organization and stability.

“Guest house” means living quarters, having no kitchen facilities, located on the same premises with a main building and occupied for the sole and occasional use of members of the family, and temporary guests. This is distinguished from “Residential Facilities” that serve six or fewer persons.

“Multifamily dwelling” means a room or suite of 2 or more rooms, containing kitchen facilities, which is designated for, intended for or occupied by 1 family, and adjacent to other such rooms or suites of rooms, including duplexes, triplexes and other multi-unit configurations. This is distinguished from “Supportive housing” and “Transitional Housing.”

“Residential facility” means a family home, group care facility, or similar facility for 24-hour non-medical care of persons in need of personal services, supervision or assistance essential for sustaining the activities of daily living or for the protection of the individual. A residential facility that serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or persons with mental health disorders, foster care home, guest home, rest home, community residence, or other similar term that implies that the residential facility is a business run for profit or differs in any other way from a family dwelling. Residential facility shall not include

“Senior Congregate Care Housing” means a structure(s) providing residence for a group of senior citizens (60 years of age or more) with central or private kitchen, dining, recreational, etc. facilities with separate bedrooms and/or living quarters. This is distinguished from supportive and traditional housing.

“Supportive Housing” or “Traditional Housing.”

c. The following definitions are removed in their entirety from Section 17.04.050 of the Municipal Code:

“Rest home” means premises used for the housing of and assisted caring for the aged and infirm. There shall be only incidental convalescent care not involving either a nurse or physician residing on the premises. There shall be no surgery, physical therapy or other similar activities.

Section 3. AMENDING CHAPTER 17.08 OF THE DESERT HOT SPRINGS MUNICIPAL CODE

Chapter 17.08 of the Desert Hot Springs Municipal Code shall be amended to read as follows:

Chapter 17.08 RESIDENTIAL DISTRICTS

17.08.020 Permitted, development permitted and conditionally permitted uses.

A. The following list represents those uses in the residential districts which are Permitted (P), subject to a Development Permit (D), a Conditional Use Permit (C) or Prohibited (X):

TABLE 17.08.01 PERMITTED, DEVELOPMENT PERMITTED AND CONDITIONALLY PERMITTED USES

**TABLE 17.08.01
PERMITTED, DEVELOPMENT PERMITTED AND CONDITIONALLY PERMITTED USES**

	R-E	R-L	R-M	R-MH	R-H	R-VS
Residential Uses						
Accessory Dwelling Unit	P	P	P	P	P	P
Community Care Facility (6 or fewer)	P	P	P	P	P	P
Condominium or Townhouse	X	X	D	D	D	D
Day Care Center	X	X	X	X	C	C
Day Care Homes, Family Small Family Day Care Home	P	P	P	P	P	P

Large Family Day Care Home	D	D	D	D	D	D
Dormitories/Fraternity/Sorority	X	X	X	X	C	C
Emergency Shelter	X	X	C	X	P	C
Manufactured Housing	P	P	P	P	P	P
Mobile Home Parks or Subdivisions	X	X	C	C	C	C
Multifamily Dwellings	X	X	P	D	P	D
Parolee/Probationer Homes	C	C	C	C	C	C
Planned Residential Development	X	C	C	C	C	D
Residential Facility (6 or fewer)	P	P	P	P	P	P
Senior Citizen/Congregate Care Housing	X	X	X	C	D	D
Single-Family Dwellings	P	P	P	P	P	P
Supportive Housing	<u>P</u>	<u>P</u>	P	<u>P</u>	P	<u>P</u>
Transitional Housing	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Equestrian Uses						
Stables, Private	D	D	C	X	X	C
Stables, Commercial	C	C	C	X	X	C
Agricultural Uses	C	C	X	X	X	C
Recreational Uses						
Clubhouses	C	C	C	C	C	C
Golf Course	C	C	C	C	C	C
Golf Course Related Facilities	C	C	C	C	C	C
Swimming Pool/Spa	D	D	D	D	D	D
Tennis Court, Private	D	D	D	D	D	D
Trails, Equestrian	P	P	P	P	P	P
Bed & Breakfast	C	C	C	X	X	D
Hotel/Motel/Resort	C	X	X	X	X	D
Accessory Uses						
Antennae, Vertical/Satellite Dish	D	D	D	D	D	D
Fences and Walls	D	D	D	D	D	D
Garage	D	D	D	D	D	D
Guest Houses	D	D	C	C	X	X
Storage	D	D	D	D	D	D
Other Uses						
Churches	C	C	C	C	C	C
Private/Public Utility Facilities	D	D	D	D	D	D
Schools	C	C	C	C	C	C
Other such uses that the Director may find to be similar with those uses previously listed, pursuant to Section 17.04.070(C).						
Home Occupations (Subject to (H) Home Occupation Permit in all residential zones)						
Temporary Uses (Subject to (T) Temporary Use Permit in all residential zones)						
Residential developments of more than 4 units requires a development permit (See Chapter 17.64.010)						

17.08.060 Day care center design standards.

Day care centers are subject to Conditional Use Permit review, pursuant to Section 17.08.020 (Table 17.08.01) and Chapter 17.76. The centers shall be constructed in the following manner:

- A. The facility shall conform to all property development standards of the land use district in which it is located.
- B. Facilities shall not be located within 500 feet of another day care center.
- C. An outdoor play area of no less than 75 square feet per child, but in no case less than 450 square feet in area shall be provided. The outdoor play area shall be located in the rear (non-street) area. Stationary play equipment shall not be located in required side and front yards.
- D. A 6-foot-high solid decorative fence or wall shall be constructed on all property lines, except in the front yard. In the front yard, the open fence shall not exceed 48 inches in height, and a solid wall shall not exceed 42 inches in height. Materials, textures, colors, and design of the fence or wall shall be compatible with on-site development and adjacent properties. All fences or walls shall provide for safety with controlled points of entry.
- E. On-site landscaping shall be consistent with the use and that prevailing in the neighborhood and shall be installed and maintained, pursuant to Chapter 17.56 (Landscaping Standards). Landscaping shall be provided to reduce noise impacts on surrounding properties.
- F. All on-site parking shall be provided pursuant to the provisions of Chapter 17.48 (Off-Street Parking). On-site vehicle turnaround or separate entrance and exit points, and adequate passenger loading spaces shall be provided.
- G. All on-site lighting shall be stationary, directed away from adjacent properties and public rights-of-way, and of an intensity appropriate to the use it is serving.
- H. All on-site signage shall comply with the provisions of Chapter 17.44 (Sign Standards).
- I. The center shall contain a fire extinguisher and smoke detector devices and meet all standards established by the City Fire Marshal.
- J. A center within a residential land use district may operate up to 14 hours per day.
- K. Outdoor activities may only be conducted between the hours of 8:30 a.m. to 8:00 p.m. (Prior code § 159.04.030(2)(B))

17.08.080 Density bonus.

This Section is intended to provide incentives for production of affordable housing, senior housing and development of Child Care Facilities. In enacting this Section, it is the intent of the City to implement the goals, objectives, and policies of the general plan and any applicable specific plans, to address housing needs in the community and ensure consistency between local regulations and California Government Code Section 65915 et seq. (State density bonus law). This section shall apply to all zoning districts where residential developments project of five (5) or more residential units, including mixed-use developments, are proposed and where the applicant seeks and agrees to provide low, very low, senior or moderate income housing units or donate land to the

city in the threshold amounts specified in state density bonus law such that the resulting density is beyond that which is permitted by the applicable zoning. This provision shall apply only to the residential component of a mixed use project and shall not operate to increase the allowable density of the nonresidential component of any proposed project.

A. Application Requirements.

1. Any applicant requesting a density bonus, incentive(s) and/or waiver(s) pursuant to state density bonus law shall provide the city with a written proposal. The proposal shall be submitted prior to or concurrently with filing the planning application for the housing development and shall be processed in conjunction with the underlying application, and be subject to the following provisions:

a. Density Bonus. Prior to the issuance of building permits for any dwelling unit in a development for which "density bonus units" have been awarded or incentives have been received, the developer shall submit documentation which identifies the size type and location of each restricted affordable units and shall enter into a written agreement with the City to guarantee that rental units shall be continually used and available to low- and moderate-income households for 55 years and initial occupants for-sale units that qualified the applicant for the awards of the density bonus are persons and families of very low, low, or moderate incomes, as requires, and that the units are offered at an affordable housing cost. With respect to the for-sale units, the city shall enforce an equity sharing agreement as described in Government Code Section 65915, unless it is in conflict with the requirements of another public funding source of law. The agreement restricting rental units shall extend more than 55 years if required by the Construction or Mortgage Financing Assistance Program, Mortgage Insurance Program, or Rental Subsidy Program. The terms and conditions of the agreement shall run with the land which is to be developed, shall be binding upon the successor in interest of the developer, and shall be recorded in the office of the Riverside County Recorder. The agreement may be executed by the city manager without review of the housing commission, planning commission or city council if the underlying application does not require review and/or approval by those bodies, to the satisfaction of the city attorney. Rent for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. The specific requested density bonus proposal shall evidence that the project meets the threshold for state density bonus law. The proposal shall also include calculations showing the maximum base density, the number/percentage of affordable units and identification of the income level at which such units will be restricted, additional market rate units resulting from the density bonus allowable under state density bonus law and the resulting unit per acre density.

B. Requested Incentive(s). The request for particular incentive(s) shall include documentation evidencing that the requested incentive(s) results in identifiable, financially sufficient and actual cost reductions. The documentation shall be sufficiently detailed to allow the city to verify its conclusions. If the city requires the services of specialized financial

consultants to review and corroborate the analysis, the applicant will be liable for all costs incurred in reviewing the documentation.

C. Requested Waiver(s). The written proposal shall include an explanation of the waiver(s) of development standards requested and why they are necessary to make the construction of the project physically possible. Any requested waivers shall not exceed the limitations provided in Section 17.08.080.F. and to the extent such limitations are exceeded will be considered as a request for an incentive.

D. Fee. Payment of the fee in an amount set by resolution of the city council to reimburse the city for staff time spent reviewing and processing the state density bonus law application submitted pursuant to this chapter.

2. An applicant shall be ineligible for a density bonus or any other incentives or waivers under this Chapter if the housing development displaces qualifying rental dwelling units, unless the development replaces those units in accordance with state law.

B. Amenities Bonus Provision.

1. This provision allows an increase in the maximum permitted density of 15% in only the R-M, R-H, R-MH or R-VS land use zoning districts. Increases of up to 15% may be granted based upon the finding(s) that any proper combination of the following amenities are provided in excess of those required by the applicable land use district:

- a. Architectural features that promote upscale multifamily development;
- b. Additional on-site or off-site mature landscaping and similar improvements which will benefit the project;
- c. Additional useable open space;
- d. Attached garages;
- e. Additional recreational facilities (i.e., clubhouse, play area, pool/jacuzzi, tennis court, etc.); and

2. This amenity bonus provision shall not be used as an addition to the affordable housing density bonus provision. (Prior code § 159.04.030(2)(D))

3. Applications shall be processed in the same manner as set forth above.

C. Density Bonus.

1. "Density bonus" shall have the same meaning as set forth in Government Code Sections 65915 et seq. The amount of the allowable density bonus shall be calculated as provided in state density bonus law.

D. Incentives.

1. The number of incentives granted shall be based upon the number the applicant is entitled to pursuant to state density bonus law.

2. An incentive includes a reduction in site development standards or a modification of zoning code requirements or architectural requirements that result in identifiable, financially sufficient and actual cost reductions. An incentive may be the approval of mixed use zoning in conjunction with a housing project if the mixed use will reduce the cost of the housing development and is compatible with the housing project. An incentive may, but need not be, the provision of a direct financial incentive, such as the waiver of fees.

3. Denial of an incentive is a separate and distinct act from a decision to deny or approve the entirety of the project.

E. Discretionary approval authority retained.

1. The granting of a density bonus or incentive(s) shall not be interpreted in and of itself to require a general plan amendment, zoning change or other discretionary approval. If an incentive would otherwise trigger one of the approvals, when it is granted as an incentive, no general plan amendment, zoning change or other discretionary approval is required. However, if the base project without the incentive requires a general plan amendment, zoning change or other discretionary approval, the city retains discretion to make or not make the required findings for approval of the base project.

F. Waivers

1. A development qualifying for a density bonus may be eligible for a waiver, subject to the provision of this section. A waiver is a modification to a development standard such that construction at the increased density would be physically possible. Modifications to floor area ratio in an amount equivalent to the percentage density bonus utilized shall be allowable as a waiver. Requests for an increase in floor area ratio above that equivalent percentage shall be considered a request for an incentive. Other development standards include, but are not limited to, a height limitation, a setback requirement, an on-site open space requirement, or a parking ratio that applies to a residential development. An applicant may request a waiver of any development standard to make the project physically possible to construct at the increased density. To be entitled to the requested waiver, the applicant must show that without the waiver, the project would be physically impossible to construct. There is no limit on the number of waivers.

G. Design and quality.

1. Density bonus units shall be generally dispersed throughout a development project and shall not differ in appearance from other units in the development. Affordable units shall be constructed concurrently with market rate units and shall be integrated into the project. Affordable units shall be of equal design and quality as the market rate units. Exteriors, including architecture and elevations, and floor plans of the affordable units shall be similar to the market rate units. Interior finishes and amenities may differ from those provided in the market rate units, but neither the workmanship nor the products may be of substandard or inferior quality as determined by the building official. The number of bedrooms in the affordable units shall be consistent with the mix of market rate units.

2. Parking standards shall be modified as allowable under state density bonus law and anything beyond those standards shall be considered a request for an incentive.

17.08.100 Guest house design standards.

Guest houses, which are distinguished from Accessory Dwelling because guest houses do not have kitchen facilities and Accessory Dwelling Units require complete independent living facilities, are subject to Conditional Use Permit review and shall be constructed in the following manner:

- A. All guest houses shall conform to all development standards of the underlying land use district.
- B. There shall be no more than 1 guest house on any lot.
- C. The floor area of the guest house shall not exceed 500 square feet.
- D. The guest house shall not exceed the height of the main dwelling.
- E. There shall be no kitchen or cooking facilities or wet bar facilities within a guest house.
- F. The guest house shall conform to all of the setback regulations outlined in the applicable land use district.
- G. A guest house shall be used only by the occupants of the main dwelling, their non-paying guests, or domestic employees. The guest house shall not be rented.

17.08.120 Manufactured Homes

A. Conditions. A manufactured home may be installed on a foundation on any lot in the City that is zoned to permit the construction of a conventional single-family dwelling, if it meets the following conditions:

- 1. The manufactured home shall be certified under the national Mobilehome Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) and shall bear a California insignia or Federal label as required by section 18550 (b) of the Health and Safety Code.
- 2. The foundation system shall meet the requirements of section 18551 of the Health and Safety Code as amended or applicable.
- 3. The manufactured home shall have a roof overhang of not less than 16 inches with a minimum 12-inch gable overhang, unless it is determined that it is not compatible to the neighborhood in which the manufactured home is being located.
- 4. The manufactured home shall have non-reflecting roofing material and siding material that is compatible with the neighborhood in which the manufactured home is to be located.
- 5. A garage compatible to the neighborhood in which the manufactured home is being installed shall be constructed.
- 6. The manufactured home shall be used only as a single family residential use and shall comply with all the setback and height requirements of the zone in which it is located.

17.08.130 Mobile home park or subdivision design standards.

The intent and purpose of this section is to establish standards for the development of mobile home parks in a manner that will be compatible with the general plan and surrounding uses.

- A. Applicability. Mobile home parks shall be subject to a conditional use permit as noted in Section 17.08.020. Mobile home parks shall be subject to the requirements of the underlying district in which it is located and the development standards identified in this section.

B. Development standards.

1. A mobile home park must conform to the standards and maintain a valid permit in accordance with state laws and regulations, including provisions of the Mobile Home Parks Act, California Health and Safety Code, Division 13, Part 2.1 and the applicable regulations adopted pursuant thereto by the State Department of housing and Community Development.
2. Recreational vehicles, campers and trailers shall not be used as dwelling units within a mobile home park.
3. A mobile home park shall encompass an area of at least five (5) acres.
 4. The density (dwelling units/acre) of a mobile home park shall be subject to the density standards designated in the general plan.
 5. A mobile home park shall provide recreational facilities for the benefit of the residents of the mobile home park.

17.08.170 Accessory dwelling unit.

A. This Section provides for accessory dwelling units on lots developed or proposed to be developed with single-family dwellings, provided they comply with the requirements of this section. Accessory dwelling units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities, including near transit on single family lots.

B. This Section applies to all lots that are occupied or proposed to be occupied with a single family dwelling unit and zoned residential. Accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and are a residential use that is consistent with the existing general plan and zoning designation for the lot.

C. An accessory dwelling unit within an existing space including the primary structure, attached or detached garage or other accessory structure shall be permitted ministerially with a building permit regardless of all other standards within the Chapter if it complies with:

1. Building and safety codes;
2. Independent exterior access from the existing residence; and
3. Fire codes.

D. Accessory dwelling units shall meet the following general development standards:

1. The unit may be rented separately from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence and may be rented.
2. The lot is zoned for residential and contains an existing or proposed, single-family dwelling.
3. The accessory dwelling unit is either attached or located within the living area of the proposed or existing dwelling, or detached from the proposed or existing primary dwelling, and located on the same lot as the proposed or existing dwelling.
4. The total area of the floorspace of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area or 1,200 square feet.

5. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet.

6. Local building code requirements that apply to detached dwellings, as appropriate.

7. No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

8. No setback shall be required for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

9. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence and may employ alternative methods for fire protection.

10. The applicant for a permit issued pursuant to this section must be an owner-occupant.

11. Attached accessory dwelling units shall be located in such a fashion so that it is concealed from public view (specifically the entrance) and shall have matching colors and materials as the main unit.

E. Accessory dwelling units shall be permitted ministerially if all applicable requirements and development standards of this chapter are met and no variances are required.

Section 4. MINISTERIAL APPROVAL OF ACCESSORY DWELLING UNITS

Accessory dwelling units shall be permitted ministerially, in compliance with this Government Code Section 65852.2, within 120 days of application if all applicable requirements and development standards of this chapter are met and no variances are required.

Section 5. AMENDING TITLE 17 OF THE DESERT HOT SPRINGS MUNICIPAL CODE TO ADD CHAPTER 17.220

Chapter 17.220 (Reasonable Accommodation) of the Desert Hot Springs Municipal Code is hereby added to Title 17 (Zoning) as follows:

17.220.010. Purpose

The purpose of this Chapter is to provide a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act in the application of zoning laws and other land use regulations, policies and procedures, and to establish relevant criteria to be used when considering such requests.

17.220.020. Applicability

In order to make specific housing available to an individual with a disability, any person may request a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of his or her choice. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. This Chapter applies only to those persons who are defined as disabled under the Federal Fair Housing Act and the California Fair Employment and Housing Act.

17.220.030. Application requirements

(1) A request for reasonable accommodation shall be filed on the application form provided by the planning department. If necessary to ensure accessibility, the applicant may request an alternative format. The applicant may be the person with the disability or his or her representative. No fee shall be required for a request for reasonable accommodation, but if the project requires another discretionary permit, then the prescribed fee shall be paid for all other discretionary permits. The application shall be signed by the owner of the property and shall provide the following information:

- (a) Applicant's name and contact information;
- (b) Property address;
- (c) Current use of the property;
- (d) Basis for the claim that the individual is considered disabled under Fair Housing Laws;
- (e) The zoning code provision, regulation or policy from which reasonable accommodation is being requested;
- (f) Explanation why the reasonable accommodation is necessary to make the specific property accessible to the individual; and
- (g) Plans showing the details of the proposal.

(2) If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval under this Title (including but not limited to a conditional use permit, variance, or zoning amendment), the application for reasonable accommodation shall be submitted and reviewed at the same time as the related applications.

17.220.040. Review authority

(1) If an application under this Chapter is filed without any accompanying application for another approval, permit or entitlement under this Title, the Director shall make a written determination and either grant, grant with modifications or deny a request for reasonable accommodation. The Director shall engage in an interactive process with the applicant to determine whether there is an alternative accommodation, which does not pose an undue financial or administrative burden on the city, or require a fundamental alteration that would effectively address the applicant's disability-related need, prior to denying a request for reasonable accommodation.

(2) If an application under this Chapter is filed with an application for another approval, permit or entitlement under this Title, it shall be heard and acted upon at the same time

and in the same manner as such other application, and shall be subject to all of the same procedures. The relevant review authority shall engage in an interactive process with the applicant to determine whether there is an alternative accommodation, which does not pose an undue financial or administrative burden on the city, or require a fundamental alteration, that would effectively address the applicant's disability-related need, prior to denying a request for reasonable accommodation.

17.220.050. Findings and decision

(1) Any decision on an application under this Chapter shall be supported by written findings addressing the criteria set forth in this subsection. An application under this Chapter for a reasonable accommodation shall be granted if all of the following findings are made:

- (a) The housing, which is the subject of the request, will be used by an individual disabled under the Federal Fair Housing Act and the California Fair Employment and Housing Act.
- (b) The requested reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Federal Fair Housing Act and the California Fair Employment and Housing Act.
- (c) The requested reasonable accommodation would not impose an undue financial or administrative burden on the City.
- (d) The requested reasonable accommodation would not require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning.

17.220.060. Appeal determination

Any decision of the Director or designee may be appealed by the applicant to the Planning Commission. The appeal shall be made in writing and filed with the Director within 15 days following the final decision. The appeal shall clearly state the reasons for the appeal. Where the request for accommodation is in conjunction with an application for another approval, permit or entitlement under this Title, the appeal procedures for such other approval, permit or entitlement shall control.

17.220.070. Rescission of grants of reasonable accommodation

Any approval or conditional approval of an application under this Chapter may be conditioned to provide for its rescission or automatic expiration under appropriate circumstances.

17.22.080. Discontinuance

If the disabled persons for whom the reasonable accommodation was originally granted vacate the residence to which the reasonable accommodation applies, the reasonable accommodation shall remain in effect only if the planning director determines that: (a) the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with the municipal code; or (b) the accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. The planning director may request that the applicant, or his/her successor-in-interest, provide documentation that subsequent occupants are persons

with disabilities. Failure to provide such documentation within thirty (30) days of the date of a request by the city shall constitute grounds for discontinuance by the city of a previously approved reasonable accommodation.

17.220.090 Revocation

Revocation.. Any reasonable accommodation approved in accordance with the terms of this code may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or ordinance is violated in connection therewith.

17.220.100 Amendments

A request for changes in conditions of approval of a reasonable accommodation, or a change to plans that would affect a condition of approval shall be treated as a new application. The Director may waive the requirement for a new application if the changes are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the original approval.

17.220.110 Expiration

Any reasonable accommodation approved in accordance with the terms of this section shall expire within twenty-four (24) months from the effective date of the approval, or at an alternative time specified as a condition of the approval, unless:

- a. A building permit has been issued and construction has commenced;
- b. A certificate of occupancy has been issued;
- c. The use is established; or
- d. A time extension has been granted.

17.220.120 Time Extension.

a. The Director may, upon an application being filed prior to expiration of a reasonable accommodation and for good cause, grant a time extension of up to three (3) one-year extensions of time. Each extension of time shall be granted in one-year increments only. Upon granting of an extension, the Director shall ensure that conditions of the administrative approval comply with all current development code provisions.

b. A time extension for a reasonable accommodation shall be final unless appealed to the city council within fourteen (14) calendar days of the date of mailing of the determination. An appeal shall be made in writing and shall be noticed and heard pursuant to the procedures established this code.

Section 6. ADMINISTRATIVE ACTIONS

The City Council hereby authorizes City staff to perform all other actions related to the actions set forth herein, including without limitation, submitting this Ordinance to the

State Department of Housing and Community Development within sixty (60) days after adoption.

Section 7. 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 8. 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 9. 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 10. 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 11. 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 _____, 2019, 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: