REPORT TO THE CITY COUNCIL

DATE: **February 5, 2019**

TITLE: **An Ordinance 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**

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RECOMMENDATION

1) **Staff Report;**
2) **Entertain Questions of Staff from City Council;**
3) **Open the Public Hearing;**
4) **Take testimony from those in favor;**
5) **Take testimony from those opposed;**
6) **Take testimony from those in a neutral position;**
7) **Close the Public Hearing;**
8) **City Council discussion and questions to Staff; and**
9) **The Planning Commission recommends to the City Council to introduce and read by title only, "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."**

ANALYSIS

The legislature has been busy in recent years enacting legislation to encourage and promote affordable housing and access to emergency shelters and supportive and transitional housing; and additionally has made many changes to density bonus law, allowance of accessory dwelling units, and manufactured homes. The various pieces of legislation, as detailed in more detail below, mandate that cities update their zoning ordinances and Housing Element. Such efforts require cities adopt or amend existing ordinances with respect to emergency shelters and transitional and supportive housing; accessory dwelling units; and density bonuses, among others. If adopted, the proposed ordinance amends Title 17 (Zoning) of the Desert Hot Springs Municipal Code to best comport with state law.

The City is currently in the early stages of adopting a Housing Element and updating its General Plan, which will be presented to the City Council for its consideration and approval. The proposed revisions to Title 17 (Zoning) of the Desert Hot Spring Municipal Code, as set forth in the attached ordinance, will need to be revisited upon the City adopting its Housing Element and General Plan.

Senate Bill 2:

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. In amending Government Code 65589.5 (California's Housing Accountability Act ("HAA")), it required local governments to take specific zoning actions to encourage the development of emergency shelters and transitional and supportive housing. SB 2 sets forth four major requirements: (1) assess need for emergency shelter; (2) demonstrate by-right zoning for shelters; (3) treat transitional and supportive housing the same as other residential uses; and (4) include shelters and transitional and supportive housing as protected uses under the HAA.

As mentioned above, SB 2 required cities to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit ("by-right zone"). The by-right zone(s) must be identified in the housing element and must be large enough to meet the jurisdiction's need for shelter. Projects that meet a city's zoning and development standards are only subject to approval at the staff level, rather than a discretionary approval at a public hearing. However, SB 2 does not require a jurisdiction to build any shelter, nor does it require the city to permit shelters by-right on every site. Once a jurisdiction has identified sufficient by-right zoning to meet its unmet need for shelters, it may designate other zones that require a conditional use or other discretionary permit for shelter use.

Similar to the emergency shelter by-right zone(s) mentioned above, SB 2, Government Code Section 65583 provides certain requirements which much be included in the Housing Element. One such requirements is an assessment of housing needs and an inventory of resources and constraints relevant to meeting such needs, which analysis shall demonstrate local efforts to remove governmental constraints that hinder the locality from meetings its share of regional housing needs, including needs for housing for persons with disabilities, supportive housing, traditional housing, and emergency shelters. This should be done via a program which addresses and, where appropriate and legally possible, removes governmental constraints to the maintenance, improvement, and development of housing and removes constraints to, and provides reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Examples of unreasonable constraints might be: the requirement of a conditional use permit on any housing over two units; excessive landscaping requirements; failing to streamline affordable housing developments; or buildable lot area limitations and density limitations. However, as with the emergency shelter by-right zone(s), this analysis will be performed and presented for the City Council's consideration of the Housing Element. Accordingly, a more detailed explanation and analysis of City obligations with respect to this requirement will be provided to Council at the appropriate time.

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. 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. Cities may not deny a housing development project (including transitional and supportive housing) for very low, low or moderate income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible, unless it makes written findings based on substantial evidence as to one of the following: jurisdiction in in compliance with its housing element and has met its share of regional housing need for income category proposed to be built, or for emergency shelter, as the case may be; project or emergency shelter would have a specific adverse impact upon the public health or safety with no feasible method to mitigate; denial of project is required to comply with state or federal law; development is inconsistent with both the jurisdiction's zoning ordinance and general plan and land use designation, and jurisdiction has a compliant housing element; or development is proposed in agricultural area or area with insufficient water or wastewater facilities.

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. In other words, cities cannot prohibit transitional or supportive housing in areas zoned for single-family housing or in mixed-use zones that allow residential dwellings. The attached ordinance comports with SB 2 by amending Title 17 to expressly declare supportive and transitional housing a residential use subject only to those restrictions that apply to other residential dwellings of the same type in the same zone and by permitting such housing in all zones which allow residential dwellings (see Table 17.08.01 under Section 17.08.020). Amendments also distinguish supportive and transitional housing from other potentially similar

facilities and uses to clarify that any lawful restrictions on those other facilities and/or uses shall not apply to supportive and transitional housing, where prohibited by state law.

Both the Fair Housing Act and Fair Employment and Housing Act prohibit discrimination through land use decisions that make housing opportunities for persons with disabilities unavailable. The proposes ordinance comports with state law by adding Chapter 17.220 (Reasonable Accommodation) by providing a framework consistent with state law to allow requests for reasonable accommodations for persons with disabilities, as defined by state law.

Additionally, SB 2 added definitions for transitional and supportive housing and emergency shelters, as follows:

- transitional housing: 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)).
- supportive housing: 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)).
- emergency shelter: 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.

The proposed ordinance would amend and add definitions to Title 17 (Zoning) to comport with SB 2 definitions by amending Section 17.04.050 (Definitions) of Chapter 17.04 (General Provisions) of Title 17 (Zoning) to add definitions to comport with SB 2, including adding definitions of "emergency shelters," "transitional housing," and "supportive housing, as set forth in SB 2.

Additionally, the attached ordinance amends Section 17.04.050 (Definitions) by amending the definition of "Family" because requiring occupants to be related in the traditional sense of "family" may be interpreted to prohibit transitional or supportive housing in single-family zones, which is prohibited by SB 2.

<u>Accessory Dwelling Units:</u>
Recent legislation updated laws with respect to Accessory Dwelling Units ("ADU") (Senate Bill 229, Assembly Bill 4949, Senate Bill 1069 ("SB 1069"), Assembly Bill 229 ("AB 229"), and Assembly Bill 494 ("AB 494")), intended to address barriers to ADUs, streamline approval and expand potential capacity for ADUs, recognizing their unique important in addressing California's housing needs.

An ADU 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. An ADU is an accessory use for purposes of calculating allowable density under the general plan and zoning.

Among other changes, the recent legislation provided the following: authorizes off-street parking to be tandem or in setback areas unless specific findings such as fire and life safety conditions are made (SB 1069); prohibited parking requirements if ADU meets certain standards (SB

1069); ADUs shall not be considered new residential uses for purpose of calculating utility connection fees or capacity charges, including water and sewer service (SB 1069); prohibits requiring fire sprinklers in ADU unless they are required in primary residence (SB 1069); cities must ministerially approve an application to create within a single-family residential zone one ADU per single family lot if certain conditions are met (applies within all single family residential zones and ADUs within existing space must be allowed in all of these zones and no additional parking or other development standards may be applied except for building code requirements) (SB 1069); prohibits cities from adopting an ordinance precluding ADUs (SB 1069); and requires cities to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements (AB 2299). Additionally SB 229 and 494, effective January 1, 2018, among other changes, addresses the following: clarifies an ADU can be created through the conversion of a garage, carport or covered parking structure; requires special districts and water corporations to charge a proportionate fee scale based upon ADUs size or its number of plumbing fixtures; reduces maximum number of parking spaces for an ADU to one per unit or per bedroom, whichever is less; allows replacement parking spaces to be located in any configuration, as a result, of a parking structure conversion to an ADU; authorizes the Department of Housing and Community Development ("HCD") to review and comment on ADU ordinances; and defines the term "tandem parking" to mean two or more automobiles. Pursuant to Government Code Section 65852.2(h), adopted ADU ordinances must be submitted to HCD within 60 days of adoptions.

Cities may apply development standards and may designate where ADUs are permitted (Government Code Section 65852.2(a)(1)(A) and (B)), however, ADUs within existing structures must be allowed in all single family residential zones. For ADUs that require an addition or new accessory structure, development standards such as parking, height, lot coverage, lot size and maximum unit size can be established with certain limitations. ADUs can be avoided or allowed through an ancillary and separate discretionary process in areas with health and safety risks such as high fire hazard areas. However, such standards and allowable areas must not be designed or applied in a manner that burdens the development of ADUs.

Additionally, cities may establish minimum and maximum unit sizes (Government Code Section 65852.2(c)). However, this should not burden development of ADUs. ADU law requires local government approval if ADU meets carious requirements (Government Code Section 65852.2(A)(1)(D)), including unit size requirements. Specifically, attached ADUs shall not exceed 50% of the existing living area or 1,200 square feet and detached ADUs shall not exceed 1,200 square feet. A city may choose a maximum unit size less than 1,200 square feet as long as the requirement is not burdensome on the creation of ADUs.

ADU law has many requirements and restrictions associated with parking requirements. For instance, cities may not allow parking to be required where there is a car share located within a block of the ADU, when ADU is located within ½ mile of public transit; ADU is located within an architecturally and historically significant district, ADU is part of existing primary residence or an existing accessory structure, or when on-street parking permits are required but not offered to occupant of ADU. A car share location includes a designated pick up and drop off location. Additionally, off-street parking is permitted in setback areas or through tandem parking, but cities may make specific findings that tandem parking in setbacks are infeasible based on specific site, regional topographical or fire and life safety conditions or that tandem parking or parking in setbacks is not permitted anywhere else in the jurisdiction.

The proposed ordinance updates Section 17.04.050 (Definitions) to replace the previously used term of "second dwelling unit" to "accessory dwelling units," consistent with state law term and updates the definition to comport with state law definition, and replaces the term throughout Title 17 for internal consistency. To that end, Tables 17.08.01 and 17.08.03 are updated. Additionally, potentially conflicting definitions and terms were removed from Title 17, including "Granny" housing, as this is governed by state laws on ADUs.

Section 17.08.170 is amended to provide regulation of ADUs consistent with state law. Among other changes, the ordinance provides that an ADU within an existing space is permitted ministerially with a building permit if certain requirements are met; provides general development standards; and provides parking regulations, all consistent with state law.

City must submit ADU ordinance to State Department of Housing and Community Development within 60 days after adoption. The ordinance is not subject to a Department review and findings process similar to housing element law (Government Code Section 65585).

State Density Bonus Law:

The Density Bonus Law, found in California Government Code Sections 65915-65918, is 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.

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. All cities must adopt ordinances to facilitate compliance with the density bonus laws. Failure to adopt a local ordinance does not relieve a city from complying with density bonus requirements. 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 or concessions to the developer. In other words, a developer who meets the requirements of the state law and city’s ordinance is entitled to receive the density bonus and other benefits as a matter of right.

Cities are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- at least 5% of the housing units are restricted to very low income residents;
- at least 10% of housing units are restricted to lower income residents;
- at least 10% of housing units in a for-sale common interest development are restricted to moderate income residents;
- at least 10% of the housing units are for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low income level;
- the project donates at least one acre of land to the city for very low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housings;
- the project is a senior citizen housing development (no affordable units required);
- or the project is a mobilehome park age-restricted to senior citizens (no affordable units required).

In addition to required density bonus, the city is also required to provide one or more “incentives” or “concessions” to each project which qualifies for a density bonus (except that market rate senior citizen projects with no affordable units, and land donated for very low income housing). Concession or incentive is defined as:

- reduction in site development standards or modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or
- approval of mixed use zoning; or
- other regulatory incentives or concessions which actually result in identifiable and actual cost reductions.

The number of required incentives or concessions is based on the percentage of affordable units in the project, as follows:

- Projects with at least 5% very low income, 10% lower income of 10% moderate income units, one incentive or concession is required
- Projects with at least 10% very low income, 20% lower income or 20% moderate income units, two incentives or concession required.
- Projects with at least 15% very low income, 30% lower income or 30% moderate income units, three incentives or concessions are required.

The City is required to grant the concession or incentive proposed by developer unless it finds the proposed concession or incentive does not result in identifiable and actual cost reductions, would cause a public health or safety problem, would cause an environmental problem, would harm historical property, or would be contrary to law. New legislation in 2017 restricts types of information and reports that a developer may be required to provide in order to obtain requested inventive or concession.

A development qualifying for a density bonus also receives two additional forms of assistance: waiver or reduction of development standards or maximum parking requirements. The City is not permitted to apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives. Upon developer's request, City may not require more than the following parking ratios for a density bonus project: 1 onsite parking space for studios and one bedroom units; 2 onsite parking spaces for two and three bedroom units; and 2.5 onsite parking spaces for units with four or more bedrooms. Lower parking ratios apply to specified project. Requesting parking standards doesn't count as an incentive or concession, but developer may request further parking standard reductions as an incentive or concession.

Affordable rental units must be restricted by an agreement which sets maximum income and rents for those units and must remain in place for a 55 year term for very low or lower income units (formerly a 30 year term was required). Affordable for sale units must be sold to the initial buyer at an affordable housing cost. Income and affordability requirements are not binding on resale purchasers.

There are development bonuses set forth in state law with respect to senior projects, commercial projects, condominium conversion projects, child care facilities, and through land donation.

The density bonus statutes apply to Charter Cities pursuant to Government Code 65915.

The attached ordinance proposes to amend Section 17.08.080 (Density Bonus) to comport with state law.

Miscellaneous:
Among other revisions, the proposed ordinance cleans up terms and definitions referenced in Title 17 (Zoning) to comport with state law definitions.

Consistent with Health and Safety Code 1566.3, the attached ordinance permits Residential Facilities that serve six or fewer persons in residential zones and clarifies that such a facility 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.

However, the law allows cities to place restrictions on building heights, setback, lot dimensions, or placement of signs of a residential facility that serves six or fewer person as long as those restrictions are identical to those applied to other family dwellings of the same type in the same zone.

Moreover, Health and Safety Code Section 1566.3(e) prohibits conditional use permits, zoning variances or other zoning clearance of a residential facility that serves six or fewer persons that is not required of a family dwelling of the same type in the same zone.

Additionally, several additional revisions were made to Table 17.08.01, as follows:

- amended to allow Large Family Day Care Homes in all residential districts, subject to a Development Permit, to comply with state law (Health and Safety Code Section 1597.46).
- amended to permit small family day care homes in residential zones. Small family day care homes must be considered a residential use of property for the purposes of all local ordinances (Health and Safety Code 1597.45). Cities cannot apply any requirements to small family child care homes that are not applied to all other single-family residences. Cities cannot prohibit the operation of either small or large family child care homes in single-family dwellings.
- Removed the “6 or less” requirement pertaining to Community Care Facility. The “6 or less” distinction applies to “residential facilities” and not Community Care Facility. A “residential facility” is a kind of “community care facility” (Health and Safety Code Section 1502).

If the attached ordinance is adopted, the city may apply ordinances which deal with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of the city, to a residential care facility.

FISCAL IMPACT
None at this time.

EXHIBIT
1) Ordinance