

REPORT TO THE CITY COUNCIL



DATE: March 5, 2019

TITLE: An Ordinance Amending Chapter 17.180 Allowing and Setting Parameters for Marijuana Non-Storefront Retail as a Use

Prepared by: (At the direction of the City Council and recommendation of the Planning Commission)

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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) That the City Council concur with Planning Commission's recommendation to introduce and read by title only, "An Ordinance of the City Council of the City of Desert Hot Springs, amending Chapter 17.180 of the Desert Hot Springs Municipal Code allowing and setting parameters for Marijuana Non-Storefront Retail as a Use and harmonizing certain definitions and uses with State law."

BACKGROUND

Currently, the DHSMC only allows cannabis retail sales within the Commercial district and refers to such establishments as "dispensaries." Each dispensary must possess both a Conditional Use Permit and a Regulatory Permit. Through prior actions, the City Council has limited the number of permitted dispensaries to 16 specific applicants.

The state of California has removed references to the word "dispensaries" and licenses two types of cannabis retail, based on whether or not the business has a storefront. The two types of retail establishments are (1) Storefront Retail and (2) Non-storefront Retail. A Storefront Retail state license is comparable to the City's local dispensary permit; a Non-storefront Retail state license applies to businesses (without a storefront) that will utilize delivery as their method of sales. Further details regarding Storefront and Non-storefront Retail are provided in Exhibit 2.

The City has been contacted by several cannabis developers located in the Industrial zone who wish to add Non-storefront Retail activities to their business models. Many are conducting cannabis manufacturing activities and want to move their products statewide, via sales/delivery and distribution. Sales/delivery activities require a state Non-storefront Retail license, which requires sales transactions to be permitted at the business premises (even when transactions take place online or via delivery). However, the DHSMC does not have a non-storefront business use. Instead, the DHSMC only refers to "dispensaries" (which in essence are Storefront Retail establishments). Therefore, City Council action is needed to allow for Non-storefront Retail use activities.

There are both anticipated benefits and issues, when considering Non-storefront Retail. The benefits come from attracting businesses who wish to augment their business models to allow for a non-storefront sales/delivery component. Such sales reaching beyond the local market will

provide increased revenues to the City, via the current 10 percent tax on proceeds from the sales or provision of cannabis. Most issues created by allowing non-storefront cannabis retail are currently addressed via the zoning regulations in the City's Industrial zone, designated for cannabis cultivation, manufacturing, and distribution. Since non-storefront sales do not have a walk-in retail component, but rather utilize delivery (incorporating several vehicle trips), Staff believes such use would be best suited in the Industrial districts in the City. Additionally, Staff believes limiting Non-storefront Retail sales/delivery to recipients outside of the City provides further clarification on the differentiation of use from that of the City's current dispensary establishments.

DISCUSSION

In general, this ordinance will harmonize the term "dispensaries" to the new state law term of "Storefront Retail", and it will also allow the use of Non-Storefront Retail in the Industrial zones.

During the February 5th, 2019 City Council meeting, a discussion item regarding cannabis Storefront and Non-storefront Retail uses took place. The discussion resulted in direction from the City Council for Staff to prepare an ordinance to amend the Desert Hot Springs Municipal Code (DHSMC). Staff was directed to replace "dispensaries" with "Storefront Retail" and add "Non-storefront Retail" as a permitted use in the Industrial zone, with sales/delivery only to recipients outside of the City and uses to include manufacturing, distribution, and cultivation (limited to 99 plants). A chart comparing the two retail uses, in respect to zoning, permitted uses, and non-permitted uses is provided in Exhibit 3.

Planning Commission Action

On February 12, 2019, the Planning Commission held a duly noticed public hearing and recommended that the City Council approve the attached Ordinance. In particular, the Planning Commission wanted the Ordinance to cite to certain state regulations, which it does [see Section 17.180.040(e) and 17.180.045(g)]. In addition, the Planning Commission recommended that the City Council may want to re-visit the 99 plant limitation, at some point.

FISCAL IMPACT

City revenues will increase by an unknown amount (at this time), via new Non-storefront Retail sales that will be subjected to the City's 10% tax on cannabis sales.

EXHIBIT(S)

- 1) Ordinance Amending Chapter 17.180 re Storefront and Non-storefront Retail
- 2) Definition and Use Descriptions
- 3) Cannabis Retail Use Comparison Chart

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, AMENDING CHAPTER 17.180 ALLOWING AND SETTING PARAMETERS FOR MARIJUANA NON-STOREFRONT RETAIL AS A USE AND HARMONIZING CERTAIN DEFINITIONS AND USES 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, Chapter 5.50 "Medical Marijuana Facilities Regulatory Permit," of the Desert Hot Springs Municipal Code ("DHSMC") establishes standards for granting permits to Marijuana Facilities within the City; and

WHEREAS, Chapter 17.180, of the DHSMC establishes zoning regulations and development standards for Marijuana Facilities, as that term is defined, within the City;

WHEREAS, currently, the DHSMC only allows cannabis retail sales within the Commercial Districts of the City and refers to such establishments as "dispensaries;" and

WHEREAS, per the DHSMC, dispensaries are allowed in Commercial Zones with a Conditional Use Permit and a Regulatory Permit; and

WHEREAS, through prior actions, the City Council has limited the number of permitted dispensaries to 16 specific applicants; and

WHEREAS, the state of California has removed references to the word "dispensaries" and now licenses two types of cannabis retail, based on whether or not the business has a storefront; and

WHEREAS, the two types of retail establishments are (1) Storefront Retail and (2) Non-storefront Retail; and

WHEREAS, a Storefront Retail state license is comparable to the City's local dispensary permit; and

WHEREAS, a Non-storefront Retail state license applies to businesses (without a storefront) that will utilize delivery as their method of sales; and

WHEREAS, the City has been contacted by several cannabis developers located in the Industrial Zone who wish to add Non-storefront Retail activities to their business models; and

WHEREAS, these persons desire to have a Non-storefront Retail Facility to conduct cannabis manufacturing activities and want to move their products statewide, via sales/delivery and distribution

WHEREAS, currently, the DHSMC does not have a Non-storefront business use; and

WHEREAS, instead, the DHSMC only refers to “dispensaries” (which in essence are Storefront Retail establishments); and

WHEREAS, therefore, City Council action is needed to allow for Non-storefront Retail use activities; and

WHEREAS, the City Council deems to allow Non-Storefront Retail uses as beneficial to the City inasmuch as the City will realize tax benefits, and it will also benefit the businesses to allow for such augmentation to their business models; and

WHEREAS, in general this ordinance will harmonize the term “dispensaries” to the new state law term of “Storefront retail”, and it will also allow the use of Non-Storefront Retail in the Industrial zones; 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 section 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

WHEREAS, this Ordinance protects the public health, safety and welfare.

WHEREAS, the Planning Commission held a duly noticed hearing on this Ordinance and recommended that the City Council adopt same; 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 CHAPTER 17.180 OF THE DESERT HOT SPRINGS
MUNICIPAL CODE**

Chapter 17.180 of the Desert Hot Springs Municipal Code shall be amended to read as follows:

Chapter 17.180

MARIJUANA FACILITIES OPERATION AND LOCATION

17.180.010. Purpose and Intent.

The intent of this chapter is to regulate all Marijuana Facilities within the City for the purpose of protecting the public health, safety, and welfare, and additionally, to mitigate the cost and burden on the City stemming from local control, oversight, and regulation of Marijuana Facilities.

Nothing in this Chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; or (2) allow any activity relating to the cultivation, manufacturing, testing, distribution or consumption of marijuana that is otherwise illegal under California state law.

17.180.020. Interpretation and Applicability.

Operation of Marijuana Facilities within the City shall be permitted upon the application and approval of both a City-issued Conditional Use Permit pertaining to the location of the facility and a City-issued regulatory permit pertaining to the operation of the facility in accordance with the criteria and procedures set forth in this Ordinance and the City's Municipal Code, upon application and subject to such additional regulations as may be promulgated pursuant to this Chapter.

- a. The cultivation, manufacturing, testing, and distribution of marijuana in the City is controlled by the provisions of this Chapter.
- b. Nothing in this Chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution otherwise afforded by California law.
- c. Nothing in this chapter is intended to preclude or otherwise affect the rights of a lessor of real property or any interest therein to restrict, limit, or prohibit any or all marijuana activity by a lessee.
- d. Any Marijuana Facility that has 1) submitted an application to the State licensing authority for a state license, once applications become available, or 2) is in good standing and compliance and/or has been in operation and good standing on or before January 1, 2018, may continue operations until

its state license has been approved or denied by the state licensed agency.

- e. Nothing in this chapter is intended to authorize, legalize, or exempt any activity arising out of or conducted in furtherance of the operation of a Marijuana Facility from any law, rule, or regulation that may be applicable to such activity including but not limited to rules and regulations pertaining to environmental, electrical, plumbing, building, construction, land use, labor or employment.
- f. Marijuana Facility business entity organizational status, such as it being a corporation or limited liability company or otherwise, must be compliant with applicable State law.
- g. Nothing in this chapter is intended to authorize, legalize, or exempt any activity arising out of or conducted in furtherance of the operation of a Marijuana Facility from compliance with California law applicable to such activity.
- h. All Marijuana Facilities and any activity arising out of or conducted in furtherance of the operation of a Marijuana Facility shall be subject to the provisions of this chapter regardless of whether the Marijuana Facility or activity existed or occurred prior to adoption of this chapter or any subsequent amendments hereto. The City hereby expressly reserves the right to supplement, modify, amend, repeal, or otherwise alter this chapter, and such changes shall be immediately binding on all Marijuana Facilities operating within the City regardless of when such facility began to operate or when such changes were adopted. Any reference in this chapter to California statutes shall include any regulations promulgated thereunder, and is hereby deemed to include any successor or amended version of the referenced statute or regulation promulgated thereunder.

17.180.030 Definitions.

Words and phrases not specifically defined in this chapter shall have the meanings ascribed to them as follows.

When used in this Chapter, the following words shall have the meanings ascribed to them in this section. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regulatory provision. Words and phrases not specifically defined in this Chapter shall have the meanings ascribed to them by the following sources:

- a. The CUA of 1996 (California Health and Safety Code Section 11362.5), and as may be amended from time to time;
- b. The MMPA (California Health and Safety Code Sections 11362.7 through 11362.83);
- c. The MAUCRSA (Medicinal and Adult Use Cannabis Regulation and Safety Act), enacted on June 27, 2017, as may be amended from time to time.

“Cannabis or Marijuana” shall have the same meaning as provide in Health and Safety Code Section 11018, as amended (which code section used to define Marijuana). The terms Cannabis and Marijuana shall be used interchangeably in this Chapter.

“Cannabis concentrate” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

“Cultivator” shall mean shall mean Marijuana Facilities licensed as a Cultivation Site or as a Cultivator pursuant to California Business and Professions Code section 19300 et seq. or pursuant to California Business and Professions Code section 26000 et. seq.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the commercial transfer of cannabis or cannabis products from a state licensed distributor or retailer wherever located, to an adult twenty one years of age or older, qualified patient, or primary caregiver located in the City of Desert Hot Springs, and shall include the use of any technology platform that enables adults twenty one years of age or older, qualified patients, or primary caregivers located in Desert Hot Springs to arrange for or facilitate the commercial transfer of marijuana or marijuana products.

~~**“Dispensary”** shall mean Marijuana Facilities licensed as a Dispensary pursuant to California Business and Professions Code.~~

“Distribution” means the procurement, sale, or transport of cannabis or cannabis products either within the City limits, or to and from the City from a place outside the City limits, from a permitted business location of a licensed entity to a permitted business location of another licensed entity subject to State laws and regulations and subject to the provisions of this Chapter and the City’s Municipal Code.

“Legal parcel” means a parcel of land for which one (1) legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels may at the option of the property owner be counted as a single parcel for purposes of this Chapter.

“Light Manufacturer” means a person or entity that conducts the production, preparation, or compounding of cannabis or cannabis products either directly or indirectly not using any kind of extraction method whatsoever, but merely using chemical synthesis, such as baking or infusing at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Light Manufacturing Facility” means a facility that conducts the production, preparation, or compounding of cannabis or cannabis products either directly or indirectly not using any kind of extraction method whatsoever, but merely using chemical synthesis, such as baking or infusing at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Off-site sales” means the sale of marijuana for consumption off the premises.

“On-site sales” means the sale of marijuana for consumption on the premises.

“Manufacturer” means a person or entity that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Medicinal cannabis” or **“medicinal cannabis product”** means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

“Marijuana Cultivation Facility” means a facility wherein marijuana is propagated, planted, grown, harvested, dried, cured, graded, labeled, tagged for tracking, or trimmed, or wherein all or any combination of those activities takes place.

“Marijuana Distribution Facility” means any facility or location, the primary function of which is the procurement, sale, and/or transport of marijuana and/or marijuana products between entities operating in strict accordance with State law, as may be amended from time to time, and subject to the provisions of this Chapter and the City’s Municipal Code.

“Marijuana Facility” means collectively any marijuana storefront retail facility, non-storefront retail facility,—dispensary, marijuana cultivation facility, marijuana distribution facility, marijuana testing facility or marijuana manufacturing facility, as those terms are defined in this Chapter.

“Marijuana Manufacturing Facility” means a facility where the production of marijuana concentrate, and/or the preparation, propagation, or compounding of manufactured marijuana, either directly or indirectly or by extraction methods or independently by means of chemical synthesis, or the packaging or repackaging of marijuana or marijuana products, or the labeling or relabeling of its containers, occurs, provided the facility holds a valid marijuana Manufacturing Facility license, a marijuana Regulatory Permit, and a Conditional Use Permit all issued in accordance with this Chapter and the City’s Municipal Code, and provided that the facility will qualify for a valid state when the State of California begins issuing state licenses to marijuana Manufacturers.

“Marijuana Testing Facility” shall have the same definition as in the Business and Professions Code Section 26001, as may be amended, which currently means a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following: (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state, (2) licensed by the Bureau of Cannabis Control, and regulated by Section 5700 et seq., as may be amended of Title 16 of the California Code of Regulations.

“Non-storefront Retail Facility” shall have the same meaning as in Business and Professions Code Section 26070(a)(1), as may be amended, and further defined by Sections 5414 to 5427 et seq. in the California Code of Regulations, as may be amended. Currently, this is a delivery only retail facility which sells marijuana to a customer solely and exclusively by delivery.

“Storefront Retail Facility” shall have the same meaning as in Business and Professions Code Section 26070(a)(1), as may be amended, and further defined by Sections 5400 to 5413 et seq. in the California Code of Regulations, as may be amended. Currently, this is a retail facility which sells and/or delivers marijuana or marijuana products to customers. A storefront retail facility shall have a licensed premises which is a physical location from which commercial cannabis activities are conducted.

17.180.40 Marijuana Storefront Retail Facilities ~~Dispensaries~~

- a. **Permitted Locations.** Marijuana **Storefront Retail Facilities** ~~Dispensaries~~ shall only be located in any Commercial District in the City.
- b. **Number of plants.** **Storefront Retail Facilities** ~~Dispensaries~~ shall not cultivate more than 99 mature flowering marijuana plants on site at any one time.
- c. **Conditional Use Permit/Regulatory Permit Required.** ~~Dispensaries~~ **Storefront Retail Facilities** shall obtain both a City-issued conditional use permit and regulatory permit. Approved ~~dispensaries~~ **Storefront Retail Facilities** operating with a city-approved conditional use permit and in compliance with all local and state laws may, at their discretion, add a light manufacturing use and also become a Light Manufacturing Facility to their current **Storefront Retail Facility**.
- d. Notwithstanding Section C above, any and all Light Manufacturing Facilities must comply with applicable state law and regulations, including the California Environmental Quality Act (“CEQA”)
- e. **Storefront Retail Facilities must comply with all local and state laws as it pertains to such use at all times, which certain applicable laws are currently set forth in Title 16 Code of Regulations, Sections 5400 through 5413, as may be amended..**

17.180.045 Marijuana Non-storefront Retail Facilities

- a. **Permitted Locations.** Marijuana Non-storefront Retail Facilities shall only be located in any Industrial District in the City.
- b. **Number of plants.** Non-storefront Retail Facilities shall not cultivate more than 99 mature flowering marijuana plants on site at any one time.
- c. **Conditional Use Permit/Regulatory Permit Required.** Non-storefront Retail Facilities shall obtain both a City-issued conditional use permit and regulatory permit, except as otherwise herein allowed in subsection (d) below.
- d. **Administrative Approval.**
A duly approved Manufacturing Facility and/or Distribution Facility, with a duly approved Conditional Use Permit and Regulatory Permit, and in good standing with the City, may request modification of the already approved Conditional Use Permit to operate a Non-storefront

Retail Facility provided the Director of Community Development, or his or her designee, finds all of the following:

1. There is a ten (10) percent or less than deviation to each of the following:

- a. On-site circulation and parking, loading and landscaping;
- b. Placement and/or height of walls and fences;
- c. Exterior architectural features, including colors, and/or modification of finished materials that do not alter or compromise the previously approved theme;
- d. The density or intensity of a development project;
- e. Paving; and
- f. Hours of operation.

2. The Marijuana Manufacturing and/or Distribution Facility and its Non-storefront Retail Facility use is consistent with the goals, objectives, policies and programs of the general plan;

3. The Marijuana Manufacturing and/or Distribution Facility and its Non-storefront Retail Facility use complies with all applicable zoning and other regulations;

4. The Marijuana Manufacturing and/or Distribution Facility and its Non-storefront Retail Facility use will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity;

5. The location, design and operation of the Marijuana Manufacturing and/or Distribution Facility and its Non-storefront Retail Facility use will be compatible with existing and planned land uses in the vicinity.

6. Any project contemplating this Administrative Approval must comply with the California Environmental Quality Act ("CEQA"), and any and all applicable State and local laws and regulations. If CEQA is in fact implicated, as so determined by the Director of Community Development, CEQA must be adhered to, as so required by law.

Applications for a modification of a Conditional Use Permit under this Section shall be on a form proscribed by the Director and shall be filed with the Department, pursuant to Chapter 17.68 (Applications and Fees) and must be approved by the Director, or his or her designee, who may establish additional conditions to further the intent of this Section. Any modification request which exceeds the prescribed limitations outlined in this Section shall comply with requirements set forth in Section 17.180.060(b)(2). Minor modifications shall not apply when a nonconforming use, structure or site is involved. Marijuana Manufacturing and/or Distribution Facility

applications under this section may be referred to the planning commission at the discretion of the Director.

- e. Non-storefront Retail Facilities shall not deliver to customers within the City limits.
- f. Non-storefront Retail Facilities may also manufacture and/or distribute marijuana, as so allowed with a conditional use permit.
- g. Non-storefront Retail Facilities must comply with all local and state laws as it pertains to such use at all times, which certain applicable laws are currently set forth in Title 16 Code of Regulations, Sections 5414 through 5427, as may be amended.

17.180.050 Marijuana Cultivation Facilities

- a. Permitted Locations.** Marijuana Cultivation Facilities involving the cultivation of more than 99 mature flowering marijuana plants shall only be located in any Industrial District in the City.
- b. Interior Only.** Marijuana cultivation shall be conducted only in the interior of fully enclosed structures, facilities, buildings, or other fully enclosed spaces consistent with the purpose and intent of this Chapter. No marijuana cultivation operations, including harvesting and growing plants at any stage, shall be visible from any public right of way.
- c. Permits.** Marijuana Cultivation Facilities shall obtain a City-issued conditional use permit and regulatory permit.

17.180.060 Marijuana Manufacturing Facilities

- a. Permitted Locations.** Marijuana Manufacturing Facilities shall only be located in any Industrial District in the City, subject to the regulations set forth in this Chapter and any additional regulations as may be promulgated hereunder by an ordinance or resolution of the City Council or otherwise pursuant to this Chapter.
- b. Permits.**
 - 1. Marijuana Manufacturing – Administrative Approval. A duly approved Marijuana Cultivation Facility, with a duly approved Conditional Use Permit and regulatory permit, may request modification of the already approved Conditional Use Permit to operate a Marijuana Manufacturing Facility provided the Director of Community Development, or his or her designee, finds all of the following:
 - A. There is a ten (10) percent or less than deviation to each of the following:
 - i. On-site circulation and parking, loading and landscaping;
 - ii. Placement and/or height of walls and fences;
 - iii. Exterior architectural features, including colors, and/or modification of finished materials that do not alter or compromise the previously approved theme;
 - iv. The density or intensity of a development project;

- v. Paving; and
- vi. Hours of operation.

B. The Marijuana Cultivation Facility and its manufacturing use is consistent with the goals, objectives, policies and programs of the general plan;

C. The Marijuana Cultivation Facility and its manufacturing use complies with all applicable zoning and other regulations;

D. The Marijuana Cultivation Facility and its manufacturing use will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity;

E. The location, design and operation of the Marijuana Cultivation Facility and its manufacturing use will be compatible with existing and planned land uses in the vicinity.

F. Any project contemplating this Administrative Approval must comply with the California Environmental Quality Act ("CEQA"), and any and all applicable State and local laws and regulations. If CEQA is in fact implicated, as so determined by the Director of Community Development, CEQA must be adhered to, as so required by law.

Applications for a modification of a Conditional Use Permit under this Section shall be on a form proscribed by the Director and shall be filed with the Department, pursuant to Chapter 17.68 (Applications and Fees) and must be approved by the Director, or his or her designee, who may establish additional conditions to further the intent of this Section. Any modification request which exceeds the prescribed limitations outlined in this Section shall comply with requirements set forth in Section 17.180.060(b)(2). Minor modifications shall not apply when a nonconforming use, structure or site is involved. Marijuana Manufacturing Facility applications under this section may be referred to the planning commission at the discretion of the Director.

2. Marijuana Manufacturing Facilities Not Operating within a duly Existing Marijuana Cultivation Facility. Marijuana Manufacturing Facilities which are not operated within an existing and duly approved Marijuana Cultivation Facility or which results in any additional impact or expansion of use or structure(s) shall obtain a City-issued Conditional Use Permit and regulatory permit.

c. Interior Only. Marijuana manufacturing shall be conducted only in the interior of fully enclosed structures, facilities, buildings, or other fully enclosed spaces consistent with the purpose and intent of this Chapter. No marijuana manufacturing shall be visible from any public right of way.

d. Operational Requirements.

1. Manufacturers are limited to certain equipment, methods, solvents, gases and mediums when creating marijuana extracts.
2. Manufacturing Facilities with a state license of a Type-6 (non-volatile) or a Type 7 (volatile) classification may be allowed to operate under this Chapter.
3. All other methods of extraction shall be conducted in an environment appropriate to the solvent being used, with consideration to proper ventilation and ignition source controls.

4. All equipment, systems and manufacturing processes must meet or exceed all applicable state and federal requirements and regulations regarding air, water, health and safety, and handling, processing and storage of hazardous materials, solvents, gases and waste. No manufacturing facility shall commence operations or be issued any form of certificate of occupancy without first obtaining all required fire, environmental, health and safety, planning, and building certificates, permits and approvals required under City's Municipal Code and all other applicable county, state and federal regulations.
- e. **Chemical Engineer.** As a condition of obtaining a City-issued marijuana regulatory permit and conditional use permit, a licensee of a manufacturing facility desiring to operate under this ordinance shall first verify that the licensee employs or contracts with a person who has a B.S. in chemical engineering from an accredited school who shall supervise the design, installation and operation of the facility's systems and manufacturing processes. Such person shall inspect the premises on a quarterly basis and provide such inspection report to the City. The licensee shall submit to the City a written statement that he or she certifies under penalty of perjury that the name of the employee/contractor is true and correct. The employee/contractor shall also submit a written statement that he or she certifies under penalty of perjury his or her educational qualifications and verifying that he or she is employed or contracted to supervise the design, installation and operation of the facility's systems and manufacturing processes.
- g. **State Regulations.** In the event the State of California implements health and safety regulations applicable to Marijuana Manufacturing Facilities, upon implementation of such state regulations, all Marijuana Manufacturing Facilities operators shall immediately implement the state regulations. Should the City's regulations be stricter than the state regulations, the Marijuana Manufacturing Facility shall use the City's regulation. The City reserves all rights it has with implanting its own local regulations.

17.180.070 Marijuana Testing Facilities

- a. **Permitted Locations.** Marijuana Testing Facilities shall only be located in any Industrial or any Commercial District in the City.
- b. **Interior Only.** Marijuana testing shall be conducted only in the interior of fully enclosed structures, facilities, buildings, or other fully enclosed spaces consistent with the purpose and intent of this Chapter. No marijuana testing operations shall be visible from any public right of way.
- c. **Permits.** Marijuana Testing Facilities shall obtain a City-issued regulatory permit. A conditional use permit is not required.
- d. **Administrative Approval.** A duly approved Marijuana Facility, with duly approved entitlements, such as a Conditional Use Permit and Regulatory Permit which is in good standing with the City, may request a Minor Modification to the already approved Conditional Use Permit to operate a Marijuana Testing Facility provided the Director of Community Development, or his or her designee, finds all of the following:

A. There is a ten (10) percent or less than deviation to each of the following:

- i. On-site circulation and parking, loading and landscaping;
- ii. Placement and/or height of walls and fences;
- iii. Exterior architectural features, including colors, and/or modification of finished materials that do not alter or compromise the previously approved theme;
- iv. The density or intensity of a development project;
- v. Paving; and
- vi. Hours of operation.

B. The Marijuana Testing Facility and its use is consistent with the goals, objectives, policies and programs of the general plan;

C. The Marijuana Testing Facility and its use complies with all applicable zoning and other regulations;

D. The Marijuana Testing Facility and its use will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity;

F. The location, design and operation of the Marijuana Testing Facility and its use will be compatible with existing and planned land uses in the vicinity.

E. Any project contemplating this Administrative Approval must comply with the California Environmental Quality Act ("CEQA"), and any and all applicable State and local laws and regulations. If CEQA is in fact implicated, as so determined by the Director of Community Development, CEQA must be adhered to, as so required by law.

F. Applications for a modification of a Conditional Use Permit under this Administrative Approval Section shall be on a form proscribed by the Director and shall be filed with the Department, pursuant to Chapter 17.68 (Applications and Fees) and must be approved by the Director, or his or her designee, who may establish additional conditions to further the intent of this Section. Any modification request which exceeds the prescribed limitations outlined in this Section shall comply with requirements set forth in Section 17.180.060(b)(2). Minor modifications shall not apply when a nonconforming use, structure or site is involved. Marijuana Testing Facility applications under this section may be referred to the Planning Commission at the discretion of the Director.

17.180.080 Marijuana Distribution Facilities

- a. Permitted Locations.** Marijuana Distribution Facilities shall only be located in Industrial Districts in the City, upon issuance of a conditional use permit and a marijuana regulatory permit issued pursuant to the City's Municipal Code.
- b. Permits.** Marijuana Distribution Facilities shall obtain a City-issued conditional use permit and regulatory permit.
- c. Administrative Approval.** A duly approved Marijuana Facility, with duly approved entitlements, such as a Conditional Use Permit and regulatory

permit in good standing with the City, may request modification of the already approved Conditional Use Permit to operate a Marijuana Distribution Facility provided the Director of Community Development, or his or her designee, finds all of the following:

A. There is a ten (10) percent or less than deviation to each of the following:

- i. On-site circulation and parking, loading and landscaping;
- ii. Placement and/or height of walls and fences;
- iii. Exterior architectural features, including colors, and/or modification of finished materials that do not alter or compromise the previously approved theme;
- iv. The density or intensity of a development project;
- v. Paving; and
- vi. Hours of operation.

B. The Marijuana Distribution Facility and its use is consistent with the goals, objectives, policies and programs of the general plan;

C. The Marijuana Distribution Facility and its use complies with all applicable zoning and other regulations;

D. The Marijuana Distribution Facility and its use will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity;

E. The location, design and operation of the Marijuana Distribution Facility and its use will be compatible with existing and planned land uses in the vicinity.

F. Any project contemplating this Administrative Approval must comply with the California Environmental Quality Act ("CEQA"), and any and all applicable State and local laws and regulations. If CEQA is in fact implicated, as so determined by the Director of Community Development, CEQA must be adhered to, as so required by law.

G. Applications for a modification of a Conditional Use Permit under this Administrative Approval Section shall be on a form proscribed by the Director and shall be filed with the Department, pursuant to Chapter 17.68 (Applications and Fees) and must be approved by the Director, or his or her designee, who may establish additional conditions to further the intent of this Section. Any modification request which exceeds the prescribed limitations outlined in this Section shall comply with requirements set forth in Section 17.180.060(b)(2). Minor modifications shall not apply when a nonconforming use, structure or site is involved. Marijuana Distribution Facility applications under this section may be referred to the Planning Commission at the discretion of the Director.

d. Interior Only. Other than loading, unloading and transportation, all Distribution of marijuana and marijuana products shall be conducted only in the interior of enclosed structures, facilities, or buildings.

e. Labor Peace Agreements. All applicants for a conditional use permit pursuant to this Chapter shall demonstrate that it has already entered into, and will abide by the terms of a labor peace agreement, as defined in

California Business & Professions Code Section 26000 prior to issuance of Certificate of Occupancy.

- f. Public Safety.** All applicants for conditional use permit to operate a marijuana Distribution Facility under this Chapter shall: (a) demonstrate that such facility will be equipped with adequate security installations and systems to prevent trespassing, theft and diversion of marijuana for unlawful purposes, including exterior lighting, an alarm system, and 24-hour, on-site security personnel, tag and trace protocols and video surveillance; and (b) shall maintain such security installations and systems while in operation.

17.180.090 Marijuana Facilities—Required License and Permits.

- a. In addition to those other requirements which may be imposed pursuant to this Chapter, no person or entity shall engage in marijuana activity or open or operate a Marijuana Facility without possessing and obtaining the following:
- i. A marijuana regulatory permit issued by the City pursuant to Chapter 5.50 of the City's Municipal Code; and
 - ii. A Conditional Use Permit, pursuant to the conditions set forth in this Chapter and the City's Municipal Code; and
 - iii. Compliance with all applicable codes, including the Building Code; and
 - iv. Any applicable State-required permit.

The fact that a person or entity possesses other types of state or municipal permits or licenses does not exempt the person or entity from the requirement of obtaining a City-issued conditional use permit to operate a Marijuana Facility. Notwithstanding any provision of this chapter to the contrary, Marijuana Facilities that do not qualify as one of the Marijuana Facility types expressly regulated by the provisions of this chapter are prohibited from operating anywhere within the City.

17.180.100 Licenses and Permits Applicable to Location.

No person or entity shall locate or operate a Marijuana Facility under the authority of a license or permit at any place other than the address of the Marijuana Facility as stated in the marijuana regulatory permit issued by the City and the conditional use permit issued pursuant to this Chapter.

17.180.110 Signage and Notices.

In addition to the requirements otherwise set forth in this Chapter, business identification signage for all Marijuana Facilities shall conform to the requirements of the City's Municipal Code, including, but not limited to, issuance of a City sign permit.

17.180.120 Compliance with Laws.

- a. It is the responsibility of the owners and operators of all Marijuana Facilities to ensure that such facilities are, at all times, operating in compliance with all applicable federal (not dealing with marijuana) state and local laws and regulations and any additional operating procedures or requirements which may be imposed as conditions of approval of a given marijuana Facility. Nothing in this Chapter shall be construed to authorize any action which violates federal (not dealing with marijuana), state law or local law with respect to the operation of a commercial marijuana business.
- b. Marijuana Facilities shall be permitted only as provided in this Chapter and if not expressly permitted by this Chapter, shall be prohibited.
- c. Any person or entity operating a marijuana Facility shall at all times remain in compliance and operate in accordance with the applicable provisions of this Chapter, the City's Municipal Code, and all applicable State laws and regulations, as may be amended pertaining to marijuana facilities.
- d. Failure to abide by any laws mentioned in this subsection shall constitute a public nuisance and shall subject the marijuana facility to revocation of any and all entitlements, licenses and permits.

17.180.130 Administration and Enforcement.

- a. In addition to the administration of the permitting requirements under this Chapter and the City's Municipal Code, the City Council or its designee may require, as a condition to granting or renewing permits, any information reasonably necessary to implement the intent of this Chapter to ensure that all marijuana is grown, processed, manufactured and distributed in a manner not in conflict with this Chapter, and to ensure that any and all related city taxes are being properly reported and paid.
- b. A conditional use permit, and any modifications thereto approved for a Marijuana Facility may be suspended or revoked for any violation of this Chapter and pursuant to the procedures generally applicable to Conditional Use Permits as set forth in the City's Municipal Code. Violations of this Chapter are subject to administrative, civil, and/or criminal penalties, as set forth in the City's Municipal Code, and remedies for such violations include but are not limited to civil injunctive relief, civil or administrative nuisance abatement actions or proceedings, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies. This Ordinance is adopted to address public health and safety issues, and as such, is expressly intended to be interpreted strictly and enforced rigorously in a manner such as to deter further violations.

Section 3. AMENDING THE LAND USE TABLE OF THE DESERT HOT SPRINGS MUNICIPAL CODE

The land use table shall reflect that Marijuana Testing Facilities are allowed with a conditional use permit in the Industrial and Commercial districts.

Section 4. 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 5. 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 6. 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 7. 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 8. 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 _____, 2018, 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:

N:\DHSO\0001-01 General\Doc\6169

Definition and Use Descriptions

- **STOREFRONT RETAIL** (aka “dispensaries”)
- **NON-STOREFRONT RETAIL** (aka “delivery only”)

Pursuant to State Law, “dispensaries” is no longer used as a defined term. Instead, State Law now uses the broader term “Retailers.”¹ Section 26070 of the Business and Professions Code (“B&P Code”) provides in part:

(a) State licenses to be issued by the bureau related to the sale and distribution of cannabis and cannabis products are as follows:

(1) “Retailer,” for the retail sale and delivery of cannabis or cannabis products to customers. A retailer shall have a licensed premises which is a physical location from which commercial cannabis activities are conducted. A retailer’s premises may be closed to the public. A retailer may conduct sales exclusively by delivery.

Therefore, under the B&P Code, “Retailers” can either have a physical store or conduct sales by delivery only. The California Code of Regulations (“CCRs”) clarifies “retailers” into two kinds of retailers: Storefront Retail and Non-storefront Retail².

STOREFRONT RETAIL

State Regulations – The CCRs³ provide several regulations pertaining to a storefront retail marijuana establishment, which include but are not limited to customer access to the retail area, hours of operation, requirements while not open for business, customers needing to provide proper identification, etc.

Desert Hot Springs Municipal Code (DHSMC) – The DHSMC does *not* have a definition of a storefront retail establishment, as per State Law. Instead, the DHSMC defines “dispensary” as *“Dispensary shall mean marijuana facilities licensed as a dispensary pursuant to California Business and Professions Code.”*⁴

Prior to the new State Law, “dispensary” was in fact defined by the Business and Professions Code. However, that has now changed, and currently no definition remains for “dispensary” in State Law. That said, “dispensaries” are allowed in the Commercial District with a conditional use permit and a regulatory permit.

As the City Council may recall, in 2014 the City Council deemed that nineteen (19) persons could apply for a marijuana dispensary conditional use permit. Of those nineteen (19) persons,

¹ 16 CCR, Div. 42, 42 Sections 5400 et seq); B&P Code Sections 26013, 26070.

² 16 CCR 5414.

³ 16 CCR, Div. 42, Sections 5400 through 5414.

⁴ DHSMC Section 17.180.030.

three (3) persons withdrew their applications. Sixteen (16) persons remain. Currently, there are a number of the initial dispensary applicants who have been duly issued a marijuana dispensary conditional use permit, by either the Planning Commission or the City Council. Further, there are also a number of dispensary applicants who have yet to apply for (or have been issued) a marijuana dispensary conditional use permit.

NON-STOREFRONT RETAIL

State Regulations - The CCRs⁵ provide that non-storefront retail (Type 9 State License) shall be authorized to conduct retail cannabis sales exclusively by delivery as defined in Business and Professions Code section 26001(p). B&P Section 26001(p) provides “(p) *“Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform.*” The CCRs provide several regulations pertaining to a non-storefront retail marijuana establishment, which include but are not limited to regulations pertaining to employees, deliveries facilitated by technology platforms, deliveries to a physical address, delivery vehicles, etc.

DHSMC – The DHSMC does *not* have a definition of, nor does it allow, of a non-storefront retail establishment.

⁵ 16 CCR, Div. 42, Sections 5414 through 5427.



Cannabis Retail

Storefront vs. Non-storefront

	Store-front Retail	(Proposed) Non-storefront Retail
City Permits/ Zoning:	Store-front Retail Permits <ul style="list-style-type: none"> • Commercial Zone • Limited to original 16 dispensary applicants 	Non-storefront Retail Permits <ul style="list-style-type: none"> • Industrial Zone
Uses Permitted:	<ul style="list-style-type: none"> • Retail <u>including</u> delivery inside the City • Light Manufacturing • Cultivation (up to 99 plants) 	<ul style="list-style-type: none"> • Delivery (sales) only <u>outside</u> of the City • (Full) Manufacturing • Cultivation (up to 99 plants) • Distribution
Uses <u>Not</u> Permitted:	<ul style="list-style-type: none"> • Distribution 	<ul style="list-style-type: none"> • Retail/delivery sales <u>within</u> the City (<i>Partner with existing Store-front Retail establishments for sales to DHS residents</i>)