

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA AMENDING CHAPTER 4.24 "ADMINISTRATIVE CITATION PROCEDURE" OF TITLE 4 "CODE ENFORCEMENT" OF THE DESERT HOT SPRINGS MUNICIPAL CODE TO REVISE THE PROCEDURES FOR THE ISSUANCE OF ADMINISTRATIVE CITATIONS

WHEREAS, the City of Desert Hot Springs ("City") is a municipal corporation, a charter city organized pursuant to Article XI of the California Constitution, and recognized for certain purposes as a political subdivision of the State of California; and

WHEREAS, the City's Code Compliance Division is tasked with the enforcement of the City Municipal Code ("DHSMC"), state and local laws, and health and safety regulations; and

WHEREAS, Assembly Bill 2164, effective on January 1, 2019, amends Government Code Section 53069.4, which allows local ordinances to impose immediate fines and penalties for violation of building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis; and

WHEREAS, illegal cannabis cultivators pose a threat to the public health and safety through their unpermitted activity and by avoiding oversight by City inspectors; and

WHEREAS, Chapter 4.24 of the DHSMC describes the procedures for issuing administrative citations, including fine schedules and appeals of administrative citations; and

WHEREAS, the issuance of administrative citations, along with fines and penalties, is an effective tool to combat violations of the DHSMC; and

WHEREAS, the City Council now desires to incorporate the remedies afforded to cities as prescribed in Assembly Bill 2164, bolstering those currently set forth in Chapter 4.24 in order to mitigate unlawful cannabis cultivation.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. RECITALS

That the foregoing recitals are true and correct and are herein adopted by this reference.

Section 2. AMENDMENT OF CHAPTER 4.24 "ADMINISTRATIVE CITATION PROCEDURE" OF TITLE 4 "CODE ENFORCEMENT" OF THE DESERT HOT SPRINGS MUNICIPAL CODE

That Chapter 4.24 ("Administrative Citation Procedure") of Title 4 ("Code Enforcement") of the Desert Hot Springs Municipal Code is hereby amended as follows:

4.24.010 Purpose.

The purpose of this chapter is to establish an administrative citation program that will permit City personnel to proceed administratively with its code enforcement efforts in an expedient, efficient and fair manner for purposes of effectively protecting the health and safety of the general public and enhancing the quality of life for the citizens of the City by preventing and discouraging violations of the City's code and by imposing fines on persons who violate the

City's code. This chapter will permit the City to issue administrative citations for any violation of the City's code.

4.24.020 Definitions.

A. The words and phrases included in this chapter shall employ the definitions found in Section 4.04.020 of Chapter 4.04 (General Provisions) of Title 4 (Code Enforcement) of the Desert Hot Springs Municipal Code unless it is clearly apparent from the context that another meaning is intended.

B. In addition to those definitions set forth in Section 4.04.020 of Chapter 4.04 (General Provisions) of Title 4 (Code Enforcement) of the Desert Hot Springs Municipal Code the following definitions shall apply to this chapter:

"Administrative citation" means a formal notice that is issued by **an Issuing Officer a Community Preservation Officer, issuing agent or issuing officer** to a responsible party.

"Administrative Hearing Officer" means the individual who shall be responsible for conducting administrative appeal hearings and rendering decisions pursuant to the administrative appeal procedures set forth in this chapter.

"City" means the City of Desert Hot Springs.

"City Clerk" means the City Clerk of the City or designee.

"City Council" means the City Council of the City.

"Code" means the municipal code of the City and all applicable statutes, rules, codes and regulations adopted and incorporated therein by reference through a duly adopted ordinance or resolution of the City Council.

"Finance Director" means the Director of Finance for the City or designee.

"Fine" means the sum of money imposed upon a person as a penalty for committing a violation of the Code, payable to the City.

"Issuing Officer" means a code compliance officer or any other authorized enforcement agent of the City who may issue an administrative citation or notice pursuant to this title.

"Owner" means the owner of record as shown on the last equalized assessment roll of the County or as otherwise may be known to the **Community Preservation Issuing** Officer. If there is more than one owner, the term includes all of the owners. For purposes of providing notice to an owner of any action or proceeding under this chapter, "owner" includes the actual owner of record, or such owner's agent, employee or other legal representative if such agent, employee or representative is authorized by the owner to receive such notice.

"Person" means any individual, firm, association, club or organization (including informal club or organization), partnership, business, entity, trust(ee), company or corporation, or the owner, tenant, occupant, operator, manager, employee or agent of any such firm, association, organization, partnership, business, trust, company or corporation. Person does not include an individual acting within the scope of his or her employment or contractual obligations to the City.

“Remedies” means the enforcement options available to the City to gain compliance with a law or regulation.

“Responsible party” means any person, owner, tenant or occupant and a parent or legal guardian of any person(s) under 18 years of age, whose acts or omissions have caused or contributed to a violation of this code, and shall include any owner(s) or occupant(s) of the affected property.

“Tenant” or “occupant” means the person or persons having a right of present possession of the affected property, other than the owner, including without limitation tenant(s), subtenant(s), lessee(s), sublessee(s), or assignee(s), or any authorized agent of any such person(s) or owner(s).

4.24.030 Undefined terms.

Where terms are not specifically defined in this chapter, in the code, in any applicable statute, rule, code or regulation, or in any of the Uniform Codes adopted and incorporated by reference in the code, they shall have the meanings set forth their ordinary accepted meanings within the context with which they are used. The most current edition of Webster’s Third New International Dictionary of the English Language, unabridged, shall be construed as providing ordinary accepted meanings for any duly adopted City policy or regulation.

4.24.040 Plural.

Words used in the singular include the plural, and the plural the singular.

4.24.050 Feminine and masculine.

Words used in the masculine gender include the feminine, and the feminine the masculine.

4.24.060 Reference applies to amendments.

Whenever a reference is made to any part of the code or to any ordinance of the City, reference applies to all amendments and additions now or hereafter made.

4.24.070 Issuance of administrative citation.

Whenever an **Community Preservation Issuing** Officer determines that a violation of the code has occurred, **or that a violation exists which is deemed to constitute a public nuisance pursuant to the Municipal Code and/or applicable statute, rule, code or regulation,** the **Community Preservation Issuing** Officer may issue an administrative citation to any responsible party.

4.24.080 Administrative fines.

A. Any responsible party to whom an administrative citation is issued shall be responsible for payment of an administrative fine. **Any person issued an administrative citation under this chapter, for each separate violation, shall be subject to a fine as follows Any party to whom an administrative citation is issued, shall be responsible for payment of an administrative fine, the amount of which shall be set forth in the applicable chapter of the municipal code or applicable statute, rule, code, or regulation violated or, if no amount is specified, then in the amounts as follows:** (1) an administrative fine in an amount not to exceed \$100 for the first violation; (2) an administrative fine in an amount not to exceed \$250 for a second violation of the same offense within a 12-month period

of the date of the first offense; and (3) a fine in an amount not to exceed \$500 for a third and any subsequent violation of the same offense within a 12-month period of the date of the first offense. Payment of an administrative fine shall be made in accordance with the provisions of Section 4.24.240 of this chapter.

B. A separate offense occurs for each day a violation is continued and/or maintained.

C. Any party to whom an administrative citation has been issued for violations pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, shall be provided not less than ten calendar days in which to correct or otherwise remedy the violation prior to the imposition of any administrative fine, unless a shorter period is determined necessary by the Issuing Officer. The Issuing Officer may extend the time in which to correct or otherwise remedy a violation upon a showing that the recipient of the administrative citation requires additional time to complete repairs or upon a showing that the recipient of the administrative citation is awaiting issuance of a permit, provided such person offers proof that he or she has commenced taking action to correct or otherwise remedy the violation and/or that a proper application for such permit has been made.

D. Notwithstanding Subsection (C), administrative fines or penalties may be imposed immediately if a violation pertains to building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis. However, there shall be not less than 10 calendar days, prior to the imposition of administrative fines and penalties, to correct or remedy any violations if all of the following conditions exist:

- 1. A tenant is in possession of the property that is the subject of the administrative action.**
- 2. The rental property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.**
- 3. The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.**

4.24.090 Contents of administrative citation.

An administrative citation shall **substantially** include all of the following information:

- A. The name of the person(s) responsible for committing the violation(s);
- B. The date of the violation(s);
- C. The street address or a definite description of the location where the violation occurred;
- D. A description of the violation;
- E. The code section(s) violated;
- F. An order prohibiting the continuation or repeated occurrence of the described violation(s);

- G. The amount of the administrative fine for the violation(s);
- H. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
- I. A description of the administrative citation appeal process, including the time within which a notice of appeal must be filed and the place at which a notice of appeal must be filed;
- J. A description of the process by which the City may collect any unpaid fines;
- K. A description of the potential consequences should the responsible party continue or repeat the violation;
- L. The name and signature of the Community Preservation Issuing Officer or other authorized person who issued the administrative citation; and
- M. The number of times the violation has been cited by the City within the previous 12 months.

4.24.100 Form of administrative citation.

An administrative citation may be in letter form or any other form which substantially conveys the information set forth in Section 4.24.090.

4.24.110 Persons entitled to service of administrative citation.

The administrative citation, and any amended or supplemental administrative citation, shall be served upon the responsible party(s). If the violation is related to a condition on real property, the administrative citation, and any amended or supplemental administrative citation, shall be served upon the responsible party(s) and the owner. If the violation is an act committed by an owner, operator, manager, agent and/or employee on behalf of a firm, association, organization, partnership entity, club, business, trust, company or corporation during employment activities, the administrative citation, and any amended or supplemental administrative citation, shall be served upon the owner and/or manager, operator, agent or employee of such firm, association, organization, partnership, entity, club, business, trust, company or corporation. The failure of the Community Preservation Officer, issuing agent or issuing officer Issuing Officer to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this chapter.

4.24.120 Service of administrative citation.

A. The administrative citation shall be served upon the responsible party or owner personally, or by United States mail, first-class postage prepaid, and if by such mail, it shall be sent to the last known address listed on the most recent tax assessor's records or as may otherwise be known to the Community Preservation Issuing Officer, issuing officer or issuing agent.

B. In the case of personal service, service shall be deemed complete at the time of such delivery. In the case of service by first-class mail, service shall be deemed complete at the time of deposit into the United States mail. The failure to receive the administrative citation or the notice of violation, sent via first-class mail shall not affect the validity of any enforcement proceedings under this chapter.

C. The failure of an administrative citation or notice of violation to satisfy all of the requirements of this provision shall not affect the validity of any other enforcement proceedings under this code.

4.24.130 Proof of service of administrative citation.

Proof of service of the administrative citation shall be certified at the time of service by a written declaration under penalty of perjury executed by the person(s) effecting service, declaring the date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to a copy of the administrative citation and retained by the Community Preservation Issuing Officer or authorized agent.

4.24.140 Recordation of notice of pendency of administrative action.

Upon the issuance of an administrative citation, the Community Preservation Issuing Officer, ~~issuing officer or issuing agent~~ may cause a notice of pendency of administrative action to be recorded with the County Recorder's office against the parcel of real property on which the violation exists. Upon the remedy or otherwise correction of the violation, the Community Preservation Issuing Officer, ~~issuing officer or issuing agent~~ shall, within a reasonable time, cause a withdrawal of notice of pendency of administrative action to be recorded with the Riverside County Recorder's office against the parcel of real property on which the violation occurred.

4.24.150 Appeal of administrative citation.

A person or entity named as the responsible party in an administrative citation may appeal the determination that there is/are violation(s) as alleged in the administrative citation, that the person or entity served with the administrative citation is the responsible party, that a penalty or the penalty amount is warranted, or any other relevant grounds.

4.24.160 Form for filing of appeal.

A. All appeals from any administrative citation shall be in writing and shall contain the following information:

1. Name(s) of each appellant;
2. A brief statement in ordinary and concise language of the specific items protested, together with any material facts claimed to support the contentions of the appellant;
3. A brief statement in ordinary and concise language of the relief sought and the reasons why the administrative citation should be rescinded, modified or otherwise set aside; and
4. The signatures of all parties named as appellants and their mailing addresses.

B. Any appeal filed that fails to provide all of the information required by this section shall be deemed incomplete.

4.24.170 Time in which to file appeal.

A complete and proper appeal of an administrative citation shall be filed with the City Clerk within 21 calendar days from the date of the service of the administrative citation, as

provided by this chapter. Any appeal not timely filed shall be rejected. Failure to timely submit a completed request for an appeal hearing or to pay the appeal processing fee and advance deposit of any penalty constitutes a waiver of the right to appeal and a failure to exhaust administrative remedies.

4.24.180 Fee for filing of appeal.

A filing fee as established by City Council resolution or any amendments thereto for an appeal of an administrative citation must be paid to the City at or prior to the time of the filing of such appeal. Any appeal of the administrative citation filed without payment of the filing fee shall be deemed incomplete.

4.24.190 Incomplete filing.

Not later than five calendar days from the date the appeal is filed, the City Clerk shall determine whether the appeal is complete. If the appeal is determined to be incomplete, the City Clerk shall immediately mail to the appellant a notice of incomplete filing which shall provide a written explanation of each reason why the appeal has been determined to be incomplete. If service of the notice of incomplete filing is completed within five calendar days from the date the appeal is filed, the 21-calendar-day time period within which to file a completed appeal of an administrative citation or notice of violation shall not be extended.

4.24.200 Processing of appeal.

The City Clerk shall present any appeal filed pursuant to this chapter to the Administrative Hearing Officer upon receipt of such appeal.

4.24.210 Stay pending appeal.

Enforcement of any administrative citation shall be stayed during the pendency of an appeal therefrom which is properly and timely filed pursuant to this chapter. The appeal of any administrative citation shall not prevent the issuance of additional administrative citations for the same continuing violation or for other code violations not previously cited against the same responsible party.

4.24.220 Failure to file proper appeal.

Failure to timely and properly file an appeal from an administrative citation shall constitute a waiver of all rights to an administrative appeal hearing and adjudication of the administrative citation or any portion thereof. The determination that the violation occurred and that the person to whom the administrative citation was issued was responsible for the violation shall be deemed final on the date that service of the administrative citation is deemed completed pursuant to Section 4.24.120.

4.24.230 Fee waiver.

The City may waive the fee required for filing an appeal if the person in receipt of the administrative citation or notice of violation meets the requirements of this subsection.

A. The request for a waiver of the appeal filing fee shall be filed with the appeal of the administrative citation.

B. Waiver of the fee shall be granted by the Finance Director if the person requesting the fee waiver submits documentation demonstrating that he/she is receiving benefits pursuant to the Supplemental Security Income (SSI) program (42 U.S.C. 1381), the

State of California Supplemental Payments (SSP) program (Welfare and Institutions Code Section 12200 et seq.), the Temporary Aid to Needy Families (TANF) program (42 U.S.C. 601 et seq.), the Food Stamp program (7 U.S.C. 2011 et seq.), or if the person requesting the fee waiver submits documentation that his or her monthly income is less than the current monthly poverty threshold established annually by the Community Services Administration pursuant to Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or if the Finance Director determines that the person requesting the fee waiver is experiencing financial hardship and is unable to deposit with the City the full amount of the fee in advance of the hearing.

C. The Finance Director shall make a determination either accepting or denying the request within seven calendar days after the request has been filed.

D. If the Finance Director determines that the person requesting the waiver is not eligible for such waiver, the appeal filing fee shall be remitted to the City within 10 calendar days of the date of the decision issued by the Finance Director, or 21 calendar days from the date service of the administrative citation is completed, whichever is later.

4.24.240 Time in which to pay fine.

Where no proper appeal of the administrative citation is filed, the recipient of an administrative citation shall pay the administrative fine no later than 30 calendar days from the date the administrative citation was issued. Where a timely and complete appeal of the administrative citation is filed pursuant to this chapter and where the administration administrative citation was upheld by the Administrative Hearing Officer, the administrative fine shall be paid no later than 10 days from the effective date of the notice of decision. If the amount of any fine or penalty imposed under this chapter has not been satisfied as provided in this section and has not been successfully challenged by appeal or in court, the penalty amount may become a special assessment or lien against the affected property, as provided in Sections 4.24.420 and 4.24.430. The amount of the fine for which the recipient shall be responsible shall be as set forth in the administrative citation. Payment of the administrative fine shall be made to the issuing department or division of the City unless otherwise indicated in the citation.

4.24.250 Administrative Hearing Officer.

The City Manager, or designee, shall select the Administrative Hearing Officer to conduct administrative hearings pursuant to this chapter. All Administrative Hearing Officers shall be impartial third parties and shall not have any pecuniary interest in the proceeding over which he or she is presiding, nor any pecuniary interest in the outcome thereof. The Administrative Hearing Officer shall conduct all administrative appeal hearings of any timely and properly filed appeal from an administrative citation pursuant to the procedures set forth in this chapter. The Administrative Hearing Officer shall review all evidence and hear all oral testimony submitted by, for, and against the appellant. The Administrative Hearing Officer may decide to uphold the administrative citation, notice of violation, rescind the administrative citation, notice of violation, in part or in its entirety, and/or reduce the amount or waive payment of the administrative fine.

4.24.260 Limitations on authority of Administrative Hearing Officer.

The Administrative Hearing Officer's authority to hear and consider appeals shall be limited to passing on only those appeals pertaining to matters within his or her subject matter jurisdiction. The Administrative Hearing Officer shall consider at the hearing on the appeal only those matters or issues which were specifically raised by the appellant in his or her appeal and which are relevant to the issues of the hearing. The Administrative Hearing Officer shall not

have the authority to waive any requirements of the code and/or any applicable statutes, rules, codes or regulations, except as otherwise provided in this chapter.

4.24.270 Scheduling of administrative appeals hearing.

As soon as practicable after receiving the written appeal, the Administrative Hearing Officer shall fix a date, time and place for the hearing of the appeal. Such date shall be not less than 10 calendar days and not more than 30 calendar days from the date the appeal was filed with the City Clerk, unless the Community Preservation Issuing Officer determines that the matter is urgent or that good cause exists for an extension of time, in which case the hearing date may be shortened or extended, as warranted by the circumstances.

4.24.280 Preparation and form of notice of appeals hearing.

As soon as practicable after scheduling the administrative appeals hearing, the Administrative Hearing Officer shall prepare a hearing notice which shall be in substantially the same form as follows:

You are hereby notified that a hearing will be held before the Administrative Hearing Officer at _____ on the _____ day of _____, _____, at the hour of _____ to hear your appeal of the administrative citation issued (or notice of violation, when applicable) or otherwise served upon you on _____. You may be present at the hearing. You may be, but need not be, represented by an attorney. You may present any relevant evidence at the hearing and you will be given a full opportunity to cross-examine all witnesses testifying against you.

4.24.290 Time for and method of service of notice of administrative appeals hearing.

The Administrative Hearing Officer shall provide a copy of the hearing notice to the City Clerk who shall cause a copy of the notice to be provided to the appellant either by causing a copy of the notice to be delivered to each appellant personally or by causing a copy of the notice to be delivered by first class mail, postage prepaid, and addressed to each appellant at the address shown on the appeal form. The City Clerk shall also cause a copy of the hearing notice to be provided to the Community Preservation Issuing Officer, issuing officer or issuing agent.

4.24.300 Proof of service of hearing notice.

Proof of service of the hearing notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the person(s) effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the hearing notice and retained by the Issuing Officer issuing officer or authorized agent.

4.24.310 Report and recommendation.

The Community Preservation Issuing Officer, issuing officer or issuing agent may prepare written report concerning the administrative citation or the notice of violation for the Administrative Hearing Officer for consideration at the hearing. If the Community Preservation Issuing Officer, issuing agent or issuing officer submits the said written report, then a copy of the report shall be served on the appellant(s) at least five days before the hearing.

4.24.320 Admissibility of evidence at appeals hearing.

At the appeals hearing, the Administrative Hearing Officer shall consider ~~written or oral testimony or other any~~ evidence offered either in support of appellant's claim or in support of the administrative citation. Evidence offered during the hearing must be ~~credible and~~ relevant in the estimation of the Administrative Hearing Officer, but formal rules governing the presentation and consideration of evidence shall not apply. The Administrative Hearing Officer has the authority to determine the relevance ~~and credibility~~ of any evidence to the hearing. The Administrative Hearing Officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy. Evidence presented by the **Community Preservation Issuing** Officer, ~~issuing officer or issuing agent~~ tending to show that the responsible party violated the City's code and was the person responsible for committing the violation, shall establish a prima facie case that issuance of the administrative citation was warranted. The burden of proof shall then be on the responsible party to refute such evidence. The standard to be applied for meeting such burden shall be a preponderance of the evidence.

4.24.330 Failure to attend administrative appeals hearing.

The failure of the responsible party, appellant or other interested party to appear at the hearing following proper notice shall constitute a waiver of the right to be heard and a failure by such party to exhaust his or her administrative remedies, **in which event it shall be deemed that such party has exhausted his or his administrative remedies.**

4.24.340 Duty to prepare and serve notice of decision and compliance order.

The Administrative Hearing Officer shall prepare and serve a written notice of decision and compliance order upon the appellant and the **Community Preservation Issuing** Officer, ~~issuing officer or issuing agent~~ following the appeals hearing. The notice of decision or the compliance order shall include a statement of the right to have the order judicially reviewed in the manner and in the time frames specified in Section **4.24.390 4.24.400**. Unless otherwise ordered by a court of competent jurisdiction, enforcement of the compliance order shall not be stayed pending judicial review thereof. The decision of the Administrative Hearing **Appeals** Officer shall be final.

4.24.350 Time in which to serve notice of decision and compliance order.

The **Administrative Hearing Appeals** Officer shall serve the written notice of decision and compliance order to each appellant within 30 calendar days from the date the hearing is deemed closed.

4.24.360 Form of notice of decision and compliance order.

The notice of decision and compliance order shall state whether the administrative citation or notice of violation has been either upheld, in full or in part, or rescinded, in full or in part. The notice of the decision shall also contain a brief summary of the evidence considered, findings of fact, and the effective date of the decision. If the Administrative Hearing Officer finds that no violation occurred, that the violation was corrected within the specified time period, or that the person cited is not the responsible party, the Administrative Hearing Officer shall issue an administrative order to reflect those facts, and the City will promptly refund the amount of any penalty deposited.

4.24.370 Service of notice of decision and compliance order.

A. The Administrative Hearing Officer shall cause a copy of the notice of decision and compliance order to be provided to each appellant either by causing a copy of the notice to be delivered to each appellant personally or by causing a copy of the notice to be delivered to

each appellant by first class mail, postage prepaid, and addressed to appellant at the address shown on the appeal.

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

4.24.380 Effective date of notice of decision.

The effective date of the Administrative Hearing Officer's notice of decision and compliance order shall be as stated therein.

4.24.390 Appeal of imposition of administrative fines.

Any party contesting the final decision of the Administrative Hearing Officer concerning the imposition of an administrative fine under this chapter may seek judicial review of the imposition of the fine by filing an appeal pursuant to California Government Code Section 53069.4(b)(1) after the party has exhausted all available administrative remedies relating to the underlying violation.

4.24.400 Collection procedures of the administrative fine and other fees, penalties.

The amount of any administrative fine imposed by this chapter, as well as any fine, civil penalty or fee imposed by Title 4 (Code Enforcement) or Title 8, 9 or 12 of the code, including, but not limited to, the fee and the civil penalty imposed by Chapter 8.40 of this code, together with any applicable interests shall be deemed a civil debt owing to the City. An action may be commenced in the name of the City in any court of competent jurisdiction for the collection of the amount of any such delinquent or unpaid fine, fee or civil penalty with any penalties applicable thereto as otherwise provided by law. The remedy prescribed by this section shall be cumulative and the use of an action to collect such delinquent and unpaid fine, fee or civil penalty as a debt by civil action shall not bar the use of any other remedy as otherwise provided by law. Any fine, penalty, or fee imposed under this code may also be enforced by imposition of a lien or special assessment upon real property, pursuant to Sections 4.24.410 and 4.24.420 of this chapter. Any lien or special assessment imposed upon real property shall remain in effect until the penalty, fine or fee is paid in full.

4.24.410 Special assessment.

A. Any administrative fine, penalty or fee imposed for violations of this code, including but not limited to the administrative fines authorized by this chapter and any fine, civil penalty or fee imposed by Title 4 (Code Enforcement) or Title 8, 9 or 12 of the code, including, but not limited to, the fee and the civil penalty imposed by Chapter 8.40 of this code, together with any applicable interests, whether imposed or levied judicially or administratively, may be enforced by imposing a special assessment on the property pursuant to the provisions of this section. Any special assessment imposed on real property pursuant to this section may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ordinary municipal taxes. To commence the special assessment process, the City shall serve the property owner with a notice of special assessment in the manner provided under Section 4.24.120. The notice of special assessment shall include the following information:

1. The date the administrative fine, fee, or penalty was imposed;

2. The amount of the administrative fine, fee, or penalty;
3. Statement that failure to pay the administrative fine, fee, or penalty has caused the City to commence imposing a special assessment on the property;
4. That if a special assessment is imposed, the property may be sold after three years by the tax collector for unpaid delinquent assessments;
5. That the property owner may appeal the imposition of the special assessment within 10 calendar days after service of the notice of special assessment.

B. Appeals. Any appeal of a notice of special assessment shall be processed under the appeals procedures of this chapter.

C. Notice of Assessment. If the administrative fine, fee, or penalty is upheld on appeal, or if no appeal was filed, the Finance Director shall execute and file in the office of the Riverside County Auditor-Controller and shall send a copy via certified mail to the owner a certificate which contains the following information:

1. The amount of the special assessment;
2. That the special assessment is being imposed by the City;
3. The date the administrative citation was issued;
4. The street address, legal description and assessor's parcel number of the parcel on which the special assessment is imposed;
5. The name and address of the record owner of the parcel; and
6. That the property may be sold after three years by the tax collector for unpaid delinquent assessments.

D. Assessment Book. The Riverside County Auditor-Controller shall enter the amount of the special assessment in the County's assessment book opposite the description of the particular property, and the amount shall be collected together with all other taxes against the property.

E. Collection. The amount set forth in the notice of assessment shall thereafter be collected at the same time and in the same manner as ordinary City taxes are collected, and shall be subject to the same penalties and interest and to the same procedure and sale in the case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of City taxes shall apply to the special assessment.

F. Refunds. The City Council may order a refund of all or part of the assessment paid pursuant to this chapter if it finds that all or part of the assessment was erroneously made. An assessment or part thereof shall not be refunded unless a claim is filed with the City Clerk within six months after the assessment became due and payable. The claim shall be verified by the person who paid the assessment or the legal representative of such person.

4.24.420 Lien procedure.

A. As an alternative to making a special assessment pursuant to Section 4.24.410, any administrative fine, penalty or fee imposed for violations of this code, including, but not

limited to, any fine, civil penalty or fee imposed by Title 4 (Code Enforcement) or Title 8, 9 or 12 of the code, including, but not limited to, the fee and the civil penalty imposed by Chapter 8.40 of this code, together with any applicable interests, whether imposed or levied judicially or administratively, may be enforced by recording a lien against the property pursuant to the provisions of this section. Prior to the recordation of a lien, the City shall serve the owner with a notice of imposition of lien. The notice shall include the following:

1. The date the administrative fine, fee, or penalty was imposed;
2. The amount of the administrative fine, fee, or penalty;
3. Statement that failure to pay the administrative fine, fee, or penalty has caused the City to consider imposing a lien on the property; and
4. That the property owner may appeal the notice of imposition of lien within 10 calendar days after service of the notice.

B. Appeals. Any appeal of a notice of imposition of lien shall be processed under the appeals procedures of this chapter.

C. Notice of Lien. If the administrative fine, fee, or penalty is upheld on appeal, or if no appeal was filed, the Finance Director shall execute and file in the office of the Riverside County Recorder, a certificate which contains the following information:

1. The amount of the lien;
2. That the lien is being imposed by the City of Desert Hot Springs;
3. The date the administrative citation was issued;
4. The street address, legal description and assessor's parcel number of the parcel on which the lien is imposed;
5. The name and address of the record owner of the parcel.

A copy of said notice shall be served on the owner in the manner specified in subsection B of this section.

D. Discharge, Release or Satisfaction of Lien. In the event the lien is discharged, released or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection F of this section shall be recorded by the City. The lien and release of lien shall be indexed in the grantor-grantee index.

4.24.430 Attorney's fees.

The prevailing party in any proceeding conducted pursuant to this chapter and associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees, as approved by the City Council, incurred in any such proceeding. In no action, administrative proceeding, or special proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the City in the action or proceeding.

Section 4. SEVERABILITY

That, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 5. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the DHSMC as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 6. AMENDING OF BAIL SCHEDULE

That the City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 7. EFFECTIVE DATE

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

Section 8. CERTIFICATION

That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the ____ day of _____, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

[SIGNATURES FOLLOW ON THE NEXT PAGE]

ATTEST:

Jerryl Soriano, CMC, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

DRAFT