

## REPORT TO THE CITY COUNCIL

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**DATE:** September 3, 2019

**TITLE:** An Urgency Interim Ordinance Adopting a Moratorium on the Establishment of Any Marijuana Facility, or Any Use or Activity Related Thereto, for Properties Located in the Downtown Area near City Hall, Specifically on Pierson Boulevard between Cactus Drive and Mesquite Avenue, on Palm Drive between Acoma and 1st Street, on 1st Street between Cactus Drive and Mesquite Avenue, and on Acoma Avenue between Cactus Drive and Palm Drive

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**Reviewed by:** Jennifer A. Mizrahi, City Attorney

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### RECOMMENDATION

- 1) Staff Report;
- 2) Entertain Questions of Staff from City Council;
- 3) Open the Public Hearing;
- 4) Take Public Testimony from those in favor;
- 5) Take Public Testimony from those opposed;
- 6) Take Public Testimony from those in a neutral position;
- 7) Close the Public Hearing;
- 8) City Council discussion and questions to Staff; and
- 9) Adopt an Urgency Interim Ordinance of the City Council of the City of Desert Hot Springs Adopting a Moratorium on the Establishment of Any Marijuana Facility, as Defined in Chapter 17.180 of the Desert Hot Springs Municipal Code, or Any Use or Activity Related Thereto, for Properties Located in the Downtown Area near City Hall, Specifically on Pierson Boulevard between Cactus Drive and Mesquite Avenue, on Palm Drive between Acoma and 1st Street, on 1st Street between Cactus Drive and Mesquite Avenue, and on Acoma Avenue between Cactus Drive and Palm Drive

### DISCUSSION

The City currently regulates Marijuana Facilities as they relate to land use, as allowed by the Desert Hot Springs Municipal Code ("Municipal Code") Chapter 17.180. Chapter 17.180 currently defines "Marijuana Facility" means collectively any marijuana storefront retail facility, non-storefront retail facility, marijuana cultivation facility, marijuana distribution facility, marijuana testing facility or marijuana manufacturing facility, as those terms are defined in this chapter ("Marijuana Facility" or "Marijuana Facilities" in the plural). Current State law which regulates marijuana expressly protects local licensing practices, zoning ordinances, and other local actions taken pursuant to the City's constitutional police power. The local police power includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders. Chapter 17.180 allows (with certain entitlements, permits, and licenses) Marijuana Facilities in specifically designated zoning districts of the City. Specifically, Chapter 17.180 allows (with certain entitlements, permits, and licenses) Storefront Retail Facilities and Marijuana Testing Facility Facilities (as those terms are defined in the Municipal Code) Marijuana Facilities in the City's Commercial Zoning Districts; and

Several people and business entities have expressed an interest in applying for entitlements, permits and licenses for Marijuana Facilities for properties located on Pierson Boulevard between Cactus Drive and Mesquite Avenue, on Palm Drive between Acoma and 1<sup>st</sup> Street, on 1<sup>st</sup> Street between Cactus Drive and Mesquite Avenue, and on Acoma Avenue between Cactus

Drive and Palm Drive, directly adjacent or within close proximity to City Hall (the “Subject Area”). Although certain Marijuana Facilities are currently allowed (with certain entitlements, permits, and licenses) within the City, the Subject Area may not be suited for Marijuana Facility use since the Subject Area, or portions thereof: 1) is a prominent welcoming area for all City residents and visitors since it is adjacent to or within close proximity to City Hall and the City’s Civic Center Area, and 2) could be used for a different land use that depends on convenient access to City Hall and the Civic Center Area.

The City Council anticipates that some may be seeking to establish additional Marijuana Facilities in the Subject Area before a non-urgency ordinance would become effective. If Marijuana Facilities were permitted to be established in the Subject Area without appropriate regulation, such uses might be established in areas that could conflict with the policies of the General Plan (a copy of which was made available for review by the City Council by the Office of the City Clerk), be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding Marijuana Facilities. City staff needs time to develop appropriate zoning regulations, uses, and development standards for the Subject Area.

### **The Proposed Ordinance**

If approved, the proposed Ordinance would cause a temporary suspension of the processing of any incomplete application or approval of any permit, entitlement or license within the Subject Area. Further, no use permit, variance, building permit, or any other entitlement for use would be accepted, processed, approved or issued for the establishment or operation of a uses for the Subject Area. Adopting such proposed Ordinance would allow adequate time for the City to consider, study, and enact regulations for any such area, so that the City Council can properly consider the best uses and proper development standards for that area.

If passed, such proposed Ordinance would take effect immediately. In order to adopt such an ordinance, the following must be done:

- 1) Adoption requires a four-fifths vote of the City Council;
- 2) The proposed Ordinance must contain findings, which are included with the proposed Ordinance, stating why the proposed Ordinance is needed to address a current and immediate threat to public health, safety, or welfare;
- 3) 10 days prior to the expiration of the Proposed Ordinance or any extension thereof, the Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the Proposed Ordinance

The proposed Ordinance has an initial term of 45 days, unless it is extended by four-fifths vote of the Council. The proposed Ordinance can be extended by the City Council for a period of time up to 22 months and 15 days, for a total of 2 years.

### **FISCAL IMPACT**

Reduced potential for additional cannabis tax.

### **EXHIBIT(S)**

- 1) Proposed Urgency Interim Ordinance