

ORDINANCE NO. ____

EXTENSION OF 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

WHEREAS, pursuant to the authority granted the City of Desert Hot Springs (“City”) by Article XI, Section 7 of the California Constitution, the City has the police power to regulate the use of land and property within the City in a manner designed to promote public convenience and general prosperity, as well as public health, welfare and safety; and

WHEREAS, adoption and enforcement of comprehensive zoning regulations and other land use regulations lies within the City’s police power; and

WHEREAS, 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; and

WHEREAS, 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); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the City Council amended Title 17 “Zoning” of the Municipal Code adding Chapter 17.180 for the purpose of imposing reasonable regulations

pertaining to Marijuana Facilities 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; and

WHEREAS, Chapter 17.180 allows (with certain entitlements, permits, and licenses) Marijuana Facilities in specifically designated zoning districts of the City; and

WHEREAS, 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

WHEREAS, 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 1st Street, on 1st 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"); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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 (which was made available for review by the City Council by the office of the City Clerk and a copy of which was made available for review), 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; and

WHEREAS, City staff needs time to develop appropriate zoning regulations, uses, and development standards for the Subject Area; and

WHEREAS, the City Council desires, on an urgency basis, to temporarily prohibit Marijuana Facilities of any kind whatsoever in the Subject Area of the City; and

WHEREAS, on September 3, 2019, after a duly noticed public hearing, the City Council adopted an Ordinance titled “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 (“Underlying Ordinance”);” and

WHEREAS, City Council amended the Underlying Ordinance to including language that it shall not affect current existing approved entitlements or existing operations located in the Subject Area from expanding their businesses to adjacent properties, and excepting APN 639-293-029 (Bodde’s project);

WHEREAS, the Underlying Ordinance is set to expire on October 18, 2019; and

WHEREAS, on October 15, 2019, the City Council held a duly noticed public hearing on the this current Ordinance which would extend the Underlying Ordinance 22 months and 15 days from October 18, 2019; and

WHEREAS, pursuant to Government Code Section 65858(d), ten days prior to the expiration of this interim ordinance or any extension, the City Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance (“65858(d) Report”); and

WHEREAS, the 65858 Report is adopted, which is attached hereto as Exhibit A; and

WHEREAS, California Government Code Section 65858 provides the statutory authority and time limits for interim ordinances prohibiting any uses which may be in conflict with a contemplated general plan, specific plan or a zoning proposal which the City plans to consider, study or intends to study within a reasonable time; and

WHEREAS, Government Code section 36937 provides that the City may adopt an ordinance that takes effective immediately when adopted for the immediate preservation of the public peace, health or safety, providing the ordinance contains a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of

the city council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS DOES ORDAIN AS FOLLOWS:

Section 1. RECITALS

That the above recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. EVIDENCE

That the City Council has considered all of the evidence at its meeting, which includes, but is not limited to, the following:

- (a) The City's General Plan, including updates;
- (b) The City's Municipal Code;
- (c) The staff report; and
- (d) The public comments, both written and oral, received and/or submitted at, or prior to the City Council's consideration of this urgency interim ordinance.

Section 3. FINDINGS

That based on the foregoing recitals and evidence, the City Council finds as follows:

- (a) 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.
- (b) 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.
- (c) Several people and business entities have expressed an interest in applying for entitlements, permits and licenses for Marijuana Facilities for properties within the Subject Area, which is 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.
- (d) 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.
- (e) 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.
 - (f) 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 (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.
 - (g) The City needs to properly plan and develop the zoning, uses, regulations, and development standards that will be within the Subject Area.
 - (h) This Ordinance shall not affect current existing approved entitlements or existing operations located in the Subject Area from expanding their businesses to adjacent properties, and excepting APN 639-293-029 (Bodde's project).

Section 4. CONCLUSIONS

That based on the foregoing recitals, evidence and findings, the City Council concludes as follows:

(a) It is necessary to temporarily suspend the processing of any application or approval of any permit, entitlement or license, for any kind of Marijuana Facility to allow adequate time for the City to consider, study, and enact regulations for Marijuana Facilities for the Subject Area, so that the City Council can properly consider the best uses and proper development standards for the Subject Area.

(b) That a temporary moratorium will provide the City with time to consider, study, draft, and adopt proper zoning, uses, development standards and regulations regarding the Subject Area in a manner that are consistent with the General Plan and Municipal Code, compatible with surrounding neighborhoods, and in the best interests of the residents of the City.

(c) This Ordinance shall not affect current existing approved entitlements or existing operations located in the Subject Area from expanding their businesses to adjacent properties, and excepting APN 639-293-029 (Bodde's project).

Section 5. INTERIM MORATORIUM IMPOSED

For a period of Twenty-Two (22) months and Fifteen (15) days from August 4, 2017, commencing on the date of adoption of this Extension of the Underlying Ordinance, or until such time as this ordinance may expire subject to any extension of this ordinance that the City Council may adopt and approve pursuant to Section 65858 of the Government Code, no use permit, variance, building permit, or any other entitlement for use shall be accepted, processed, approved or issued for the establishment or operation of, and no person shall otherwise establish, a "Medical Marijuana Facility" or a use or facility whatsoever related to medical or recreational marijuana within the Subject Area. This Ordinance shall not affect current existing approved entitlements or existing operations located in the Subject Area from expanding their businesses to adjacent properties, and excepting APN 639-293-029 (Bodde's project).

Section 6. **URGENT NEED**

Based on the foregoing recitals, evidence, findings and conclusions which are all deemed true and correct, this interim ordinance is urgently needed for the immediate preservation of the public safety, health, and welfare.

Section 7. **REPORT**

Pursuant to Government Code Section 65858(e), ten days prior to the expiration of this interim ordinance or any extension, the City Council shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of this ordinance.

Section 8. **ENVIRONMENTAL FINDINGS**

The City Council finds that adoption of this urgency interim ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Title 14 California Code of Regulations section 15061, subsection (b)(3), in that the proposed ordinance involves a proactive measure to prohibit Marijuana Facilities or any use or facility whatsoever related to medical or recreational marijuana within the Subject Area and does not have the potential to significantly impact the environment. Further, the City Council finds that adoption of this Extension to the Underlying Ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Title 14 California Code of Regulations section 15262 (Feasibility and Planning Studies, inasmuch as the City will be performing studies on the Subject Area.

Section 9. **SEVERABILITY**

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 10. **AMENDING OF BAIL SCHEDULE**

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 11. **EFFECTIVE DATE**

This interim ordinance is an urgency ordinance for the immediate preservation of the public health and safety and it shall be passed and become effective immediately upon its introduction pursuant to California Government Code Section 36937.

Section 12. **EXPIRATION**

This ordinance shall be of no further force or effect after _____, which is Twenty Two (22) months and Fifteen (15) days from October 18, 2019, which is the date of when the Underlying Ordinance would have expired.

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The foregoing urgency interim Ordinance was approved by at least four-fifths of the City Council and adopted at a meeting of the City Council held on ____ 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

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