

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, AMENDING CHAPTER 17.108 (HOME OCCUPANCY PERMITS) OF TITLE 17 (ZONING) OF THE DESERT HOT SPRINGS MUNICIPAL CODE TO ADOPT REGULATIONS FOR MICROENTERPRISE HOME KITCHEN OPERATIONS

WHEREAS, the City of Desert Hot Springs ("City") is a charter city organized pursuant to Article XI of the California Constitution; and

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, pursuant to Government Code Section 38771, the City may declare by ordinance what constitutes a nuisance; and

WHEREAS, Assembly Bill 626, passed on September 18, 2018, amended certain sections of the Health and Safety Code to establish uniform regulations of microenterprise home kitchen operations, as defined; and

WHEREAS, pursuant to Health and Safety Code Section 114367, a county or city may authorize, by ordinance or resolution, the permitting of microenterprise home kitchen operations; and

WHEREAS, pursuant to Health and Safety Code Section 114367, if a county authorizes microenterprise home kitchen operations, any permitted microenterprise home kitchen operation may operate in any city within that county, regardless of whether such city has separately enacted an ordinance or resolution authorizing or prohibiting microenterprise home kitchen operations; and

WHEREAS, on May 7, 2019, the County of Riverside adopted Ordinance 949 authorizing and permitting microenterprise home kitchen operations; and

WHEREAS, Health and Safety Code Section 114367.4 states that a city or county shall not prohibit the operation of, require a permit to operate, require a rezone of the property for, or impose any other restriction on, a microenterprise home kitchen operation in any residential dwelling for zoning purposes; and

WHEREAS, Health and Safety Code Section 114367.4 states that microenterprise home kitchen operations must abstain from posting signage or other outdoor displays advertising the microenterprise home kitchen operation, comply with local noise ordinances, and the Health and Safety Code, as amended by AB 626, does not supersede or otherwise limit the investigative and enforcement authority of the city, county, or city and county with respect to violations of its nuisance ordinances; and

WHEREAS, Chapter 17.108 of the Desert Hot Springs Municipal Code ("DHSMC") currently requires a permit all permissible home occupations, subject to various operating standards and conditions of approval; and

WHEREAS, the City Council desires to amend Chapter 17.108 to clarify that regardless of being duly permitted by the County of Riverside, microenterprise home kitchen operations are nonetheless subject to local public nuisance ordinances and regulations as defined by the City.

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 17.108 OF THE DESERT HOT SPRINGS MUNICIPAL CODE

That Chapter 17.108 "Home Occupancy Permit" of the Desert Hot Springs Municipal Code shall be amended to read in its entirety as follows:

Chapter 17.108 HOME OCCUPANCY PERMITS

17.108.010 Purpose.

The provisions of this chapter allow for conducting home-based occupations which are incidental to and compatible with surrounding residential uses. A home occupation represents a legal income producing activity by the occupant of the dwelling.

17.108.020 Application.

A. Conducting a home occupation requires the approval of the Director who may establish conditions to further the intent of this chapter. An application for a Home Occupation Permit shall be on a form prescribed by the Director and shall be filed with the Department pursuant to Chapter 17.68 (Applications and Fees).

B. No Home Occupation Permit shall be required for an in-home educational activity, including, but not limited to, music lessons, academic tutoring, or religious instruction, provided that no more than 5 students are present at any 1 time, and the use complies with all of the operating standards outlined below. **In addition, no Home Occupation Permit nor certificate of occupancy shall be required for a business using the owner(s) or any partner(s) home as its business address provided that:**

1. There is no signage at the home address;

2. There are no building materials stored at the home address;

3. No manufacturing takes place at the home address;

4. No vehicles with commercial advertisements are stored where visible from a public right-of-way; and

5. In the course of doing business, no employees or customers appear at the home address to transact business.

17.108.030 Operating standards.

Home occupations shall comply with all of the following operating standards:

- A. No home occupation shall alter the appearance of the dwelling unit;
- B. There shall be no displays, sale or delivery of merchandise, or advertising signs on the premises;
- C. No vehicles with commercial advertisements are stored where visible from a public right-of-way.**
- DE.** No signs other than the address and name of the resident shall be permitted;
- ED.** No advertising which identifies the home occupation by street address shall be permitted;
- E. All home occupations shall be confined completely to 1 room located within the dwelling. It shall not occupy an area equivalent to more than 10% of the gross area of first floor. No portion of any garage, carport, or other accessory structure shall be used for home occupation purposes. Horticulture activities may be conducted outdoors but only within the rear 1/3 of the lot;**
- F. In the course of doing business, no employees or customers appear at the home address to transact business.**
- GF.** A limit of 1 vehicle no larger than a 3/4 ton truck may be used by the occupant directly or indirectly in connection with a home occupation;
- HG.** Home occupations shall not encroach into any required parking, setback, or open space areas;
- IH.** There shall be no use or storage of material or mechanical equipment not recognized as being part of a normal household or hobby use;
- JJ.** Activities conducted and equipment or material used shall not change the fire safety or occupancy classifications of the premises. Utility consumption shall not exceed normal residential usage;
- KJ.** No use shall create or cause noise, dust, light, vibration, odor, gas, fumes, toxic/hazardous materials, smoke, glare, or electrical interference or other hazards or nuisances;
- LK.** Only the occupants of the dwelling may be engaged in the home occupation;
- ML.** The home occupation shall not involve the use of commercial vehicles for delivery of materials to or from the premises;
- NM.** The home occupation shall not generate pedestrian or vehicular traffic in excess of that ordinarily associated with the land use district in which it is located;

ON. No home occupation shall be initiated until a current business license is obtained, pursuant to the Desert Hot Springs Municipal Code;

PO. Home occupation permits shall not be transferable;

QP. There shall be no more than 1 home occupation in any dwelling unit;

RQ. If the home occupation is to be conducted on rental property, the property owner's written authorization for the proposed use shall be obtained prior to the submittal for a Home Occupation Permit; and

SR. Any special condition established by the Director and made part of the record of the Home Occupation Permit, as deemed necessary to carry out the intent of this chapter.

17.108.040 Prohibited home occupation uses.

The following are examples of uses that are not incidental to nor compatible with residential activities, and are prohibited:

- A. Barber and beauty shop;
- B. Businesses which entail the harboring, training, breeding, raising, or grooming of dogs, cats, or other animals on the premises;
- C. Carpentry and cabinet making;
- D. Medical and dental offices, clinics, and laboratories;
- E. Mini-storage;
- F. Repair, fix-it, or plumbing shops;
- G. Storage of equipment, materials, and other accessories to the construction and service trades;
- H. Vehicle repair (body or mechanical), upholstery, and painting;

I. Manufacturing, Warehousing and Distribution;

J. Welding and machining; and

K. Any other use determined by the Director to be not incidental nor compatible with residential activities.

17.108.045 Microenterprise Home Kitchen Operations

Microenterprise home kitchen operations ("MEHKO"), as defined by the Health and Safety Code, may operate within the City only under the following conditions:

A. The MEHKO is duly permitted by the County of Riverside;

B. The MEHKO complies with the operating standards under Section 17.108.030, except for the following subsections:

- 1. 17.108.030(F)**
- 2. 17.108.030(I)**
- 3. 17.108.030(L)**
- 4. 17.108.030(M)**
- 5. 17.108.030(P)**
- 6. 17.108.030(Q)**
- 7. 17.108.030(R)**
- 8. 17.108.030(S)**

C. Onsite consumption of food is permitted pursuant to Health and Safety Code Sections 113825 and 114367.2;

D. The MEHKO complies with all applicable sections of this code, including, but not limited to, the following:

1. Title 4, Code Enforcement;

2. Title 5, Business Licenses and Regulations;

3. Title 10, Vehicles and Traffic; and

4. Chapter 8.12, Noise Control.

17.108.050 Revocation.

A Home Occupation Permit may be revoked or modified by the Director if any 1 of the following findings can be made:

A. That the use has become detrimental to the public health, safety, or traffic, or constitutes a nuisance;

B. That the permit was obtained by misrepresentation or fraud;

C. That the use for which the permit was granted has ceased or was suspended for 6 or more consecutive calendar months;

D. That the condition of the premises, or the area of which it is a part, has changed so that the use is no longer justified under the meaning and intent of this chapter;

E. That 1 or more of the conditions of the Home Occupation Permit have not been met; or

F. That the use is in violation of any statute, ordinance, law, or regulation.

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.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the 19th day of November, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

[SIGNATURES FOLLOW ON THE NEXT PAGE]

ATTEST:

Jerryl Soriano, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

DRAFT