

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA 1) ADDING CHAPTER 2.72 "APPEALS BOARD" TO TITLE 2 "ADMINISTRATION AND PERSONNEL,"; 2) AMENDING SECTION 4.16.085 "PUBLIC NUISANCE HEARING"; 3) AMENDING VARIOUS SECTIONS OF CHAPTER 4.16.110 "PROCEDURES FOR APPEAL OF A NOTICE OF PUBLIC NUISANCE AND ORDER TO ABATE" OF TITLE 4 "PUBLIC NUISANCES"; 4) AND AMENDING VARIOUS SECTIONS OF CHAPTER 15.04 "BUILDING CODE" OF TITLE 15 "BUILDINGS AND CONSTRUCTION" OF THE DESERT HOT SPRINGS MUNICIPAL CODE IN ORDER TO ESTABLISH A BOARD TO HEAR APPEALS INVOLVING CALIFORNIA BUILDING CODE ISSUES.

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

WHEREAS, the City previously adopted the 2019 Edition of the California Building Code subject to certain amendments; and

WHEREAS, California Building Code Section 1.8.8.1 requires local governments to establish a process to hear and decide appeals of orders, decisions, and determinations made by the City involving interpretation of the California Building Code regarding the use, maintenance, and change in occupancy of buildings; and

WHEREAS, California Building Code Section 1.8.8.1 requires that either: 1) the governing body of a city hear appeals of orders, decisions, and determinations made by that city, or 2) establish a separate appeals board for such purposes; and

WHEREAS, Chapter 2.24 of the Desert Hot Springs Municipal Code currently establishes the rules and guidelines for the creation of all City boards, commissions, and *ex officio* posts; and

WHEREAS, Chapter 2.24 of the Desert Hot Springs Municipal Code currently requires appointments to boards, commissions, and *ex officio* posts to be made at the first regular City Council meeting in January following each regular election year, *unless the nature of the situation makes such provisions impractical or infeasible*; and

WHEREAS, the City Council desires to establish an appeals board pursuant to California Building Code Section 1.8.8.1 and Chapter 2.24 of the Desert Hot Springs Municipal Code in order to provide a fair and efficient process to hear appeals of California Building Code related matters; and

WHEREAS, the City Council finds that an appeals board is necessary and important to the fair administration of disputes involving the California Building Code, and waiting until January of the following year is impractical and infeasible; and

WHEREAS, in addition to the creation of an appeals board through this ordinance, the City Council shall as soon as practical appoint members to the appeal board pursuant to Chapter 2.24 of the Desert Hot Springs Municipal Code; and

WHEREAS, the City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines") under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in

this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b) (3)).

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 SECTION 4.16.085 “PUBLIC NUISANCE HEARING,” OF TITLE 4 “CODE ENFORCEMENT” OF THE DESERT HOT SPRINGS MUNICIPAL CODE

Section 4.16.086 (“Public Nuisance Hearing”) of Title 4 (“Code Enforcement”) of the Desert Hot Springs Municipal Code is hereby amended to read in its entirety as follows:

4.16.085 Public nuisance hearing.

The City’s use of the procedure set forth in this section is entirely optional, and this section is to be construed independently from the remaining provisions of this title. Failure to employ the procedure set forth in this section shall not affect the validity of any proceedings nor the availability of any rights or remedies accorded to the City by any of the other provisions of this title or by any other applicable laws, rules or regulations.

A. Notice of Hearing. If any notice and order issued pursuant to this chapter is not complied with or appealed within the time periods set forth therein, the Code Enforcement Officer or other authorized agent may, but is not required to, issue a second notice entitled “Notice of Hearing Re: Municipal Code Violation(s) and Abatement of Public Nuisance” (“notice of hearing”).

The notice of hearing shall direct the subject property owner(s) to appear at a public hearing at a stated date, time and place to show cause why the conditions on the subject property should not be declared to be a public nuisance in violation of the Desert Hot Springs Municipal Code (“Municipal Code”) and/or other applicable law and ordered condemned and/or abated as such.

The notice of hearing shall be posted to the subject property and mailed via certified mail, return receipt requested, to the record owner, tenant, occupant, if any, and/or agent, if any, having charge or control of the subject property, and any mortgagee or beneficiary under any deed of trust, of record, in the subject property. Additionally, the notice shall be mailed via regular U.S. mail to all record owners of parcels of real property of which any boundary is located within 300 feet of any boundary of the subject property. The failure of any property owner, interested party, or other person to receive such notice shall not affect the validity of the proceedings.

The hearing shall be scheduled not less than 15 days after the posting and mailing of the notice nor later than 30 days from such date, unless a later date is agreed to by the Code Enforcement Officer or other authorized agent who issued the second notice and the record owner(s) or their agent(s), if any, having charge or control of the property.

B. Hearing Officer. The public hearing ~~shall be conducted by~~ **may be conducted by either: (1) the City Council; or (2)** an administrative hearing officer designated by the City Manager, as follows:

~~1. City Council. The City Council may conduct the public hearing to determine whether the subject property constitutes a public nuisance. If, upon the conclusion of the hearing, the City Council determines, on the preponderance of the evidence, that the subject property constitutes a public nuisance, it shall adopt a resolution declaring the property as such and setting forth findings and conclusions which shall be the record of the proceeding and filed with the City Clerk.~~

~~The resolution shall order the abatement of the nuisance by the responsible part(ies) within no more than 30 calendar days, or such other time as the City Council deems reasonable under the circumstances, commencing from the date of posting of the adopted resolution to the subject property. The resolution shall also provide that, if the nuisance conditions are not abated within said time period, said conditions may be abated by the City, and that in the event the City performs the abatement, the City's abatement costs shall be recoverable by special tax assessment against the subject property pursuant to Section 4.16.130 of this chapter, as may be amended from time to time, or by any other means provided by law. The resolution shall also specify the time allowed for judicial appeal of the decision rendered by the City Council.~~

~~The resolution shall be posted to the subject property and sent via regular U.S. mail to the record owner, tenant, occupant, if any, and/or agent, if any, having charge or control of the subject property, and any mortgagee or beneficiary under any deed of trust, of record, in the subject property. The failure of any property owner or other person receive the resolution in the mail shall not affect the validity of the proceedings.~~

~~A resolution adopted by the City Council pursuant to this section is a final administrative determination on the matter.~~

~~12. Administrative Hearing Officer Selected by City Manager. The City Council hereby delegates concurrent authority to the City Manager to select hearing officers to conduct administrative hearings pursuant to this section.~~ All administrative hearing officers selected by the City Manager shall be impartial third parties. The City Manager shall ensure that no administrative hearing officer has 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, once selected, shall conduct the public hearing to determine whether the subject property constitutes a public nuisance. If, upon the conclusion of the administrative hearing, the administrative hearing officer determines, on the preponderance of the evidence, that the subject property is a public nuisance, the administrative hearing officer shall issue a written decision ordering the responsible part(ies) to abate the nuisance conditions within no more than 30 days, or such other time as the administrative hearing officer deems reasonable under the circumstances, from the date of posting of the written decision to the subject property. The decision shall also provide that if the nuisance conditions are not abated within said time period, the same may be abated by the City, and that in the event the City performs the abatement, the City's abatement costs shall be recoverable by special tax assessment against the subject property pursuant to Section 4.16.130 of this chapter, as may be amended from time to time, or by any other means provided by law. ~~The written decision shall also specify the time allowed for judicial appeal of the decision rendered by the City Council.~~

A copy of the administrative hearing officer's written decision shall also be posted to the subject property and sent via regular U.S. mail to the record owner, tenant, occupant, if any, and/or agent, if any, having charge or control of the subject property, and any mortgagee or beneficiary under any deed of trust, of record, in the subject property. The failure of any property owner or other person to receive the decision in the mail shall not affect the validity of the proceedings.

Decisions of the administrative hearing officer in all instances shall be final and conclusive unless the appellant files an appeal as set forth in Section 4.16.085(F). A written decision issued by the administrative hearing officer shall constitute a final administrative determination on the matter.

C. Conduct of the Hearing.

1. At the time fixed for the administrative hearing, the ~~City Council or~~ administrative hearing officer shall consider all violations of City ordinances, abatement orders, and administrative citations, including all relevant documents, statements, and objections, written or oral, which may be submitted by the City and the record owner, tenant, occupant, if any, and/or agent, if any, having charge or control of the subject property. The ~~City Council or~~ administrative hearing officer shall also consider recovery of abatement costs.

The term "abatement costs" as used herein means and includes all costs and expenses reasonably related to the abatement, removal, or correction of a public nuisance, including, but not limited to, City staff time, costs and expenses related to enforcement, investigation, preparation of summaries, reports and notices, telephonic contact, correspondence, mailings, title searches, hearing officer costs, court costs, civil penalties, collection costs, and attorneys' fees. "Abatement costs" shall not include administrative fines and penalties imposed pursuant to California Government Code Section 53069.4.

2. The record owner, tenant, occupant, if any, and/or agent, if any, having charge or control of the subject property shall be entitled to appear at the hearing and to show cause, if any they have, why the conditions on the subject property should not be declared to be a public nuisance in violation of the Municipal Code and/or other applicable law, and ordered condemned and/or abated as such. A property owner or other responsible party may be represented by another person who need not be an attorney, but any such representation shall be indicated on the record. Any non-attorney representing a property owner or other responsible party not present at the administrative hearing shall submit a verified statement sufficient to evidence the consent of the absent person represented.

3. The Code Compliance Enforcement Officer or other authorized agent who issued the Notice of Hearing or a prior notice and order, notice of violation or administrative citation shall not be required to personally attend but may participate in the hearing. Documents from the file of any applicable City division involved in the case shall be admitted as prima facie evidence of the facts stated therein.

4. The ~~City Council or~~ administrative hearing officer shall not be limited by the technical rules of evidence.

5. If the record owner, tenant, occupant, if any, and/or agent, if any, having charge or control of the subject property fail(s) to appear at the administrative hearing, the ~~City Council or~~ administrative hearing officer shall make a determination based on the information submitted.

D. Continuance of the Administrative Hearing. The City Council or administrative hearing officer may grant a reasonable extension of time to conduct the hearing based on good cause shown.

E. Recordation. The City Council's resolution or the administrative hearing officer's decision issued pursuant to the hearing may be recorded in the office of the County Recorder.

F. Time to Bring Action. Unless the property owner or other responsible party presents an action in a court of competent jurisdiction within 90 days after issuance of the final administrative decision contesting the validity of any administrative abatement proceedings leading up to and including the decision, all objections to the proceedings and decision shall be deemed to have been waived.

F. Appeal of Hearing Officer Decision. If applicable, the appellant may appeal the administrative hearing officer's decision as provided in Section 15.03.040 of this code. All other appeals must conform to the procedures of the California Code of Civil Procedure.

Section 3.

AMENDMENT OF CHAPTER 4.16.110 "PROCEDURES FOR APPEAL OF A NOTICE OF PUBLIC NUISANCE AND ORDER TO ABATE" OF TITLE 4 "PUBLIC NUISANCES" OF THE DESERT HOT SPRINGS MUNICIPAL CODE

Chapter 4.16.110 ("Procedures for Appeal of a Notice of Public Nuisances and Order to Abate") of Title 4 ("Public Nuisances") of the Desert Hot Springs Municipal Code is hereby amended to read in its entirety as follows:

A. The Administrative Hearing Officer (Hearing Officer) shall conduct all administrative appeal hearings of any timely and properly filed appeal from any notice of public nuisance and order to abate (notice and order) pursuant to the administrative appeal procedures set forth in this section. The Hearing Officer shall review all evidence, documents, and written testimony and hear all oral testimony submitted by the parties at or before the scheduled administrative appeals hearing and render all decisions and findings in writing to the appellant with a duplicate copy to the Code Compliance Officer Community Preservation Officer or other authorized enforcement agent who issued the administrative citation or notice and order (the citing officer).

B. The 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 Hearing Officer shall consider 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 Hearing Officer shall not have the authority to waive any requirements of the municipal code and/or any applicable statutes, rules, codes or regulations, except as otherwise provided in this section.

C. The procedures adopted in this section by the City for the selection of Hearing Officers shall not replace, substitute for, or in any way affect the administrative hearing board processes created by the uniform and national codes adopted by the City and the administrative hearings provided by the uniform and national codes shall be treated separate and apart from the administrative hearing procedures adopted in this section.

D. The City Manager, or designee, shall select the Hearing Officer to conduct administrative hearings pursuant to this section. All 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.

E. As soon as practicable, but allowing sufficient time for providing notice of the hearing, the Hearing Officer shall fix a date, time and place for the hearing of the appeal and shall instruct the citing officer of the same. The City shall prepare a notice of administrative appeals hearing (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 ____ upon the Notice of Public Nuisance and Order to Abate served upon you. 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.

F. The City shall cause a copy of the hearing notice 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 by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal.

G. 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 persons 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 City.

H. The citing officer shall prepare an administrative hearing packet for the Hearing Officer to review prior to the hearing. The packet shall include a copy of the notice and order, a staff report and any evidence of the violation(s).

I. At the appeals hearing, the Hearing Officer shall hear any evidence offered either in support of appellant's claim or in support of the notice and order, provided such evidence is relevant to the issues of the hearing. The Hearing Officer has the authority to determine the relevance of any evidence to the hearing and shall not be limited by the technical rules of evidence. The Hearing Officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy.

J. If appellant fails to attend the scheduled appeals hearing, the hearing will proceed without appellant and he or she will be deemed to have waived his or her rights to be orally heard at the appeals hearing.

K. Each party appearing at the hearing shall have the following rights:

1. To call and examine witnesses;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses;
4. To impeach any witness regardless of which party first called the witness to testify;
5. To rebut evidence; and
6. To be represented by anyone who is lawfully permitted to do so.

L. Following an appeal of a notice and order, the Hearing Officer may decide, based on the applicable standard of review, to uphold the notice and order, establish a modified schedule for compliance, or overturn the findings and determinations set forth in the notice and order, in whole or in part, and not require that the property owner or party otherwise responsible for the violation(s) take any action otherwise required by the notice and order. In the event the Hearing Officer determines to overturn the findings of the citing officer in whole, the recipient of the notice and order shall not be required to pay the administrative fine as required by the notice and order.

M. The Hearing Officer shall prepare a written decision and compliance order (decision and compliance order) within 30 calendar days from the date the hearing is deemed closed. The decision of the Hearing Officer shall be final, except as otherwise provided by **section 15.03.040(B) of this code. this chapter.**

N. The decision and compliance order for a notice and order shall contain a brief summary of the evidence considered, findings of fact, a determination of the issues presented, the effective date of the decision, and a compliance order which shall specifically describe the actions which shall be required to be taken to remedy the code violations indicated in the decision and compliance order and shall require the actions to be completed within a specified time period and by a specified deadline. The decision and compliance order shall further require the recipient of the notice and order to pay all applicable administrative fines no later than 10 days from the date of issuance of the notice of decision and compliance order. The amount of the fine for which the recipient shall be responsible shall be as set forth in the notice and order. Payment of the administrative fine shall be ordered to be made to the issuing department or division unless otherwise directed by the City.

O. The Hearing Officer shall cause a copy of the decision and compliance order to be served to each appellant either by causing a copy of the decision and compliance order to be delivered to each appellant personally or by causing a copy to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal. A copy of the decision and compliance order shall also be provided to the City. Proof of service of the 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 decision and compliance order and retained by the City.

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

Q. If, after the deadline for compliance with a decision and compliance order passes, the person(s) or entities to whom the decision and compliance order is directed shall fail, neglect or refuse to obey such order, the **Compliance Manager Community Preservation Supervisor** or other authorized agent may:

1. Cause such person to be prosecuted for an infraction violation for the offense of contempt of Hearing Officer; and/or

2. Institute any appropriate legal action or proceeding necessary to gain compliance or to abate or enjoin the conditions causing the nuisance.

R. Each day the person(s) to whom the decision and compliance order is directed fails, neglects or refuses to obey such order shall constitute a new offense. A fourth violation and subsequent violations of this section within a 12-month period shall be deemed a misdemeanor.

S. The prevailing party in any action or proceeding conducted pursuant to this chapter section and associated with the abatement of a public nuisance shall be entitled to recovery of reasonable attorney's fees incurred in any such proceeding. In no such action or 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.

**ADDITION OF CHAPTER 2.72 "APPEALS BOARD" OF TITLE 2
"ADMINISTRATION AND PERSONNEL" OF THE DESERT HOT
SPRINGS MUNICIPAL CODE**

Chapter 2.72 ("Appeals Board") of Title 2 ("Administration and Personnel") of the Desert Hot Springs Municipal Code is hereby added to read in its entirety as follows:

2.72.010 General.

There is created an Appeals Board for the City which shall consist of five members and shall be subject to the applicable provisions of Chapter 2.24 of this Code, unless as otherwise stated in this chapter.

2.72.020 Members.

A. Notwithstanding Section 2.24.040(A) of this Code, members of the Appeals Board are not required to be bona fide residents and registered voters of the City. However, no member shall be a City employee, nor shall any person be a member of more than one board or commission at any one time.

B. Members of the Appeals Board shall be knowledgeable in the applicable building codes, regulations, and ordinances.

2.72.020 Powers and Duties

The Appeals Board shall hear appeal orders, decisions, or determinations made by the Building Official relative to the application and interpretation of the non-administrative (technical) requirements of the California Building Code. The Appeals Board shall hear appeals pursuant to the procedures contained in Chapter 15.03 of this code.

2.72.030 Meetings.

A. The Appeals Board ("Board") shall meet at City Hall or at such other location as may be designated in advance by the Board. The Board shall meet at such time and day as the Board may establish, and as frequently as necessary to carry out the purposes of this Chapter.

B. Three members of the Board shall constitute a quorum. Any ruling, decision or other action of the Board shall be made by a majority of a quorum of the Board.

C. The Board shall cause proper records to be kept of its minutes, actions, findings and determinations. The records shall be forwarded to the City Clerk for filing.

Section 5.

**AMENDMENT OF CHAPTER 15.04 "BUILDING CODE" OF
TITLE 15 "BUILDINGS AND CONSTRUCTION" OF THE
DESERT HOT SPRINGS MUNICIPAL CODE**

Chapter 15.04 ("Building Code") of Title 15 ("Buildings and Construction") of the Desert Hot Springs Municipal Code is hereby added to read in its entirety as follows:

15.03.040 Administrative Hearings.

A. General. In order to appeal orders, decisions, or determinations made by the Building Official relative to the application and interpretation of the non-administrative (technical) requirements of the California Building Code, any person adversely affected by the order, decision, or determination may request an administrative hearing with a hearing officer and shall comply with all of the following procedures:

1. Submit a written request for an administrative hearing to the Building Official within fourteen (14) calendar days from the date of the service of such order, decision or determination of the Building Official.

2. Such request for an administrative hearing shall be accompanied by the appropriate appeal fee. If no appeal fee is submitted, a hearing shall not be conducted and the Building Official's decision shall stand.

3. The request for an administrative appeal hearing shall contain the following information:

- a. A brief statement setting forth the interest of the appellant in the real property identified in the order, decision or determination made by the Building Official;**
- b. A brief statement in ordinary and concise language of that (those) specific order(s), decision(s) or determination(s) protested;**
- c. A brief statement in ordinary and concise language contending that issuance of the order, decision or determination was a result of error or abuse of discretion together with any material facts claimed to support such contention;**
- d. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order, decision or determination should be reversed, modified, or otherwise set aside;**
- e. The signature of the appellant, and his or her mailing address; and**
- f. The verification (by declaration under penalty of perjury) of at least one (1) person requesting a hearing as to the truth of the matters stated in the request for hearing.**

4. Scheduling and Noticing. As soon as practicable after receiving the proper request for administrative hearing, the Building Official shall fix a date, time and place for the administrative hearing. Written notice of the time and place of the hearing shall be given to the appellant at least seven (7) calendar days prior to the date of the hearing. The failure of the Building Official 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 section.

5. Scope of Hearing. The administrative hearing before a hearing officer shall be an evidentiary hearing. Only those technical matters or issues specifically raised by the appellant in the request for administrative hearing shall be considered. The appellant and the City may present witnesses and such documentary evidence as are relevant to the issues. The Hearing Officer shall have the power to administer oaths. The City has the burden of proof by a preponderance of the evidence.

6. The City Manager, or designee, shall select the hearing officer to conduct administrative hearings pursuant to this section. All 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.

7. Limitations of Authority. The hearing officer shall have no authority relative to interpretations of the administrative provisions of this Code and shall not be empowered to waive or otherwise set aside the non-administrative (technical) requirements of this Code.

8. Effect of Hearing. Decisions of the hearing officer in all instances shall be final and conclusive unless the appellant files an appeal as set forth in Section 15.03.040(B).

B. Appeal of Hearing Officer Decision to Appeals Board. The appellant may appeal the Hearing Officer's determination to an Appeals Board as follows:

1. Only appeals based on a substantive violation of Chapter 15.04 may be heard by the Appeals Board. This includes California Building Code violations, substandard/public nuisance determinations, and orders to abate. The following may not be appealed to the Appeals Board: billing appeals, graffiti violations, public nuisance determinations not based on a California Building Code violations, planning code or zoning violations, and any other violation of a City ordinance not based on a California Building Code violation.

2. The appellant must file the appeal within fourteen (14) calendar days of service of the hearing officer's decision. The appellant shall file the appeal on a form provided by the City. The appellant must state the basis for the appeal and how the decision by the hearing officer was in error. The appellant shall pay a fee as established by the City Council. Failure to file an appeal along with full payment of fees within the period of time prescribed herein shall constitute a waiver of the right to an administrative adjudication and failure to exhaust administrative remedies.

3. Notice of the time and place of the hearing shall be mailed or otherwise delivered by the City to the appellant, respondent and all other persons, if any, to whom notice of the initial application or action was required, not less than ten days prior to the hearing.

4. The Appeals Board's consideration shall be limited to the record established by the hearing officer. The Appeals Board shall not consider new evidence unless the proponent shows that the evidence is both newly discovered and material and could not, with reasonable diligence, have been produced at the hearing before the hearing officer. If, the Appeals Board makes such a determination, it may hear the additional evidence at a continued hearing, allowing the opposing party to respond, or may remand the matter to the hearing officer to consider the new evidence.

5. The appellant shall have the burden of demonstrating that there is no substantial evidence in the record to support the hearing officer's decision, or that the decision is based on an error of law.

6. The Appeals Board shall render its decision consistent with applicable law and all ordinances of this City. The Appeal Board's decision shall be in writing and shall set forth the Appeal Board's findings of fact and conclusions. The Appeals Board shall render its decision within thirty days following the conclusion of the hearing.

7. No later than five days following the rendering of the Appeal Board's decision, the City shall mail the Appeal Board's decision to the appellant and all other parties in the appeal. Failure of the City to mail or deliver a copy of the decision to each party or to any party shall not affect the finality or effectiveness of the decision.

8. The decision of the Appeals Board shall be final. The limitation period provided pursuant to the California Code of Civil Procedure shall apply to all petitions filed seeking judicial review of administrative determinations made by the Appeals Board.

Section 6. 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 7. REPEAL OF CONFLICTING PROVISIONS

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

Section 8. 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 9. EFFECTIVE DATE

That this ordinance shall be effective thirty days after the second reading of the ordinance.

Section 10. 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 _____, 2020 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

[SIGNATURES FOLLOW ON THE NEXT PAGE]

ATTEST:

Jerryl Soriano, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney