

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, AMENDING CHAPTER 17.180 “DEFINITIONS” OF TESTING FACILITY, TO ALLOW FOR CANNABIS FACILITIES THAT ARE LICENSED BY THE FEDERAL GOVERNMENT ITSELF OR BY THE STATE GOVERNMENT ITSELF.

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

WHEREAS, Chapter 5.50 “Medical Marijuana Facilities Regulatory Permit,” of the Desert Hot Springs Municipal Code (“DHSMC”) establishes standards for granting permits to Marijuana Facilities within the City; and

WHEREAS, Chapter 17.180, of the DHSMC establishes zoning regulations and development standards for Marijuana Facilities, as that term is defined, within the City;

WHEREAS, currently, the DHSMC only allows Testing Facilities, as they are defined, within Commercial and Industrial districts of the City; and

WHEREAS, currently Testing Facilities, as they are defined, are limited to those that are licensed by the State of California; and

WHEREAS, the City has been contacted by Testing Facilities that are specifically licensed by the federal government to perform research and develop of the cannabis plant; and

WHEREAS, currently, it is arguable that Testing Facilities with federal licenses or contracts are permitted within the City pursuant to the Supremacy Clause; and

WHEREAS, the City would like to make it clear that Testing Facilities with federal licenses or contracts are permitted within the City; and

WHEREAS, the City would like to expand that use to include Testing Facilities that are specifically contracted by the State, or any lawful department thereof, to perform research and develop of the cannabis plant; and

WHEREAS, the City Council finds that the adoption of this ordinance is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance in question may have a significant effect on the environment; and

WHEREAS, the Planning Commission held a duly noticed hearing on this Ordinance and recommended that the City Council adopt same; and

WHEREAS, this Ordinance is compatible with the general objectives of the General Plan and any applicable specific plan; and

WHEREAS, this Ordinance protects the public health, safety and welfare.

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 SECTION 17.180.030 OF THE DESERT HOT SPRINGS MUNICIPAL CODE

Chapter 17.180.030 of the Desert Hot Springs Municipal Code shall be amended to read as follows:

17.180.030 Definitions.

Words and phrases not specifically defined in this chapter shall have the meanings ascribed to them as follows.

When used in this Chapter, the following words shall have the meanings ascribed to them in this section. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regulatory provision. Words and phrases not specifically defined in this Chapter shall have the meanings ascribed to them by the following sources:

- a. The CUA of 1996 (California Health and Safety Code Section 11362.5), and as may be amended from time to time;
- b. The MMPA (California Health and Safety Code Sections 11362.7 through 11362.83);
- c. The MAUCRSA (Medicinal and Adult Use Cannabis Regulation and Safety Act), enacted on June 27, 2017, as may be amended from time to time.

“Cannabis or Marijuana” shall have the same meaning as provide in Health and Safety Code Section 11018, as amended (which code section used to define Marijuana). The terms Cannabis and Marijuana shall be used interchangeably in this Chapter.

“Cannabis concentrate” means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

“Cultivator” shall mean shall mean Marijuana Facilities licensed as a Cultivation Site or as a Cultivator pursuant to California Business and Professions Code section 19300 et seq. or pursuant to California Business and Professions Code section 26000 et. seq.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the commercial transfer of cannabis or cannabis products from a state licensed distributor or retailer wherever located, to an adult twenty one years of age or older, qualified patient, or primary caregiver located in the City of Desert Hot Springs, and shall include the use of any technology platform that enables adults twenty one years of age or older, qualified patients, or primary caregivers located in Desert Hot Springs to arrange for or facilitate the commercial transfer of marijuana or marijuana products.

“Distribution” means the procurement, sale, or transport of cannabis or cannabis products either within the City limits, or to and from the City from a place outside the City limits, from a permitted business location of a licensed entity to a permitted business location of another licensed entity subject to State laws and regulations and subject to the provisions of this Chapter and the City’s Municipal Code.

“Legal parcel” means a parcel of land for which one (1) legal title exists. Where contiguous legal parcels are under common ownership or control, such legal parcels may at the option of the property owner be counted as a single parcel for purposes of this Chapter.

“Light Manufacturer” means a person or entity that conducts the production, preparation, or compounding of cannabis or cannabis products either directly or indirectly not using any kind of extraction method whatsoever, but merely using chemical synthesis, such as baking or infusing at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Light Manufacturing Facility” means a facility that conducts the production, preparation, or compounding of cannabis or cannabis products either directly or indirectly not using any kind of extraction method whatsoever, but merely using chemical synthesis, such as baking or infusing at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Off-site sales” means the sale of marijuana for consumption off the premises.

“On-site sales” means the sale of marijuana for consumption on the premises.

“Manufacturer” means a person or entity that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Medicinal cannabis” or **“medicinal cannabis product”** means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the

Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.

"Marijuana Cultivation Facility" means a facility wherein marijuana is propagated, planted, grown, harvested, dried, cured, graded, labeled, tagged for tracking, or trimmed, or wherein all or any combination of those activities takes place.

"Marijuana Distribution Facility" means any facility or location, the primary function of which is the procurement, sale, and/or transport of marijuana and/or marijuana products between entities operating in strict accordance with State law, as may be amended from time to time, and subject to the provisions of this Chapter and the City's Municipal Code.

"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 Manufacturing Facility" means a facility where the production of marijuana concentrate, and/or the preparation, propagation, or compounding of manufactured marijuana, either directly or indirectly or by extraction methods or independently by means of chemical synthesis, or the packaging or repackaging of marijuana or marijuana products, or the labeling or relabeling of its containers, occurs, provided the facility holds a valid marijuana Manufacturing Facility license, a marijuana Regulatory Permit, and a Conditional Use Permit all issued in accordance with this Chapter and the City's Municipal Code, and provided that the facility will qualify for a valid state when the State of California begins issuing state licenses to marijuana Manufacturers.

"Marijuana Testing Facility" shall have the same definition as in the Business and Professions Code Section 26001, as may be amended, which currently means a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following: (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state, (2) licensed by the Bureau of Cannabis Control, and regulated by Section 5700 et seq., as may be amended of Title 16 of the California Code of Regulations. **Notwithstanding, a Marijuana Testing Facility shall also mean any of the following 1) a testing facility that is contracted with the State of California or any lawful department thereof, to provide testing or research and development on behalf of or to benefit the State, 2) a testing facility that is contracted with the United States of America, or any lawful department thereof to provide testing or research and development on behalf of or to benefit the United States.**

"Non-storefront Retail Facility" shall have the same meaning as in Business and Professions Code Section 26070(a)(1), as may be amended, and further defined by Sections 5414 to 5427 et seq. in the California Code of Regulations, as may be amended. Currently, this a delivery only retail facility which sells marijuana to a customer solely and exclusively by delivery.

"Storefront Retail Facility" shall have the same meaning as in Business and Professions Code Section 26070(a)(1), as may be amended, and further defined by

Sections 5400 to 5413 *et seq.* in the California Code of Regulations, as may be amended. Currently, this a retail facility which sells and/or delivers marijuana or marijuana products to customers. A storefront retail facility shall have a licensed premises which is a physical location from which commercial cannabis activities are conducted.

Section 3. AMENDING THE LAND USE TABLE OF THE DESERT HOT SPRINGS MUNICIPAL CODE

The land use table shall reflect that Marijuana Testing Facilities are allowed with a conditional use permit in the Industrial and Commercial districts.

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.

That the foregoing Ordinance was approved and adopted at a meeting of the City Council held on _____, 2018, 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

By:

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