

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, AMENDING CERTAIN SECTIONS OF CHAPTER 17.180 ALLOWING AND SETTING PARAMETERS FOR MARIJUANA ENTERTAINMENT FACILITIES

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 cannabis retail sales within the Commercial Districts of the City and refers to such establishments as “Storefront Retail Facilities;” and

WHEREAS, per the DHSMC, Storefront Retail Facilities are allowed in Commercial Zones with a Conditional Use Permit and a Regulatory Permit; and

WHEREAS, the City has been contacted by several cannabis developers who wish to build a cannabis-friendly entertainment facility; and

WHEREAS, currently, the DHSMC does not have a Marijuana Entertainment Facilities; and

WHEREAS, therefore, City Council action is needed to allow for Marijuana Entertainment Facilities; and

WHEREAS, the City Council deems to allow Marijuana Entertainment Facilities uses as beneficial to the City inasmuch as the City will realize tax benefits, and it will also benefit the businesses to allow for such augmentation to their business models; 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, this Ordinance protects the public health, safety and welfare.

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 CHAPTER 17.180 OF THE DESERT HOT SPRINGS MUNICIPAL CODE

Sections 17.180.030 of Chapter 17.180 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 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 Entertainment Facility” means any facility or location, the primary function of which is an entertainment use, and which must contain 1) an entertainment use (such as a movie, theater, bowling alley, concert venue), and at least one other of the following uses: a) Marijuana Store Front Retail Facility, as defined and/or, b) on-site marijuana consumption venue.

“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 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.

“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.

“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. ADDING SECTION 17.180.048 TO THE DESERT HOT SPRINGS MUNICIPAL CODE

Sections 17.180.048 of Chapter 17.180 of the Desert Hot Springs Municipal Code shall be added to read as follows:

17.180.048 Marijuana Entertainment Facilities

- a Permitted Locations. Marijuana Entertainment Facilities shall only be located in any Commercial District (except the Commercial Downtown District), Industrial District or Mixed-Use Corridor District in the City.**
- b. Marijuana Entertainment Facilities primary function shall be an entertainment use and must contain:**

i) an entertainment use (such as a movie, theater, bowling alley, concert venue), and at least one other of the following uses:

1. Storefront Retail Facility, which facility complies with all terms and conditions in this Chapter, including all State and local laws. The Storefront Retail Facility shall enjoy all uses as provided in Section 17.180.045.

2. On-site marijuana consumption facility, which shall comply with all of the following:

a. On-site marijuana consumption facility shall not be attached to any Storefront Retail Facility and must be located on a separate premises, and otherwise comply with all State and local laws.

b. Marijuana Entertainment Facilities shall only sell marijuana products for on-site consumption only from within the facility.

c. Marijuana Entertainment Facilities shall not sell marijuana products for any Off-site sales from within the facility

c. Conditional Use Permit/Regulatory Permit Required. Entertainment Facilities shall obtain both a City-issued conditional use permit and regulatory permit. The number of Conditional Use Permits issued for Entertainment Facilities shall be above and beyond the limited number of conditional use permits allowed for Storefront Retail Facilities.

d. Marijuana Entertainment Facilities must comply with all local and State law as it pertains to any and all uses at all times.

e. If or when States laws and/or regulations allow for more uses for on-site marijuana consumption venues (such as allowance of infused products, or alcohol sales on the same premises as marijuana sales), such allowed uses may be allowed as follows:

1. Administrative Approval. A duly approved Marijuana Entertainment Facility, with a duly approved Conditional Use Permit and Regulatory Permit, and in good standing with the City, may request modification of the already approved Conditional Use Permit to operate their Marijuana Entertainment Facility pursuant to the new state law or regulations provided the Director of Community Development, or designee, finds all of the following:

1. There is a 10% or less than deviation to each of the following:

a. On-site circulation and parking, loading and landscaping;

- b. Placement and/or height of walls and fences;
 - c. Exterior architectural features, including colors, and/or modification of finished materials that do not alter or compromise the previously approved theme;
 - d. The density or intensity of a development project;
 - e. Paving; and
 - f. Hours of operation.
- 2. The Marijuana Entertainment Facility use is consistent with the goals, objectives, policies and programs of the general plan.
- 3. The Marijuana Entertainment Facility use complies with all applicable zoning and other regulations.
- 4. The Marijuana Entertainment Facility use will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.
- 5. The location, design and operation of the Marijuana Entertainment Facility use will be compatible with existing and planned land uses in the vicinity.
- 6. Any project contemplating this Administrative Approval must comply with the California Environmental Quality Act ("CEQA"), and any and all applicable State and local laws and regulations. If CEQA is in fact implicated, as so determined by the Director of Community Development, CEQA must be adhered to, as so required by law.
- f. The Storefront Retail Facility and/or the on-site marijuana consumption facility, or any other marijuana component of the Entertainment Permit shall be subject to all applicable local taxes, including but not limited to those in Chapter 3.34.

Section 4. AMENDING THE LAND USE TABLE OF THE DESERT HOT SPRINGS MUNICIPAL CODE

The land use table shall reflect that Marijuana Entertainment Facilities are allowed with a conditional use permit in the Commercial District, except the Commercial Downtown District, Industrial District or Mixed-Use Corridor District.

Section 5. 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 6. 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 7. **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 8. **EFFECTIVE DATE**

That this ordinance shall take effect thirty (30) days after its second reading by the City Council.

DRAFT

That the foregoing Ordinance was approved and adopted at a meeting of the City Council held on _____, 2020, 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:

DRAFT