

# City of Desert Hot Springs

City Council

## AGENDA ITEM REPORT



**To:** City Council  
**Date:** April 2, 2024  
**Department:** City Council  
**Prepared by:** Christina Newsom, Compliance Director  
**Subject:** **An Ordinance Amending Title 3 "Revenue and Finance" of the Desert Hot Springs Municipal Code Concerning Cannabis Facilities**

### RECOMMENDATION:

Introduce for First Reading, read by title only: " An Ordinance of the City Council of the City of Desert Hot Springs, California, amending Title 3 "Revenue and Finance" of the Desert Hot Springs Municipal Code Concerning Cannabis Facilities."

### BACKGROUND:

Title 3 of the Desert Hot Springs Municipal Code regulates revenue and finance as they relate to the operation of Cannabis Storefront Retail, Non-Storefront Retail, Distribution, Manufacturing, and Cultivation facilities (collectively Cannabis Facilities”).

The City currently relies on the Cannabis Compliance Division and Code Compliance Division (collectively, the “Compliance Department”) to enforce Chapter 5.50 to inspect all cannabis facilities and to assist in the collection of taxes. Based on their experience and expertise, the Compliance Department recommends an amendment of Chapters 3.33.050 and 3.33.060, and adding sections 3.35.035, 3.35.045, 3.35.055, 3.34.006, 3.35.065, and 3.37.006, and adding chapters 3.38 and 3.39 to address taxation for cannabis facilities.

### DISCUSSION:

The proposed ordinance seeks to amend and add several sections and chapters within Title 3 to amend the tax period for cannabis cultivators, and to amend the process for all cannabis facilities who are required to remit taxes to the City. The proposed ordinance also adds sections to allow for a “ramp-up” period for new cannabis cultivators, how those remittances are made, the possibility of lost cultivation crop waivers, and cannabis tax payment arrangements.

The City Council has provided direction to staff to assist cannabis facilities with tax payments and processes to provide relief to the operators. This ordinance will address the following areas as they relate to cannabis facilities:

#### 1. Cultivation Facilities:

- a. Will no longer make two large biennial payments, and instead make 12 monthly payments.

- b. Codify a "ramp-up" period for new cultivation facilities that generally do not receive income until their first crop has reached full maturity and processing, which takes several months.
- c. The ability to apply for a "Lost Cultivation Crop Waiver" after the loss of a crop, subject to eligibility and application approval.

## 2. Cannabis Facilities:

- a. All facilities will be mandated to make monthly tax payments through a Fee Collection System.
- b. Codify that Cannabis Tax Payment Arrangements be approved at the discretion of the City Manager and be subject to penalties and interest.

The proposed amended and added chapters and sections of Title 3 will allow facilities to make smaller, more frequent payments, as opposed to large biennial payments; require all facilities that make tax payments to the City to use a fee collection system established by the City in order to facilitate payments more easily; to seek relief from tax liabilities after suffering a loss of a cannabis crop; and to enter into cannabis tax arrangements with the City for past due taxes.

### **FISCAL IMPACT:**

The proposed amendments, added chapters and sections of Title 3 will help improve collections of cannabis taxes.

### **ENVIRONMENTAL ANALYSIS:**

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.

### **ATTACHMENTS:**

[Ordinance Amending Cannabis Tax Regulations](#)

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA AMENDING TITLE 3 “REVENUE AND FINANCE” OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

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

**WHEREAS**, currently Chapter 3.33 of the Desert Hot Springs Municipal Code imposes a tax on recreational marijuana cultivation and requires biannual remittance; and

**WHEREAS**, currently Chapter 3.34 of the Desert Hot Springs Municipal Code imposes a tax on recreational marijuana sales and provision; and

**WHEREAS**, currently Chapter 3.35 of the Desert Hot Springs Municipal Code imposes a tax on medical marijuana cultivation and requires biannual remittance; and

**WHEREAS**, currently Chapter 3.37 of the Desert Hot Springs Municipal Code imposes a tax on medical marijuana sales and provision; and

**WHEREAS**, the City desires converting from a biannual remittance of marijuana cultivation tax to a monthly remittance as provided in the Desert Hot Springs Municipal Code, Title 3 “Revenue and Finance”; and

**WHEREAS**, the City desires implementing a “ramp-up” period that would allow cultivation taxes to be phased in to provide the opportunity for cannabis cultivation facilities to complete their first grow cycle; and

**WHEREAS**, the City desires adding regulations granting tax waivers for a lost cultivation crop; and

**WHEREAS**, the City seeks to amend Chapters 3.33 and 3.35 of the Desert Hot Springs Municipal Code to change tax collection regulations from a biannual remittance of cultivation taxes to a monthly remittance; and

**WHEREAS**, the City Council desires to add Chapter 3.38 “Lost Cultivation Crop Tax Waiver” to Title 3 “Revenue and Finance” of the Desert Hot Springs Municipal Code to implement regulations for a “Lost Cultivation Crop Tax Waiver”; and

**WHEREAS**, the City Council desires to add sections 3.33.035 (recreational) and 3.35.045 (medical) of the Desert Hot Springs Municipal Code to implement a “Ramp Up Period” for cultivation facilities; and

**WHEREAS**, the City Council desires to add sections 3.33.055, 3.34.006, 3.35.065, and 3.37.066 “Cannabis Fee Collection System” of the Desert Hot Springs Municipal Code to require cannabis facilities to coordinate and create an account with the City’s cannabis fee collection system to collect all monthly surcharges; and

**WHEREAS**, City Council finds that creating fairer and commercially-sound tax regulations would not only help local cannabis facility operators but also improve the City's ability to collect cannabis taxes; and

**WHEREAS**, City Council finds that requiring cannabis facility operators to coordinate and create an account with the City's cannabis fee collection system ("Monarch") to collect all monthly tax would promote a more thorough means of tax remittance; and

**WHEREAS**, the City Council finds that the amendments implemented by this Ordinance shall not result in an increase of taxes; 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.

**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.                    AMENDING SECTION 3.33.050 "REMITTANCE" OF THE  
DESERT HOT SPRINGS MUNICIPAL CODE**

**3.33.050 Remittance.**

The taxes imposed by this chapter shall be remitted to the City *biennially monthly*, on or before *the 1<sup>st</sup> of each month*.

**Section 3.                    AMENDING SECTION 3.35.060 "REMITTANCE" OF THE  
DESERT HOT SPRINGS MUNICIPAL CODE**

**3.35.060 Remittance.**

The taxes imposed by this chapter shall be remitted to the City *biennially monthly*, on or before *the 1<sup>st</sup> of each month*.

**Section 4.                    ADDING SECTION 3.33.035 "RAMP-UP PERIOD" TO  
CHAPTER 3.33 "RECREATIONAL MARIJUANA  
CULTIVATION TAX" OF THE DESERT HOT SPRINGS  
MUNICIPAL CODE**

**3.33.035 Ramp Up Period.**

**A. A six-month tax waiver shall be automatically applied to tax liability for cannabis cultivation facilities upon the issuance of a new regulatory permit if all of the following criteria are met:**

- 1. The cultivator was not already cultivating plants at a facility associated with the new regulatory permit at the time of its issuance.**
- 2. The cultivator's facility is located at the same physical address as a prior cultivator and does not share existing plants, equipment, or owners with the prior cultivator.**

**B. This section shall not apply to cultivators who changed ownership, obtained a new regulatory permit, and possess live plants from the previous owner.**

**Section 5.**            ADDING SECTION 3.35.045 "RAMP UP PERIOD" TO CHAPTER 3.35 "MEDICAL MARIJUANA CULTIVATION TAX" OF THE DESERT HOT SPRINGS MUNICIPAL CODE

**3.35.045 Ramp Up Period.**

**A. A six-month tax waiver shall be automatically applied to tax liability for cannabis cultivation facilities upon the issuance of a new regulatory permit if all of the following criteria are met:**

- 1. The cultivator was not already cultivating plants at a facility associated with the new regulatory permit at the time of its issuance.**
- 2. The cultivator's facility is located at the same physical address as a prior cultivator and does not share existing plants, equipment, or owners with the prior cultivator.**

**B. This section shall not apply to cultivators who changed ownership, obtained a new regulatory permit, and possess live plants from the previous owner.**

**Section 6.**            ADDING SECTION 3.33.055 "CANNABIS FEE COLLECTION SYSTEM" TO CHAPTER 3.33 "RECREATIONAL MARIJUANA CULTIVATION TAX" OF THE DESERT HOT SPRINGS MUNICIPAL CODE

**3.33.055 Cannabis Fee Collection System.**

**All Cannabis Facilities shall coordinate and create an account with the City's cannabis fee collection system to collect all monthly surcharges.**

**Section 7.** ADDING SECTION 3.34.006 “CANNABIS FEE COLLECTION SYSTEM” TO CHAPTER 3.34 “MARIJUANA TAX” OF THE DESERT HOT SPRINGS MUNICIPAL CODE

**3.34.006 Cannabis Fee Collection System.**

**All Cannabis Facilities shall coordinate and create an account with the City’s cannabis fee collection system to collect all monthly surcharges.**

**Section 8.** ADDING SECTION 3.35.065 “CANNABIS FEE COLLECTION SYSTEM TO CHAPTER 3.35 “MEDICAL MARIJUANA CULTIVATION TAX” OF THE DESERT HOT SPRINGS MUNICIPAL CODE

**3.35.065 Cannabis Fee Collection System.**

**All Cannabis Facilities shall coordinate and create an account with the City’s cannabis fee collection system to collect all monthly surcharges.**

**Section 9.** ADDING SECTION 3.37.006 “CANNABIS FEE COLLECTION SYSTEM” OF “CHAPTER 3.34 MARIJUANA TAX” THE DESERT HOT SPRINGS MUNICIPAL CODE

**3.37.006 Cannabis Fee Collection System.**

**All Cannabis Facilities shall coordinate and create an account with the City’s cannabis fee collection system to collect all monthly surcharges.**

**Section 10.** ADDING CHAPTER 3.38 “LOST CULTIVATION CROP WAIVER”

**3.38.001 Definitions**

**The definitions contained in Chapters 5.50 and 17.180 of this code shall apply, except as otherwise stated in this chapter.**

**3.38.005 Eligibility**

**The City, in its sole discretion, may grant a lost cultivation crop tax waiver to a cannabis cultivation facility that has lost its cannabis crops if the City determines that all of the following eligibility requirements have been met:**

**A. The cannabis cultivation facility entity has not been granted a lost cultivation crop tax waiver in the prior 12 months.**

**B. The cannabis cultivation facility is in good standing with the City, with no active Code Compliance matters or tax delinquencies.**

**C. The cannabis cultivation facility has not intentionally caused or significantly contributed to the cause of the failed crop.**

**D. The failed crop is not the result of a natural disaster or an Act of God.**

**E. Preventative measures were not readily and reasonably knowable to the cannabis cultivation facility prior to the events leading to the failed crop.**

### **3.38.010 Rejection of Lost Cultivation Crop Tax Waiver**

**A Lost Cultivation Crop Tax Waiver application shall be rejected if the cannabis cultivation facility fails to meet all of the eligibility requirements.**

### **3.38.020 Lost Cultivation Crop Tax Waiver Application**

**A cannabis cultivation facility desiring or proposing to apply for a Lost Cultivation Tax Waiver shall file with the City Manager or designee a written application as so required by the provisions of this Chapter. Each such application shall contain clearly and truthfully, under oath or affirmation, set forth and show, in addition to such other information as the City Manager shall require, the following information:**

**A. The date of the application.**

**B. The true name of the applicant, and any other names by which the applicant has been known. In the event the applicant is not the legal owner of the entity that holds the regulatory permit, the application must be accompanied with a notarized acknowledgement from the legal owner.**

**C. The name and address of the cannabis cultivation facility, and evidence that the cannabis facility is duly organized under the applicable laws of the State of California.**

**C. Authorization for the City Manager or designee to seek verification of the information contained within the application.**

**D. A statement in writing by the applicant that it certifies under penalty of perjury that all the information contained in the application is true and correct.**

**E. A statement in writing providing details of the contributing factors that led to the failed crop.**

**F. Proof of destruction of crop by any of the following:**

- 1. Metrc Reporting**
- 2. Bill of Lading**
- 3. Video of destruction**

**G. A mitigation plan that addresses the measures you will put in place to avoid failed crops in the future.**

**H. If the application is incomplete, the applicant shall have an opportunity to cure the incompleteness within 30 days' written notice by the City Manager or designee. Failure to complete the application within thirty (30) days of written notice shall result in the denial of the application.**

**I. Any such additional information as deemed necessary by the City Manager or designee to administer this chapter.**

### **3.38.030 Waiver Benefits by the City**

**If an eligible cannabis cultivation facility's lost cultivation crop tax waiver application is approved pursuant to this chapter, the City Manager or designee shall have the sole discretion to determine the amount of the tax waiver pursuant to this chapter and within budgetary limitations, but no greater than \$75,000. The City Manager or designee shall make a determination based on the provisions of this chapter, any rules and regulations adopted pursuant to this chapter, and the factual information submitted by the parties or otherwise readily available and shall serve his or her written determination by first-class mail, postage prepaid, to the cannabis cultivation facility operator to the entity's business address and to the property owner's address as shown on the last equalized assessment roll.**

#### **A. Waiver Benefit Amount Determining Factors**

**1. The City will grant waiver benefits in an amount up to \$75,000 based on the following factors:**

**a. The total calculation of cultivation square footage of the lost cultivation crop**

**1. This calculation will be based on the proof of destruction provided by the applicant.**

**b. The total cultivation tax liability for of cultivation square footage of the lost cultivation crop**

### **3.38.040 Grounds for Denial**

**The City Manager or designee shall deny a lost cultivation crop waiver upon making any of the findings.**

**A. The cannabis facility is not eligible under this chapter.**

**B. The applicant or owner(s) made one or more oral or written misrepresentations or omissions.**

**C. The cannabis facility does not possess an active license State License with the Department of Cannabis Control.**



- D. The cannabis facility does not possess an active regulatory permit.**
- E. The cannabis facility or property owner has an active Code Compliance matter.**
- F. The cannabis facility is delinquent in cultivation tax for periods prior to the lost cultivation crop.**
- G. Any violation of this Municipal Code.**
- H. Any other condition specified by law.**
- I. If the City Manager or designee denies an application, a written notice specifying the reasons for denial shall be issued to the applicant. The City Manager or designee's decision shall be final unless the applicant appeals pursuant to Section 3.38.050 within 14 calendar days of the date of service of the City Manager's or designee's decision.**

### **3.38.050 Appeals.**

**A. Within 14 calendar days after the date of a decision of the City Manager or designee to deny an application, an aggrieved applicant may appeal such action to a hearing officer by filing a written appeal with the City Clerk setting forth the reasons why the decision was not proper.**

**B. The City Manager or designee shall select the hearing officer. 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.**

**C. 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 and serve a notice of hearing, 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 \_\_\_\_\_ concerning your appeal filed pursuant to Section 3.38.050 of the Desert Hot Springs Municipal Code. 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.**

**D. The City shall cause a copy of the notice of hearing 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.**

**E. At the hearing, the hearing officer shall hear any evidence offered either in support of, or against, appellant's claim, 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.**

**F. 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.**

**G. The hearing officer shall issue a written decision within 30 days following the conclusion of the hearing. 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 to be delivered to each appellant personally or by causing a copy to be delivered by first class mail, postage prepaid, and addressed to each appellant at the address shown on the appeal. The decision of the hearing officer shall be final.**

**H. Any appeal of the hearing officer's decision shall be conducted pursuant to the California Code of Civil Procedure.**

**Section 11.**

**ADDING CHAPTER 3.39 "CANNABIS TAX PAYMENT ARRANGEMENTS"**

**3.39.010 Policy**

**The City Council finds and determines that it is in the best interest of the City to enter into tax payment arrangement agreements ("agreement") for entities and people delinquent in paying taxes relating to: (1) Chapter 3.33 "Marijuana Cultivation Tax"; (3) Chapter 3.34 "Marijuana Tax"; (4) Chapter 3.35 "Medical Marijuana Cultivation Tax"; and/or (5) Chapter 3.37 "Medical Marijuana Tax" (collectively "subject tax structures"). On the one hand, such agreement(s) will provide the City with an additional mechanism for collection of delinquent taxes, and on the other hand, the entity or person will benefit as they will have more time to become economically viable, providing a greater chance of tax remittance. This chapter is intended to enable tax payment agreements other than tax installment agreements under Chapter 3.06 of this code.**

**A. Any new tax payment arrangement agreements as of the effective date of this ordinance shall be subject to penalties and interest.**

**3.39.020 Authority/content of tax payment arrangement agreements.**

**A. The City, acting through the City Manager, or designee, may initiate tax payment arrangement agreements with entities or persons delinquent in paying taxes for the subject tax structures.**

**B. The City Manager, or designee, shall have the sole authority to negotiate, execute and bind the City into a tax payment arrangement agreements, and any amendments thereto, for the full amount of the taxes owed.**

**C. The tax payment arrangement agreement shall be prepared to the satisfaction of the City Manager, or designee. The City Attorney shall review and approve the agreement and any amendments as to form.**

**D. Nothing in the agreement shall be construed as limiting the City's rights in using whatever methods it deems appropriate to collect the delinquent taxes.**

**Section 12.**                    **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 13.**                    **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 14.**                    **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 15.**                    **EFFECTIVE DATE**

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

**Section 16. 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 \_\_\_\_\_, 2024 by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

\_\_\_\_\_  
Scott Matas, Mayor

**ATTEST:**

\_\_\_\_\_  
Jerryl Soriano, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Tuan-Anh Vu, City Attorney