

## ORDINANCE NO. 728

### **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 "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 allowed 16 authorize applicants to apply for conditional use permits for the Storefront Retail Facilities; 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 permit Marijuana Entertainment Facilities; and

**WHEREAS**, therefore, City Council action is needed to allow for Marijuana Entertainment Facilities, which permits will be in addition to the 16 authorized applicants to apply for conditional use permits for the Storefront Retail 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) or as that use may be defined in DHMC Section 17.04.050, and at least one other of the following uses: a) Marijuana Store Front Retail Facility, as defined and/or, b) on-site marijuana consumption area.**

**“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 these 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 be located in Commercial Districts (except the Commercial Downtown District), Industrial District or the Mixed-Use Corridor District in the City.**

**b. Marijuana Entertainment Facilities’ primary function shall be an entertainment use and must include:**

**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 17.180.040.**

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

**a. On-site marijuana consumption area within the confines of the Entertainment Facility shall only be attached to any Storefront Retail Facility via non-public, secure passageways and must be located in a separate area, and otherwise comply with all State and local laws.**

**b. In addition to offsite sale, the Storefront Retail Facility attached to an Entertainment Facility may sell marijuana products for on-site consumption only to be consumed within the marijuana consumption area. Such on-site sales must be done and consummated by an employee of the Entertainment Facility via menu only.**

**c. Any marijuana-containing product not fully consumed on-site, shall be properly packaged for the patron to take it offsite.**

**d. The sale or consumption of alcohol or tobacco products is not allowed on the premises, and other consistent with State law.**

**e. The smoking, inhalation, consumption or ingestion of cannabis or cannabis products shall not be visible from any public place or any area where minors may be present.**

**c. The Marijuana Entertainment Facility shall:**

**1. Create and maintain an active account within the state's track and trace system required by Business and Professions Code Section 26067 prior to commencing any commercial marijuana activity.**

**2. Ensure that the consumption of marijuana or marijuana products is not visible from the outside of the business.**

**3. Comply with any other conditions specified in their Marijuana Entertainment Facility Conditional Use Permit and Regulatory Permit.**

**4. Ensure that marijuana consumption areas shall have adequate security and lighting for the safety of patrons and to protect the premises from theft at all times.**

**5. Comply with all state law and local requirements, including alcohol requirements.**

**6. Notify patrons verbally and through posting of a sign in a conspicuous location that entry into the premises by persons under the age of twenty-one is prohibited.**

**7. Employ a person to be on the premises to supervise employees and patrons at all times during business hours.**

**8. Install an odor absorbing ventilation and exhaust system so that odor generated inside the premises is not detected outside the premises.**

**9. Properly designate any and all smoking areas, if applicable, and in compliance with all local and state laws.**

**10. All designated smoking areas shall be 50 feet from any residential property line.**

**11. Place and properly maintain solid waste receptacles and recycling bins, in sufficient numbers and locations to service the needs of the proposed use at peak business periods.**

**12. Properly re-package any and all cannabis or cannabis products that are partially consumed to be taken offsite.**

**d. The Marijuana Entertainment Facility shall not:**

**1. Allow any on-duty employee to consume any marijuana or marijuana products on the premises.**

**2. Distribute any free samples of marijuana or marijuana products on the premises.**

**3. Sell, serve, or permit the sale or serving of marijuana or marijuana products to patrons who are visibly intoxicated.**

**4. Permit any public nuisances, including any noise violations or other offenses to the public peace and safety.**

**5. Allow smoking or vaping of any product outside of designated and marked smoking areas, consistent with all local and state law.**

**e. 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.**

**f. Marijuana Entertainment Facilities must comply with all provisions of this code and State law at all times.**

**g. 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:**

**i. 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.**

**ii. Under no circumstances shall any additional square footage be added to the Entertainment Facility**

**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.**

**h. The Storefront Retail Facility and/or the on-site marijuana consumption area, 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.

**PASSED AND ADOPTED** by the City Council of the City of Desert Hot Springs at a regular meeting held on the 19th day of January, 2021, by the following vote:

**AYES:** 4 – Betts; Gardner; Pye; and Mayor Matas.

**NOES:** None.

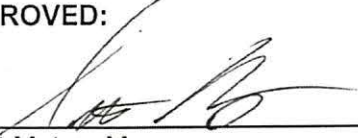
**ABSTAIN:** 1 – Nuñez.

**ABSENT:** None.


ATTEST:

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

APPROVED:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jennifer A. Mizrahi, City Attorney