

ORDINANCE NO. 553

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS
AMENDING TITLE 17 "ZONING" OF THE DESERT HOT SPRINGS MUNICIPAL CODE
TO ADD CHAPTER 17.180 "MEDICAL MARIJUANA FACILITIES - LOCATION"**

WHEREAS, Chapter 17.172 "Medical Marijuana Dispensaries" prohibits medical marijuana dispensaries in the City of Desert Hot Springs; and

WHEREAS, on November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of cannabis by seriously ill individuals upon a physician's recommendation; and

WHEREAS, Proposition 215, which was codified as section 11362.5 of the California Health and Safety Code, was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction"; and

WHEREAS, On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act became law and was codified in sections 11362.7 to 11362.83 of the California Health and Safety Code; and

WHEREAS, the Medical Marijuana Program Act, among other things, requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system; and

WHEREAS, the Federal Controlled Substances Act, which was adopted in 1970, established a federal regulatory system designed to combat recreational drug abuse by making it a federal criminal offense to manufacture, distribute, dispense, or possess any controlled substance which includes marijuana; and

WHEREAS, the Department of Justice of the State of California in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("2008 Attorney General Guidelines") has opined that neither Proposition 215, nor the Medical Marijuana Program Act conflict with Federal Controlled Substances Act, since "California did not 'legalize' medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition; and

WHEREAS, in *City of Riverside v Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court ruled unanimously that the Compassionate Use Act and the Medical Marijuana Program Act do not preempt local ordinances that completely and permanently ban medical marijuana facilities, but recognized that the local police power, which derives from California Constitution Art XI, Section 7, "includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders; and

WHEREAS, if medical marijuana dispensaries and cultivation were permitted to be established or if existing business were permitted to distribute, sell or cultivate medical marijuana without appropriate regulation, such uses might be established in areas that would conflict with the requirements of the General Plan, be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and

WHEREAS, the City Council desires to enact reasonable regulations pertaining to medical marijuana dispensaries and cultivation to ensure that qualified patients and their caregivers are afforded safe and convenient access to medical marijuana, while at the same time ensuring that such uses do not conflict with the General Plan, are not inconsistent with surrounding uses, and not detrimental to the public health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS DOES ORDAIN AS FOLLOWS:

Section 1. EVIDENCE

That the City Council has considered all of the evidence submitted into the administrative record, which includes, but is not limited to, the following:

- (a) The City's General Plan, including updates;
- (b) The Planning Commission's recommendation; and
- (c) Public comments, both written and oral, received and/or submitted at, or prior to the City Council's consideration of this ordinance.

Section 2. ADDING CHAPTER 17.180 "MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION" TO TITLE 17 "ZONING" OF THE DESERT HOT SPRINGS MUNICIPAL CODE

Title 17 "Zoning" of the Desert Hot Springs Municipal Code shall be amended as follows:

Chapter 17.180

**MEDICAL MARIJUANA FACILITIES
LOCATION**

17.180.010. Purpose and intent.

Medical marijuana facilities shall be permitted, in accordance with the criteria and procedures set forth in this Code, upon application and approval of a conditional use permit pertaining to the location of the facility and a regulatory permit pertaining to the operation of the facility.

17.180.020. Medical Marijuana Facilities.

Medical marijuana facilities permitted under this chapter include medical marijuana dispensaries and medical marijuana cultivation facilities that are owned and operated by bona fide non-profit organizations such as a cooperative or a collective, subject to the provisions of the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code Sections 11362.7 through 11362.83), the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008, and any other state laws pertaining to cultivating and dispensing medical marijuana.

17.180.030. Number of Permitted Medical Marijuana Facilities.

The number of permitted medical marijuana facilities permitted in the City shall be determined by resolution of the City Council.

17.180.040. Application Period.

Applications may be submitted during those applications periods designated from time to time by resolution of the City Council and the applications will be prioritized for processing based on the number of points assigned to each application that has been submitted and deemed complete by the City during the application period.

17.180.050. Priority Point System.

Each application submitted and deemed complete by the City during the application period will be evaluated for priority for processing based on certain criteria set forth in a Priority Point System approved by resolution of the City Council.

17.180.060. Medical Marijuana Dispensaries - Permitted Locations.

Medical marijuana dispensaries may be located in any Commercial District in the City, upon issuance of a conditional use permit and a regulatory permit, provided that the dispensary does not cultivate more than 99 mature flowering marijuana plants on site.

17.180.070. Medical Marijuana Cultivation Facilities - Permitted Locations.

Medical marijuana cultivation facilities involving the cultivation of more than 99 mature flowering marijuana plants may be located in any Industrial District in the City, upon issuance of a conditional use permit and a regulatory permit.

17.180.075. Cultivation – Interior Only.

All medical marijuana cultivation shall be conducted only in the interior of enclosed structures, facilities and buildings and all cultivation operations including all marijuana plants at any stage of growth shall not be visible from the exterior of any structure, facility or building containing the cultivation of medical marijuana.

17.180.080. Definitions.

Words and phrases not specifically defined in this Municipal Code shall have the meanings ascribed to them as defined in the following sources:

- A. The Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5);
- B. The Medical Marijuana Program Act (California Health and Safety Code Sections 11362.7 through 11362.83); and
- C. The California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008.

17.180.090. Conditional Use Permit required.

Prior to initiating operations and as a continuing requisite to operating a medical marijuana facility, the legal representative of the persons wishing to operate a dispensary or cultivate medical marijuana shall obtain and maintain a validly issued conditional use permit from the City, which shall include the condition that the permit holder shall also obtain and maintain a medical marijuana facility regulatory permit required by this Code.

Section 3. 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 4. 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 5. 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 6. 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 October 21, 2014, by the following vote:

AYES: 5 - BETTS ; MATAS ; MCKEE ; PYE ; AND MAYOR SANCHEZ .

NOES: NONE .

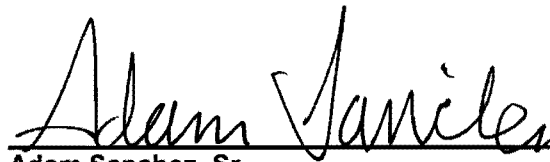
ABSENT: NONE .

ABSTAIN: NONE .

ATTEST:

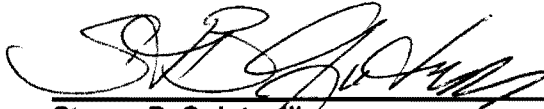


Jeryl Soriano,
City Clerk



Adam Sanchez, Sr.,
Mayor

APPROVED AS TO FORM:



Steven B. Quintanilla,
City Attorney