

ORDINANCE NO. 552

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS ADDING CHAPTER 5.50, "MEDICAL MARIJUANA FACILITIES REGULATORY PERMIT" TO TITLE 5, "BUSINESS LICENSES AND REGULATIONS" OF THE DESERT HOT SPRINGS MUNICIPAL CODE

WHEREAS, on November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana 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 medical marijuana facilities 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 medical marijuana facilities 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, 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 5.50 "MEDICAL MARIJUANA FACILITIES REGULATORY PERMIT" TO TITLE 5 "BUSINESS LICENSES AND REGULATIONS" OF THE DESERT HOT SPRINGS MUNICIPAL CODE

Title 5 "Business Licenses and Regulations" of the Desert Hot Springs Municipal Code shall be amended as follows:

Chapter 5.50

**MEDICAL MARIJUANA FACILITIES
REGULATORY PERMIT**

5.50.010. Purpose and intent.

Medical marijuana facilities shall be permitted, upon application and approval of a regulatory permit in accordance with the criteria and procedures set forth in this Code, which include the need to obtain and maintain a conditional use permit validly issued by the City per the Code.

5.50.020. 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.

5.50.030. Definitions.

Words and phrases not specifically defined in this Code shall have the meaning 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.

5.50.040. Permits 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 medical marijuana facility shall first obtain a

conditional use permit pursuant to the applicable provisions of this Code and then obtain a regulatory permit from the city manager or designee under the terms and conditions set forth in this chapter. The legal representative shall file an application with the city manager or designee upon a form provided by the city and shall pay an application fee as established by resolution adopted by the city council as amended from time to time. An application for a regulatory permit shall include, but shall not be limited to, the following information:

A. An estimate of the size of the group of primary caregivers and/or qualified patients who will be served by the medical marijuana facility;

B. Whether delivery service of medical marijuana to any location outside the medical marijuana facility will be provided and the extent of such service.

C. The address of the location of the medical marijuana facility;

D. A site plan and floor plan of the medical marijuana facility denoting all the use of areas of the medical marijuana facility, including storage, cultivation, exterior lighting and dispensing.

E. A security plan that addresses how the following measures shall be implemented or complied with:

1. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 240 concurrent hours of digitally recorded documentation in a format approved by the city manager or designee. The cameras shall be in use 24 hours per day, 7 days per week. The areas to be covered by the security cameras shall include, but are not limited to, the public areas, storage areas, employee areas, all doors and windows, and any other areas as determined to be necessary by the city manager or designee.

2. The medical marijuana facility shall be alarmed with an audible interior and exterior alarm system, unless waived for extenuating circumstances by the city manager or designee, that is operated and monitored by a recognized security company, deemed acceptable by the city manager or designee. Any change in the security company shall be subject to the approval of the city manager or his designee. All current contact information regarding the medical marijuana facility's security company shall be provided to the city manager or designee.

3. Entrance to the dispensing or cultivation areas and any storage areas shall be locked at all times, and under the control of medical marijuana facility staff.

4. All medical marijuana shall be securely stored, and a reliable, commercial alarm system shall be installed and maintained where the medical marijuana is secured.

5. A licensed security guard, licensed by the California Department of Consumer Affairs, shall be present at the medical marijuana facility during all hours of operation. If the security guard is to be armed, then the security guard shall possess at all times a valid Security Guard Card and Firearms Permit issued by the California Department of Consumer Affairs.

F. The name and address of the owner and lessor of the real property upon which the medical marijuana facility is to be operated. In the event the applicant is not the legal owner of the property, the application must be accompanied with a notarized acknowledgement from the owner of the property that a medical marijuana collective or cooperative medical marijuana facility will be operated on his/her property.

G. Authorization for the city manager or designee to seek verification of the information contained within the application.

H. Evidence that the organization operating the medical marijuana facility is organized as a bona fide non-profit cooperative, affiliation, association, or collective of persons comprised exclusively and entirely of qualified patients and the primary caregivers of those patients in strict accordance with the Compassionate Use Act of 1996, the Medical Marijuana Program Act and the 2008 Attorney General Guidelines.

I. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

J. Any such additional and further information as is deemed necessary by the city manager or designee to administer this section.

5.50.050. Background check.

All applicants for a regulatory permit for a medical marijuana facility, including any management personnel who are responsible for the day-to-day operations and activities of the medical marijuana facility shall be required to submit to a Fingerprint-Based Criminal History Records Check conducted by the Desert Hot Springs Police Department.

5.50.060. Grounds for denial.

The city manager or designee shall reject an application upon making any of the following findings:

A. The applicant made one or more false or misleading statements or omissions on the application or during the application process;

B. The medical marijuana facility's related cooperative or collective is not properly organized in strict compliance pursuant to the Compassionate Use Act of 1996, the Medical Marijuana Program Act, the 2008 Attorney General Guidelines and any other applicable law, rules and regulations;

C. The applicant is not a primary caregiver or qualified patient or the legal representative of the medical marijuana facility;

D. The medical marijuana facility is not permitted in the proposed area; or

E. The applicant, or any person who is managing or is otherwise responsible for the activities of the medical marijuana facility has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, with the exception of medical cannabis related offenses for which the conviction occurred after the passage of the Compassionate Use Act of 1996.

5.50.070. Limitations on city's liability.

To the fullest extent permitted by law, the city shall not assume any liability whatsoever, with respect to approving any regulatory permit pursuant to this chapter or the operation of any medical marijuana facility approved pursuant to this chapter. As a condition of approval a regulatory permit as provided in this chapter, the applicant or its legal representative shall:

A. Execute an agreement indemnifying the city from any claims, damages, etc. associated with the operation of the medical marijuana facility;

B. Maintain insurance in the amounts and of the types that are acceptable to the city manager or designee;

- C. Name the city as an additionally insured on all City required insurance policies;
- D. Agree to defend, at its sole expense, any action against the city, its agents, officers, and employees related to the approval of a regulatory permit; and
- E. Agree to reimburse the city for any court costs and attorney fees that the city may be required to pay as a result of any legal challenge related to the city's approval of a regulatory permit. The city may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

5.50.080. Additional terms and conditions.

Based on the information set forth in the application, the city manager or designee may impose reasonable terms and conditions on the proposed operations of the medical marijuana facility in addition to those specified in this chapter.

5.50.090. Compliance with state law.

All medical marijuana facilities shall comply fully with all of the applicable restrictions and mandates set forth in state law and federal law, including without limitation the Compassionate Use Act of 1996, the Medical Marijuana Program Act and the 2008 Attorney General Guidelines.

5.50.100. Hours.

All medical marijuana facilities may only be open between the hours of 8:00 a.m. and 10:00 p.m. and may operate as many as seven days per week.

5.50.110. Marijuana secured.

All marijuana and marijuana products shall be kept in a secured manner during business and non-business hours.

5.50.120. Consumable marijuana products.

If consumable medical marijuana products (including, but not limited to, lollipops, brownies, cookies, ice cream, etc.) are present on site or offered for distribution, then the medical marijuana facility shall secure any approval from the County of Riverside Department of Health Services required for handling food products.

5.50.130. Sales taxes.

All medical marijuana facilities must pay any applicable sales tax pursuant to federal, state, and local law.

5.50.140. Point of sale system.

Medical marijuana facilities shall have an electronic point of sale system that produces historical transactional data for review by the city manager or designee for auditing purposes.

5.50.150. Odor control.

Medical marijuana facilities shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the medical marijuana facility that is distinctive to its operation is not detected outside the medical marijuana facility, anywhere on adjacent property or public rights-of-way, on or about any exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any

other unit located within the same building as the medical marijuana facility. As such, medical marijuana facilities must install and maintain the following equipment or any other equipment which the city manager or designee determines has the same or better effectiveness:

A. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or

B. An air system that creates negative air pressure between the medical marijuana facility's interior and exterior so that the odors generated inside the medical marijuana facility are not detectable outside the medical marijuana facility.

5.50.160. Records.

All medical marijuana facilities shall perform an inventory on the first business day of each month and shall record the total quantity of each form of marijuana on the premises. These records shall be maintained for two (2) years from the date created and shall be made available to the city manager or designee upon request.

5.50.170. Community relations.

Each medical marijuana facility shall provide the city manager or designee with the name, phone number, facsimile number, and email address of an on-site community relations or staff person or other representative to whom the city can provide notice if there are operating problems associated with the medical marijuana facility or refer members of the public who may have any concerns or complaints regarding the operation of the medical marijuana facility. Each medical marijuana facility shall also provide the above information to its business neighbors located within 100 feet of the medical marijuana facility as measured in a straight line without regard to intervening structures, between the front doors of each establishment.

5.50.180. Compliance.

All medical marijuana facilities and their related collectives or cooperatives shall fully comply with all the provisions of the Compassionate Use Act of 1996, the Medical Marijuana Program Act, the 2008 Attorney General Guidelines, all applicable provisions of this Code, and any specific, additional operating procedures and measures as may be imposed as conditions of approval of the regulatory permit.

5.50.190. Inspections and Enforcement.

A. Recordings made by security cameras at any medical marijuana facility shall be made immediately available to the city manager or designee upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.

B. The city manager or designee shall have the right to enter all medical marijuana facilities from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter.

C. Operation of the medical marijuana facility in non-compliance with any conditions of approval or the provisions of this chapter shall constitute a violation of the Municipal Code and shall be enforced pursuant to the provisions of this Code.

D. The city manager or designee may summarily suspend or revoke a medical marijuana regulatory permit if any of the following, singularly or in combination, occur:

1. The city manager or designee determines that the medical marijuana facility has failed to comply with this chapter or any condition of approval or a circumstance or situation has

been created that would have permitted the city manager or designee to deny the permit under section 5.50.030;

2. Operations cease for more than 90 calendar days, including during change of ownership proceedings;

3. Ownership is changed without securing a regulatory permit;

4. The medical marijuana facility fails to maintain 240 continuous hours of security recordings; or

5. The medical marijuana facility fails to allow inspection of the security recordings, the activity logs, or the premise by authorized city officials.

5.50.120. Appeals.

Any decision regarding the denial, suspension or revocation of a regulatory permit may be appealed to a hearing officer pursuant to the provisions set forth in Chapter 4.36. The procedures governing suspension and revocation in chapter 4.36 shall apply equally to the denial of a regulatory permit. Said appeal shall be made by a notice of appeal from the person appealing within thirty (30) days from the date of the decision.

5.50.130. Cessation of operations.

In the event a qualified medical marijuana facility that receives a regulatory permit ceases to operate for any reason, the city manager or designee shall consider the next qualified applicant on the waiting list placed in order of application and provide an opportunity for new applicants to be considered for a permit.

5.50.140. Permits not transferable.

Regulatory permits issued pursuant to this chapter are not transferrable.

5.50.150. Violations.

A. Any violation of any of the provisions of this chapter is unlawful and a public nuisance.

B. Any violation of any of the provisions of this chapter shall constitute a misdemeanor violation and upon conviction thereof any violation shall be punishable by a fine not to exceed one thousand dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

C. In lieu of issuing a misdemeanor citation, the city may issue an administrative citation, and/or assess an administrative fine of up to one thousand dollars (\$1,000.00) for each violation of this ordinance pursuant to the procedures set forth in Title 14.

D. A separate offense occurs for each day any violation of this chapter is continued and/or maintained.

E. The remedies provided herein are not to be construed as exclusive remedies, and in the event of violation, the city may pursue any proceedings or remedies otherwise provided by law.

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. 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 5. EFFECTIVE DATE

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

That 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; MOKEE; PYE; AND MAYOR SANCHEZ.

NOES: NONE.

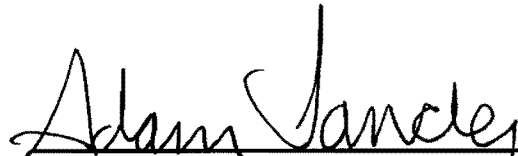
ABSENT: NONE.

ABSTAIN: NONE.

ATTEST:

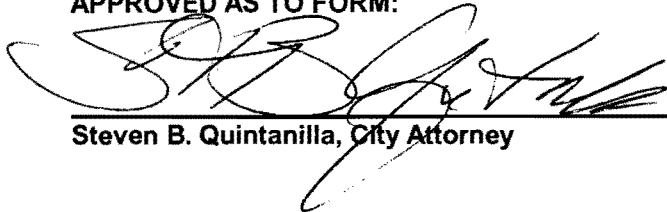


Jerry Soriano, City Clerk



Adam Sanchez, Sr., Mayor

APPROVED AS TO FORM:



Steven B. Quintanilla, City Attorney