

**RESOLUTION NO. 20200123-059**

**WHEREAS**, during the 86<sup>th</sup> Legislative Session the Texas Legislature passed House Bill 1325, legalizing and regulating hemp, and defining it as any part of the Cannabis sativa L. (cannabis) plant with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent; and

**WHEREAS**, House Bill 1325 makes it virtually impossible to distinguish, beyond a reasonable doubt, between plant forms of marijuana and hemp without a lab test to measure THC concentration; and

**WHEREAS**, the limited testing resources available from the State of Texas have made prosecuting cannabis-related substance possession so time-consuming and expensive that the Travis County and Williamson County prosecutors, along with many other state prosecutors around the State of Texas, are declining to prosecute all new misdemeanor possession of marijuana charges brought after House Bill 1325 took effect on June 10, 2019, unless there is a lab test confirming that the substance is marijuana rather than hemp; and

**WHEREAS**, due to the passage of House Bill 1325, the City may have to acquire new testing equipment, in addition to equipment already owned, for prosecutors to prosecute people who continue to be arrested or cited by City of Austin police officers for marijuana offenses; and

**WHEREAS**, specific accreditation for THC concentration testing is necessary for the now required lab test results to be admissible as evidence in a court of law, requiring substantial new expenditure of funds and staff time from limited City resources for City personnel to obtain this accreditation; and

**WHEREAS**, the necessity to invest in new testing equipment, protocols, and accreditations in order to continue to prosecute marijuana offenses represents an unplanned and unfunded mandate from the State of Texas on local governments; and

**WHEREAS**, the odor of marijuana is largely indistinguishable from hemp, even to trained drug-sniffing dogs; and

**WHEREAS**, the Austin Police Department has issued a directive to its officers not to use the perceived odor of marijuana as the sole source of probable cause for conducting searches or taking enforcement action; and

**WHEREAS**, the Austin Police Department continues to cite or arrest people for possession of marijuana despite the current practice of Travis and Williamson County prosecutors of not accepting these charges without an accompanying lab report; and

**WHEREAS**, the Texas Legislature passed Senate Bill 2 during the 86<sup>th</sup> Legislative Session, which effectively caps the amount of revenue from property taxes that city and county governments can draw without additional costly and time-consuming rollback elections, cutting the prior rollback rate by more than half; these

revenue caps in Senate Bill 2 go into effect for Fiscal Year 2021, leaving the City of Austin and other local governments to face budget deficits, and will force difficult decisions about the City's priorities for spending; and

**WHEREAS**, the City is responsible for determining how to utilize its local law enforcement resources to best address issues of public safety; and

**WHEREAS**, City Council adopted Strategic Direction 2023 in 2018, with Safety as one of six primary outcomes, and the fair administration of justice as a principal indicator of this outcome, with the first strategy to achieve this outcome listed as: "Develop and act on recommendations to ensure that all community members are treated fairly and equitably in the enforcement of laws and the adult and juvenile justice systems, whether they are defendants or victims of crime;" and

**WHEREAS**, even short periods of incarceration are strongly correlated with higher rates of new criminal activity; when held as few as 2 or 3 days, low-risk defendants are almost 40 percent more likely to commit new crimes before trial than defendants held for fewer than 24 hours; and

**WHEREAS**, communities of color are disproportionately impacted by the enforcement of marijuana possession laws in Austin and across the country; and

**WHEREAS**, continued arrests and citations by the Austin Police Department for low-level marijuana offenses that local prosecutors are, by policy, declining to prosecute without a lab report result in a drain of both City and County resources,



and may cause a significant burden upon the resident who is being arrested or cited, while also creating confusion and mistrust among the larger community; and

**WHEREAS**, City Council passed Resolution No. 20180614-073, directing the City Manager to reduce racial disparities in the Austin Police Department's use of arrests for offenses eligible for citation, including those for misdemeanor possession of marijuana; however residents may be ineligible for citation rather than arrest if they are outside of their county of residence, making City residents who reside in Williamson County ineligible for citation if stopped in Travis County, and vice versa; and

**WHEREAS**, high priority marijuana cases, such as felony-level marijuana trafficking cases may be pursued for prosecution by testing evidence for THC concentration level in these cases, without expending resources on lower-level marijuana possession cases, and such high priority cases may still be pursued without City of Austin lab tests, perhaps through the use of non-City laboratory services; and

**WHEREAS**, police officers maintain the discretion to confiscate substances believed to be marijuana, regardless of use of citation or arrest; and

**WHEREAS**, enforcement of low-level marijuana laws is not a public safety priority of the citizens of Austin or the Austin City Council, especially compared to other public safety imperatives; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

It is the policy of the City that City funds and personnel will not be used to:

- Develop THC concentration testing protocols or pursue validation for the purpose of testing any cannabis-related substance to determine whether the substance meets the legal definition of marijuana under state law.
- Access, by any means, THC concentration testing of cannabis-related substances except in the investigation of high priority felony level cannabis-related trafficking offenses or a violent felony charge (not a cannabis-related charge).

**BE IT FURTHER RESOLVED:**

It is the policy of the City that City resources may be used to access THC concentration testing conducted or performed by non-City laboratories only for use in the investigation of high priority felony-level cannabis-related trafficking offenses, for the purpose of determining whether a cannabis-related substance meets the legal definition of marijuana under state law. For the purposes of this resolution, trafficking offenses are cases where the substance is not for personal use.

Nothing in this resolution shall be construed to limit the ability of the Austin Police Department to conduct toxicology testing when necessary to ensure public safety or to limit testing for the purpose of investigating any violent felony charge (not a cannabis-related charge).

**BE IT FURTHER RESOLVED:**

The City Council directs the City Manager to take the steps necessary and appropriate to eliminate, to the furthest extent allowable under state law and as long as there is no immediate threat to a person's safety, the use of arrest or other enforcement action for cannabis-related possession offenses, when the Chief of the Austin Police Department knows, or reasonably should know, that the prosecuting entity will automatically reject the charges or that a lab report will not be obtained to test the THC concentration of the substance. Otherwise, such arrest and other enforcement action is governed by prior Council action and state law.

**BE IT FURTHER RESOLVED:**

The City Council directs the City Manager to take steps necessary and appropriate to ensure City police officers are well-trained in, and that the public is informed of, the changes made as a result of this resolution.

The City Manager is directed to confer with the community, prosecutors, and the Justice of the Peace on how to communicate with any person who is given a citation that will be automatically dismissed without penalties, with the goal of ensuring transparency, clarity for Austin residents, and maintaining and building trust with the criminal justice system.

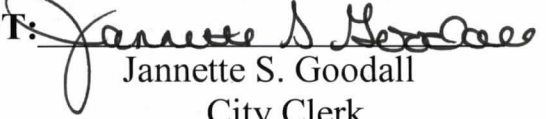
**BE IT FURTHER RESOLVED:**

The City Council directs the City Manager to provide a report back to Council

on the implementation of this resolution, including changes to policies and procedures, by May 1, 2020, and to provide a written report to Council on the implementation of this resolution by January 31, 2021.

The City Manager may return to the Council for authorization of any needed policy clarifications or changes in the event of future changes to state law, local prosecutorial policies, or testing technology that affect how cannabis-related offenses are investigated and prosecuted.

The City Manager is directed to ensure that testing at state or private labs does not inhibit the ability to prosecute high priority felony-level cannabis-related trafficking offenses or a violent felony charge (not a cannabis-related charge) in a timely manner, and to report to Council on progress.

ADOPTED: January 23, 2020 ATTEST:   
Jannette S. Goodall  
City Clerk