

1 **RESOLUTION NO.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 **BE IT FURTHER RESOLVED:**

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

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

101 **BE IT FURTHER RESOLVED:**

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

110 **BE IT FURTHER RESOLVED:**

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

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

119 **BE IT FURTHER RESOLVED:**

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

121 on the implementation of this resolution, including changes to policies and
122 procedures, by May 1, 2020.

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

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129 **ADOPTED:** _____, 2020 **ATTEST:** _____

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Jannette S. Goodall
City Clerk

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