

ORDINANCE 1287

AN ORDINANCE OF THE CITY OF TRACY AMENDING VARIOUS SECTIONS OF CHAPTER 6.36 OF TITLE 6 "BUSINESSES, PROFESSIONS, AND TRADES" OF THE TRACY MUNICIPAL CODE REGARDING LOCAL REGULATIONS OF COMMERCIAL CANNABIS ACTIVITY IN THE CITY OF TRACY

WHEREAS, In November 1996, California voters approved the Compassionate Use Act of 1996 ("CUA") which authorized a limited defense to criminal charges for the use, possession or cultivation of marijuana (cannabis) for medical purposes when a qualified patient has a doctor's recommendation for the use of cannabis, and

WHEREAS, In November 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), which legalized the use of non-medicinal (recreational) cannabis by adults and the cultivation of up to six cannabis plants for personal use; and the AUMA also created a statewide regulatory framework for the cultivation, production, and sale of non-medical cannabis for adult use, and

WHEREAS, In June 2017, the State Legislature adopted Senate Bill 94 creating a new statewide comprehensive regulatory system for medical and adult use commercial cannabis activity titled Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), and

WHEREAS, CUA, AUMA and MAUCRSA do not prohibit cities from enacting regulations regarding commercial cannabis activities and uses, and

WHEREAS, The City Council seeks to establish regulations for commercial cannabis activity in the City of Tracy to ensure such activities are conducted in a manner that mitigates negative impacts, protects the public health, safety, and welfare of residents, and supports economic development, and

WHEREAS, The City of Tracy engaged in a comprehensive review and study of state and local cannabis regulations, conducted community outreach on this topic, and held various public meetings to discuss commercial cannabis activity, provide policy direction to staff, and receive public input on the topic of commercial cannabis activity, and

WHEREAS, The City Council adopted an ordinance establishing local regulations on commercial cannabis activity in the City of Tracy on December 3, 2019, which are set forth in Chapter 6.36 of the Tracy Municipal Code, and

WHEREAS, This Ordinance would amend various sections of Chapter 6.36 of the Tracy Municipal Code to further protect the public health, safety, and welfare of residents by adding regulatory measures to a fast-evolving industry, to reflect technical changes, and to cleanup provisions.

The City Council of the City of Tracy does ordain as follows:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein as findings.

SECTION 2. Amended Sections. Sections 6.36.050, 6.36.060, 6.36.090, 6.36.100, 6.36.130, and 6.36.150 of Article 2 of Chapter 6.36, and Section 6.36.370 of Article 4 of Chapter 6.36 of the Tracy Municipal Code are hereby amended to read as follows:

“Section 6.36.050. Application Procedure for a Cannabis Business Permit.

(a) The City Council shall adopt by resolution the procedures to govern the application process, and the manner in which the decision to issue a cannabis business permit(s) is made. Said resolution shall authorize City staff and/or consultants to provide detailed objective review criteria to be evaluated on a point system or equivalent quantitative evaluation scale tied to each set of review criteria ("Review Criteria") and to prepare the necessary forms, solicit applications, and review and evaluate the applicants. Applications for a cannabis business permit shall include, but not be limited to, the following information:

- i. Applicant Background Information.
 - A. A description of the statutory entity or business form that will serve as the legal structure for the applicant and a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement.
 - B. The phone number and address to which any notices and correspondence regarding the application is to be mailed.
 - C. Owners. The name, address, telephone number, title, respective percentage of ownership, and function of each of the owners.
 - D. Background checks. For each of the interested parties:
 1. A legible copy of one valid government-issued form of photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.
 2. A list of their misdemeanor and felony convictions, if any. For each conviction, the list must set forth the date of arrest, the offense charged, the offense convicted, the sentence, the jurisdiction of the court, and whether the conviction was by verdict, plea of guilty, or plea of nolo contendere.
 3. Consent to fingerprinting and a criminal background investigation.
 - E. Evidence of a conviction of any of the offenses enumerated in California Business and Professions Code Section 26057(b)(4), absent a Certificate of Rehabilitation, shall be grounds for immediate disqualification of the applicant.
- ii. Business operations.
 - A. Business plan. A plan describing how the cannabis business will operate in accordance with this code, state law, and other applicable regulations. The business plan must include proof of sufficient capital to start the business and sustain it through the first three months of operation, plans for handling cash and transporting cannabis and cannabis products to and from the site.
 - B. Community relations plan. A plan describing who is designated as being responsible for outreach and communication with the

- surrounding community, including the neighborhood and businesses, and how the designee can be contacted.
- C. Document(s) demonstrating property owner acknowledgement. Document(s) demonstrating that the property owner is fully aware that the applicant intends to use the property for cannabis business purposes. Document(s) must include name, address, and contact information for the property owner.
 - D. State licenses. Copies of any state licenses relating to cannabis that the applicant holds.
 - E. Tax compliance. A current copy of the applicant's city business operations tax certificate pursuant to Chapter 6.04. A copy of the applicant's state sales tax seller's permit, if applicable. If the applicant has not yet received a sales tax seller's permit, then the applicant shall attest that the applicant is currently applying for a seller's permit. A copy of the applicant's most recent year's financial statement and tax returns, if applicable.
 - F. Insurance. The applicant's certificate of commercial general liability insurance and endorsements and certificates of all other insurance related to the operation of the cannabis business.
 - G. Budget. A copy of the applicant's most recent annual budget for operations.
 - H. Price list. A list of the most recent prices for all products and services provided by the applicant.
- iii. City authorization. Authorization and consent for the City to seek verification of the information contained within the application.
 - iv. Applicant's certification. A statement dated and signed by the applicant, under penalty of perjury, that the applicant has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the applicant's supervision.
 - v. Indemnification. An agreement, in a form approved by the City Attorney, whereby the applicant: (1) releases the City, and its agents, officers, elected officials, and employees from any and all claims, injuries, damages, or liabilities of any kind arising from: (a) any repeal or amendment of this Chapter or any provision of Title 10 of the Zoning Code relating to cannabis, and (b) any arrest or prosecution of the applicant or its managers, employees, or members for violation of state or federal laws; and (2) defends, indemnifies, and holds harmless the City and its agents, officers, elected officials, and employees from and against any and all claims or actions: (a) brought by adjacent or nearby property owners or any other parties for any damages, injuries, or other liabilities of any kind arising from operations at the commercial cannabis business, and (b) brought by any party for any problems, injuries, damages, or other liabilities of any kind arising out of the distribution of cannabis produced or processed at the site or by the business.
- (b) Non-Refundable Application Fee. At the time of filing, each applicant shall pay a non-refundable application fee established by resolution of the City Council, to cover all costs incurred by the City in the application process.
- (c) Review of Applications. The Development Services Director or designee, Finance Director or designee, and Fire Chief or designee ("Review Committee") shall

conduct an initial review of the applications and rank and score the applications utilizing the Review Criteria. The Review Committee shall then make a recommendation to the Police Chief or designee, who shall make a final selection in accordance with Section 6.36.060.

(d) THE CITY'S RESERVATION OF RIGHTS:

The City reserves the right to reject any or all applications. Prior to cannabis business permit issuance, the City may also modify, postpone, or cancel any request for applications, or the entire program under this Chapter, at any time without liability, obligation, or commitment to any party, firm, or organization, to the extent permitted under California law. Persons submitting applications assume the risk that all or any part of the program, or any particular category of permit potentially authorized under this Chapter, may be cancelled at any time prior to cannabis business permit issuance. The City further reserves the right to request and obtain additional information from any candidate submitting an application.

Section 6.36.060. Selection of Cannabis Business Permittee(s).

(a) The Police Chief or designee shall determine which applicants will be granted a cannabis business permit in accordance with the procedures established referenced in Section 6.36.050, subsection (a). The Police Chief's or designee's decision as to the selection of permittees shall be appealable to the City Manager. Such appeals shall comply with Chapter 1.12 of this Code.

(b) Upon issuance of a conditional use permit, a cannabis business permit is valid at only the location granted under the conditional use permit and State License.

(c) Issuance of a cannabis business permit does not constitute a land use permit. Following the Police Chief's selection, the prevailing candidates(s) shall apply to the City's Development Services Department to obtain a conditional use permit pursuant to Section 10.08.4250 and any other required land use approvals or permits for the permittee's premises. Land use approvals shall include compliance with all applicable provisions of California Environmental Quality Act.

(d) Furthermore, no permittee shall begin operations, notwithstanding the issuance of a cannabis business permit, unless all of the state and local laws and regulations have been complied with, including but not limited to the requirements of this Chapter and Section 10.08.3196 of this Code.

(e) Notwithstanding anything in this Chapter to the contrary, the City reserves the right to reject any or all applications if it determines it would be in the best interest of the City, taking into account any health, safety and welfare impacts on the community. Applicants shall have no right to a cannabis business permit until a permit is issued, and then only for the duration of the term specified in the permit. Each applicant assumes the risk that, at any time prior to the issuance of a cannabis business permit, the City Council may terminate or delay the program created under this Chapter.

(f) If an application is denied for a cannabis business permit, a new application may not be filed for one (1) year from the date of the denial.

- (g) Permit Fee. Each person granted a Cannabis Business Permit shall pay the permit fee established by resolution of the City Council, to cover the costs of administering the cannabis business permit regulatory program created in this Chapter.

Section 6.36.090. Suspension, Modification, or Revocation of Cannabis Business Permits.

- (a) The Police Chief or designee may suspend, modify, or revoke a cannabis business permit issued pursuant to the provisions of this Chapter for any of the following reasons:
 - i. One or more of the circumstances upon which a cannabis business permit could be denied, as described in Section 6.36.070, exists or has occurred;
 - ii. One or more conditions of the cannabis business permit has been violated;
 - iii. The Permittee, its owners, officers, directors, partners, agents, or other persons vested with the authority to manage or direct the affairs of the business have violated any provision of this Chapter; or
 - iv. One or more of the conditions placed on the conditional use permit issued under Title 10 of this Code has been violated.
- (b) The Police Chief's or designee's decision as to the suspension, modification, or revocation of a cannabis business permit shall be appealable to the City Manager. Such appeals shall comply with Chapter 1.12 of this Code.

Section 6.36.100. Renewal Applications.

- (a) An application for renewal of a cannabis business permit shall be filed at least sixty (60) calendar days prior to the expiration date of the current permit.
- (b) The renewal application shall contain all the information required under this Chapter and the procedures established by City Council resolution.
- (c) The applicant shall pay a fee in an amount set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this Chapter.
- (d) An application for renewal of a cannabis business permit shall be denied if any of the following exists:
 - i. One or more of the circumstances upon which a cannabis business permit could be denied, as described in Section 6.36.070, exists or has occurred;
 - ii. The application is filed less than sixty (60) days before its expiration.
 - iii. The cannabis business permit is suspended or revoked at the time of the application.
 - iv. The cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application, unless the applicant has been granted a conditional use permit and is diligently pursuing either a discretionary permit or building permit, or is in construction.
 - v. The permittee fails to or is unable to renew its State License.

(e) The Police Chief or designee(s) is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the Police Chief or designee(s) is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the Police Chief or designee(s) shall be directed to the City Manager and shall be handled pursuant to Chapter 1.12.

(f) If a renewal application is denied, a person may file a new application pursuant to this Chapter no sooner than one (1) year from the date of the rejection.

(g) If an existing cannabis business permit holder fails to renew their permit, the City may, in its discretion, solicit and consider permit applications from other applicants pursuant to Sections 6.36.050 and 6.36.060.

Section 6.36.130. Transfer of Cannabis Business Permit.

(a) No permittee shall assign, sell, or transfer any or all ownership interests or control of the permit to another person or entity and any attempt to assign, sell, or transfer a cannabis business permit or ownership interest in a cannabis business permit, either directly or indirectly in violation of this section, is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the permit.

(b) Notwithstanding subsection (a) above, a permittee wishing to transfer any or all ownership interests or control of the permit to another person or entity may do so provided that the transferee obtains an amendment to their State License, if required, and an amendment to the permit from the Police Chief stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Police Chief or designee(s) in accordance with all provisions of this Chapter (as though the transferee were applying for an original cannabis business permit) accompanied by a transfer fee in an amount set by resolution of the City Council, and the Police Chief or designee(s) determines that the transferee passed the background check required under subsection (a) of Section 6.36.050 and meets all other requirements of this Chapter.

(c) Cannabis business permits issued through the grant of a transfer by the Police Chief shall be valid for a period of one year beginning on the day the Police Chief approves the transfer of the permit. Before the transferee's permit expires, the transferee shall apply for a renewal permit in the manner required by this Chapter.

(d) Changes in ownership of a permittee's business structure or a substantial change in the ownership of a permittee business entity (changes that result in a change of more than 51% of the original ownership), must be approved by the Police Chief or designee(s) through the transfer process contained in this subsection (b). Failure to comply with this provision is grounds for revocation.

(e) No cannabis business permit may be transferred when the Police Chief or designee has notified the permittee that the permit has been or may be suspended or revoked.

Section 6.36.150. Cannabis Employee Permit Required.

- (a) Any person who is an employee or who otherwise works within a cannabis business must be legally authorized to do so under applicable state law.
- (b) Any person who is an employee or who otherwise works within a cannabis business must obtain a cannabis employee permit from the City prior to performing any work at any cannabis business.
- (c) Applications for a cannabis employee permit shall be developed, made available, and processed by the Police Chief or designee(s), and shall include, but not be limited to, the following information:
 - i. Name, address, and phone number of the applicant;
 - ii. Verification of the applicant's age and identity. A copy of a birth certificate, driver's license, government issued identification card, passport or other proof that the applicant is at twenty-one (21) years of age must be submitted with the application;
 - iii. Name, address of the cannabis business where the person will be employed, and the name and phone number of the primary manager of that business. This subsection (c)iii. shall not be construed to restrict the holder of a valid cannabis employee permit from seeking employment with a different cannabis business;
 - iv. A list of any crimes enumerated in California Business and Professions Code Section 26057(b)(4) of which the applicant has been convicted;
 - v. Name, address, and contact person for any previous employers from which the applicant was fired, resigned, or asked to leave and the reasons for such dismissal or firing;
 - vi. The application shall be accompanied by fingerprints and a recent photograph of the applicant in a form and manner as required by the Police Chief or designee(s).
 - vii. A fee paid in an amount set by resolution of the City Council in an amount necessary to cover the costs of administering the cannabis employee permit program. The fee is non-refundable and shall not be returned in the event the employee permit is denied or revoked.
- (d) The Police Chief or designee(s) shall review the application for completeness, shall conduct a background check to determine whether the applicant was convicted of a crime or left a previous employer for reasons that show the applicant has ever been convicted of any of the offenses enumerated in California Business and Professions Code Section 26057(b)(4).

Employers who wish to hire an individual notwithstanding this rule shall apply to the Police Chief, who at his/her sole discretion may issue a written waiver. The employer or employee shall submit a statement of rehabilitation for each conviction. The statement of rehabilitation may contain evidence that the employer or employee would like the Police Chief to consider that demonstrates the employee's fitness for a cannabis employee permit. Supporting evidence may be attached to the statement of rehabilitation and may include, but is not limited to, dated letters of reference from employers, instructors, or professional counselors that contain valid contact information for the

individual providing the reference. The Police Chief's or designee's decision as to the selection of an employee shall be appealable to the City Manager. Such appeals shall comply with Chapter 1.12 of this Code.

Discovery of facts showing that the applicant has either failed to disclose or has been convicted of any of the offenses enumerated in California Business and Professions Code Section 26057(b)(4) are grounds for denial of the permit. Where the applicant's sentence (including any term of probation, incarceration, or supervised release) for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is completed, such underlying conviction shall not be the sole ground for denial of a commercial cannabis employee permit.

(e) The Police Chief or designee shall implement the cannabis employee permit process in accordance with the procedures and rules established by resolution adopted by the City Council.

(f) A cannabis employee permit shall be valid for a twelve (12) month period from date of issuance and must be renewed on an annual basis. Renewal applications shall contain all the information required in Section 6.36.150, subsection (c) above including the payment of a renewal application fee in an amount to be set by resolution of the City Council.

(g) The City may immediately revoke the cannabis employee permit should the permit holder be convicted of a crime listed California Business and Professions Code Section 26057(b)(4). The following are additional grounds for revoking a cannabis employee permit based on the specific role and function of that employee:

- i. A cannabis employee permit shall be revoked if the employee permit holder:
 - A. Sells or provides cannabis or cannabis products to a minor;
 - B. Attempts to give away cannabis or cannabis products while working, unless as authorized pursuant to Section 5411 of Chapter 3, Division 42, Title 16 of the California Code of Regulations;
 - C. Acts to illegally divert cannabis or cannabis products to the black market, including stealing cash; stealing the licensee's product for personal consumption; or selling the licensee's product and keeping the proceeds of the sale; or
 - D. Is cited for driving under the influence of alcohol, cannabis or another illicit drug while on- or off-duty.

(h) The applicant may appeal the denial or revocation of a cannabis employee permit to the City Manager by filing a notice of appeal with the City Clerk within ten (10) working days of the date the applicant received the notice of denial or revocation, which appeal shall be conducted as set forth in Chapter 1.12 of this Code.

Section 6.36.370 Cannabis Non-Storefront (Delivery Only) Retailer Permit Requirements.

(a) Permit Required. No person shall operate a cannabis delivery only business in the City (without a valid City cannabis business permit issued pursuant to this Chapter, or in a manner that is inconsistent with the permit issued.

(b) Permit Fee. A cannabis delivery-only permit program fee is established and imposed. The City Council shall establish by resolution the amount of the permit fee and any related penalties.

(c) Permissible Delivery Locations and Customers. Cannabis delivery-only retailers are subject to the following requirements:

- i. Cannabis, cannabis products and cannabis accessories shall only be delivered to customers located at a residential address including a nursing or assisted living facility;
- ii. The delivery of Cannabis, cannabis products and cannabis accessories to any location or facility owned, leased or occupied by a public agency, including but not limited to, a public school, library, and community center, is expressly prohibited;
- iii. No deliveries shall be conducted on private property open to the public, including but not limited to, business and professional offices, retail stores and their adjoining parking lots, places of assembly, eating and drinking establishments.
- iv. Any kiosk, i-Pad, tablet, smartphone, fixed location or technology platform, whether manned or unmanned, other than a Licensee or Permit Holder, that facilitates directs or assists the retail sale or delivery of cannabis, cannabis products, or cannabis accessories, is expressly prohibited and shall be a violation of this Chapter.

(d) All cannabis and cannabis products being delivered shall be obtained from the site of the cannabis business that is authorized to deliver cannabis. No cannabis or cannabis products may be delivered from any other facility, such as a separate storage facility or a cannabis product manufacturing facility.

(e) No person delivering cannabis, cannabis products and cannabis accessories shall possess more than \$3,000 worth of cannabis and cannabis products at any time.

(f) The cannabis delivery only business shall use and maintain computer software to record the following information relating to each delivery:

- i. A delivery request that includes the date of the request, the full name of the person requesting the delivery, a specific description of the items requested, whether each item is a medical cannabis or adult-use cannabis product, and the address to which the items are to be delivered;
- ii. The name of the person who delivered the items; and
- iii. The date and time of the delivery.

(g) A person delivering cannabis or cannabis products on behalf of a cannabis non-storefront retailer shall carry the following items:

- i. A copy of the dispensary's current dispensary permit;
- ii. The person's government-issued identification;
- iii. Evidence of the person's City-issued cannabis employee permit; and
- iv. A copy of the delivery request as described in subsection (f).

(h) Upon demand of a peace officer or City employee authorized to enforce this chapter, a person delivering cannabis or cannabis products pursuant to this section shall present the items listed in subsection (g) for examination.

(i) No person shall deliver cannabis to anyone except the person who requested the delivery. The person delivering the cannabis shall confirm compliance with sections 6.36.370 (g) (medical cannabis dispensing operations) and 6.36.370(f) (adult-use cannabis dispensing operations), as applicable, by inspecting the relevant identification and documentation before handing the cannabis or cannabis product to the customer.

(j) A cannabis delivery-only retailer shall maintain the information described in subsection (f) for at least three years on the site and shall produce the information to the city upon request.

(k) **Delivery-Only Vehicle Requirements.** Prior to commencing operations, a Cannabis Non-Storefront Retailer shall provide the City with all information requested by the Police Chief or designee(s) regarding the vehicles used to deliver cannabis to customers. Such information shall include, but not be limited to the following:

- i. Proof of ownership of the vehicle or a valid lease for any and all vehicles that will be used to deliver cannabis or cannabis products.
- ii. Proof of insurance as required in section 6.36.140 (b) for any and all vehicles being used to deliver cannabis or cannabis products.
- iii. The make, model, color, and license number of all vehicles owned or leased by the commercial cannabis retailer and used to deliver cannabis or cannabis products.

(l) **Retail Sales Prohibited.** No person shall conduct any retail sales of any good or services on or from a permitted cannabis delivery-only retailer site.

(m) **Location Requirements.** Cannabis non-storefront retail permittees shall locate in a site consistent with Section 10.08.3196.”

SECTION 3. If any provision or the application of this Ordinance is for any reason held to be unconstitutional, invalid, or otherwise unenforceable, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted each subsection or provision of this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 4. This Ordinance shall take effect 30 days after its final passage and adoption.

SECTION 5. The City Council finds that this Ordinance is exempt from CEQA in accordance with Business and Professions Code section 26055(h) because it requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

SECTION 6. This Ordinance shall either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk’s office at least five days before the ordinance is adopted and within

15 days after adoption, with the names of the Council Members voting for and against the ordinance. (Gov't. Code §36933.)

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The foregoing Ordinance 1287 was introduced at a regular meeting of the Tracy City Council on the 19th day of May 2020, and finally adopted on the 2nd day of June, 2020, by the following vote:

AYES: COUNCIL MEMBERS: ARRIOLA, RANSOM, VARGAS, YOUNG, RICKMAN
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE

SIGNED: Robert Rickman, Mayor

ATTESTED: Adrienne Richardson, City Clerk