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Ordinance 04-25

AN ORDINANCE TO UPDATE CHAPTER 155 OF THE PROCTOR, MN CODE OF ORDINANCES

Section 1	Administration
Section 2	Amendment of Section 155.001
Section 3	Amendment of Section 155.156
Section 4	Amendment of Section 155.176
Section 5	Amendment of Section 155.191
Section 6	Amendment of Section 155.310

The Proctor City Council for the City of Proctor does hereby ordain:

Section 1. Administration

1.1 Findings and Purpose

The Proctor City Council makes the following legislative findings:

The purpose of this ordinance is to revise Chapter 155 of the City of Proctor's Code of Ordinances to address two matters. First, to revise the standard for granting variance requests to bring the Code of Ordinances into compliance with the provisions of Minnesota Statutes, Section 462.357, Subdivision 6. Second, to implement the zoning provisions of Minnesota Statutes, Chapter 342, as amended, which authorizes the Proctor City Council to protect the public health, safety, welfare of the City of Proctor's residents by regulating cannabis businesses within the legal boundaries of the City of Proctor.

The Proctor City Council finds and concludes that the proposed provisions are appropriate and lawful land use regulations for the City of Proctor, that the proposed amendments will promote the community's interest in reasonable stability in zoning for now and in the future, and that the proposed provisions are in the public interest and for the public good.

1.2 Authority and Jurisdiction

The Proctor City Council has the authority to adopt this ordinance pursuant to:

- a) Minnesota Statutes § 342.13(c), regarding the authority of a local unit of government to adopt reasonable restrictions of the time, place, and manner of the operation of a cannabis business provided that such restrictions do not prohibit the establishment of cannabis businesses.
- b) Minnesota Statutes § 342.22, regarding the local registration and enforcement requirements of state-licensed cannabis retail businesses and lower-potency hemp edible retail businesses.

- c) Minnesota Statutes § 152.0263, subdivision 5, regarding the use of cannabis in public places.
- d) Minnesota Statutes § 462.357, regarding the authority of a local authority to adopt zoning ordinances.

1.3 Severability

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

Section 2. Amendment of Section 155.001

The definition of Home Occupations is hereby amended as follows:

Paragraph 6(o) is deleted in its entirety and replaced with the following:

- 6(o) A HOME OCCUPATION shall not include a cannabis business or a hemp business.

A new paragraph 6(p) is added with the following text:

- 6(p) The City Council may add any additional requirements that it deems necessary to ensure that the operation of HOME OCCUPATION will be compatible with nearby land uses.

Section 3. Amendment of Section 155.156

Section 155.156, which defines the permitted uses in a “C-1” Commercial District is amended to include a new paragraph (M) as follows:

- (M) Sales of lower-potency hemp edibles, as defined under Minn. Stat. 342.01 subd. 50.

Section 4. Amendment of Section 155.176

Section 155.176, which defines the permitted uses in a “C-2” Commercial District is amended to include a new paragraph (N) as follows:

- (N) The following cannabis purposes under license issued by the State of Minnesota:
 - (1) retail operations of cannabis microbusiness with retail operations endorsement;
 - (2) retail operations of cannabis mezzobusiness with retail operations endorsement;
 - (3) cannabis retailer;
 - (4) cannabis event organizer;
 - (5) medical cannabis combination business; or
 - (6) lower-potency hemp edible retailer.

Section 5. Amendment of Section 155.191

Section 155.191, which defines the permitted uses in an “I” Industrial District is amended to include a new paragraph (F) as follows:

- (F) The following cannabis purposes under license issued by the State of Minnesota:
 - (1) Non-retail operations of cannabis microbusiness with retail operations endorsement;
 - (2) Non-retail operations of cannabis mezzobusiness with retail operations endorsement;
 - (3) Cannabis microbusiness without retail operations endorsement;
 - (4) Cannabis cultivator;
 - (5) Cannabis manufacturer;
 - (6) Cannabis wholesaler;
 - (7) Cannabis transporter;
 - (8) Cannabis testing facility;
 - (9) Cannabis delivery service; and

- (10) Lower-potency hemp edible manufacturer.

Section 6. Amendment of Section 155.310

Section 155.310 is deleted in its entirety and replaced as follows:

Section 155.310

The Board of Adjustment shall have powers and duties:

(A) To authorize, upon appeal in specific cases, a variance for height, area, size of structure, or size of yards and open spaces from the terms of this chapter as will not be contrary to the public interest where the applicant has demonstrated that a literal enforcement of the provisions of this chapter would result in practical difficulties. Practical difficulties, for the purpose of this section, means:

- (1) the property owner proposes to use the property in a reasonable manner not permitted by this Chapter;
- (2) the plight of the landowner is due to circumstances unique to the property not created by the landowner' and
- (3) the variance, if granted, will not alter the essential character of the locality.

(B) Decision Standards

- (1) The proposed variance must be in harmony with the general purpose and intent of the ordinance, consistent with the comprehensive plan, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (2) A variance may not be granted:
 - (a) based on economic considerations alone;
 - (b) to permit any use that is not allowed under this chapter for property in the zone where the subject property is located;
 - (c) on the basis that the proposed use is allowed as a nonconforming for another property in the same district or in another district; or
 - (d) establishment or expansion of an otherwise prohibited use in the district.
- (3) For the purpose of this § 155.310, practical difficulties include inadequate access to direct sunlight for solar energy systems.
- (4) A variance shall be granted for earth sheltered construction, as defined in Minn. Stat. § 216C.06, Subd. 14, but only when in harmony with this chapter.
- (5) The Board of Adjustment may permit, as a variance:
 - (a) the temporary use of a one-family dwelling as a two-family dwelling; or
 - (b) restrictions on nonconforming uses.

(C) A variance from the terms of this chapter shall not be granted by the Board of Adjustment unless and until:

- (1) A written application for a variance is submitted demonstrating that the conditions listed in paragraph A, above, are met.
- (2) Notice of public hearing shall be given as in § 155.355;
- (3) A public hearing has been held. Any party may appear at the public hearing in person, by agent, or by attorney;
- (4) The Board of Adjustment has made findings that the requirements of this section, including the decision standards in paragraph (B), above, have been met by the applicant for the variance;

(D) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Any conditions imposed on the variance must be directly related to and must bear rough proportionality to the impact created by the variance. Violation of the conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

