

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON ADOPTING CHAPTER 21, ARTICLE V, OF THE CITY OF DENTON CODE OF ORDINANCES, TITLED “MARIJUANA ENFORCEMENT”; PROVIDING REPEALER, CUMULATIVE, AND SEVERABILITY CLAUSES; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, on May 4, 2022, an initiative petition was filed with the City Secretary seeking to initiate a new ordinance to eliminate enforcement of low-level marijuana offenses by creating Chapter 21, Article V of the Denton Code of Ordinances to be titled “Marijuana Enforcement”; and

WHEREAS, in accordance with Section 4.04 of the City Charter, the City Secretary examined the petition, and on June 7, 2022, submitted her certificate to the City Council stating the petition was sufficient and in compliance with the provisions of Article IV of the City Charter; and

WHEREAS, on July 19, 2022, the proposed initiative ordinance was read and a public hearing was held in accordance with Section 4.07 of the City Charter; and

WHEREAS, in accordance with the City Charter, by Ordinance No. 22-1198, the City Council deemed it in the best interests of the public to call a special election for the proposition, designated as Proposition B (Section 2 of Ordinance No. 22-1198); and

WHEREAS, a municipal Special Election was held in the City of Denton on November 8 2022, such date being a uniform election date as defined in Texas Election Code §41.001, as amended; and

WHEREAS, on November 8, 2022, the voters of the City of Denton approved Proposition B; and

WHEREAS, on November 22, 2022, the City Council, by Ordinance No. 22-2247, canvassed the election return and declared the result of the special election held on November 8, 2022, and that Section 2 of Ordinance No. 22-1198, Chapter 21, Article V of the Denton Code of Ordinances, titled “Marijuana Enforcement” had been approved and adopted by initiative receiving a majority of the qualified voters of the City of Denton, and directed the City Secretary to codify Section 2 of Ordinance No. 22-1198 in the Denton Code of Ordinances; and

WHEREAS, on May 16, 2022, the City Council expressed its desire for City Staff to prepare an ordinance for City Council consideration that was identical in every respect to Chapter 21, Article V of the Denton Code of Ordinances, thereby obviating any potential confusion between the power of initiative to adopt an ordinance and the power of the City Council to adopt an ordinance; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference.

SECTION 2. The City Council adopts this Ordinance through the authority of Section 2.09 of the City of Denton Charter for City Council to adopt an ordinance, the provisions of which mirror in its entirety without alteration or amendment the ordinance approved by initiative through the authority of Section 4.10 of the City of Denton Charter by the canvassed election results of Proposition B in Ordinance No. 22-2447.

SECTION 3. Chapter 21 of the City of Denton Code of Ordinances, Offenses, is adopted to add Article V, “Marijuana Enforcement” to read:

ARTICLE V. - MARIJUANA ENFORCEMENT

Sec. 21-80. - Ending citations and arrests for misdemeanor possession of marijuana.

(a) Denton police officers shall not issue citations or make arrests for Class A or Class B misdemeanor possession of marijuana offenses, except in the limited circumstances described in (b).

(b) The only circumstances in which Denton police officers are permitted to issue citations or make arrests for Class A or Class B misdemeanor possession of marijuana are when such citations or arrests are part of (1) the investigation of a felony level narcotics case that has been designated as a high priority investigation by a Denton police commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.

(c) in every instance other than those described in (b), if a Denton police officer has probable cause to believe that a substance is marijuana, an officer may seize the marijuana. If the officer seizes the marijuana, they must write a detailed report and release the individual if possession of marijuana is the sole charge.

(d) Denton police officers shall not issue any charge for possession of marijuana unless it meets at least one of the factors described in (b).

Section 21-81. - Citations for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

(a) A class C misdemeanor citation for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

Section 21-82. - Prohibition against using City funds or personnel to conduct THC concentration testing.

(a) No City funds or personnel shall be used to request, conduct, or obtain tetrahydrocannabinol (THC) testing of any cannabis-related substance to determine whether the substance meets the legal definition of marijuana under state law, except in the limited circumstances of a police investigation pursuant to § 21-80(b).

(b) This prohibition shall not limit the ability of Denton police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge

Section 21-83. - Prohibition against City police using the odor of marijuana or hemp as probable cause for search or seizure.

(a) Denton police shall not consider the odor of marijuana or hemp to constitute probable cause for any search or seizure, except in the limited circumstances of a police investigation pursuant to § 21-80(b).

Section 21-84. - Training and policy updates; community involvement.

(a) The City Manager and Chief of Police shall ensure that Denton police officers receive adequate training concerning each of the provisions of this ordinance.

(b) The City Manager shall work with the Denton Police Chief and other relevant stakeholders identified in (c) to update City policies and internal operating procedures in accordance with this ordinance. Actions that may be necessary include, but are not limited to: updating the Denton Police Department General Manual; updating the training bulletin; training officers; and updating internal databases and systems.

(c) The City Manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this ordinance, which shall include community stakeholders including: the Police Chiefs Advisory Panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the City; immigrant communities; and communities of color. These meetings shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the City's website.

Section 21-85. - Discipline.

(a) Any violation of this chapter may subject a Denton police officer to discipline as provided by the Texas Local Government Code or as provided in City policy.

Section 21-86. - Reporting.

(a) Within three months of the adoption of this ordinance, and once per year thereafter, the City Manager or their designee shall present to the City Council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the City's implementation of this ordinance.

SECTION 4. This Ordinance shall be cumulative of all provisions of ordinances of the City of Denton, except where the provisions of this Ordinance are in direct conflict with the provisions such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 5. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance, shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6. This Ordinance shall become effective immediately upon its passage and approval as provided by law.

The motion to approve this Ordinance was made by _____ and seconded by _____, the Ordinance was passed and approved by the following vote [___ - ___]:

| | Aye | Nay | Abstain | Absent |
|--|------------|------------|----------------|---------------|
| Mayor Gerard Hudspeth: | _____ | _____ | _____ | _____ |
| Vicki Byrd, District 1: | _____ | _____ | _____ | _____ |
| Brian Beck, District 2: | _____ | _____ | _____ | _____ |
| Paul Meltzer, District 3: | _____ | _____ | _____ | _____ |
| Joe Holland, District 4: | _____ | _____ | _____ | _____ |
| Brandon Chase McGee, At Large Place 5: | _____ | _____ | _____ | _____ |
| Chris Watts, At Large Place 6: | _____ | _____ | _____ | _____ |

PASSED AND APPROVED this the _____ day of _____, 2023.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: 