



City of Denton

215 E. McKinney Street City Hall

Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: CITY ATTORNEY'S OFFICE

CM/ DCM/ ACM: Mack Reinwand, City Attorney

DATE: May 20, 2025

SUBJECT

Consider adoption of an ordinance of the City of Denton repealing an Initiative Ordinance Chapter 21, Article V – Marijuana Enforcement of the City of Denton Code of Ordinances; providing for severability; and providing an effective date.

BACKGROUND

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 City of Denton Code of Ordinances to be titled “Marijuana Enforcement”. In accordance with Section 4.04 of the City Charter, the City Secretary examined the petition, and on June 7, 2022, submitted a certificate to the City Council stating the petition was sufficient and in compliance with the provisions of Article IV of the City Charter. 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. The City Council did not pass the ordinance proposed by initiative petition, and in accordance with Sections 4.07-08 of the City Charter, the City Council called a special election for this voter initiative regarding the elimination of low-level marijuana offenses (designated as Proposition B on the ballot). A municipal Special Election was ordered and held by the City on Tuesday, November 8, 2022, such date being a uniform election date as defined in Texas Election Code § 41.001. On November 8, 2022, a majority of the votes cast approved Proposition B and on November 22, 2022, the City Council passed Ordinance No. 22-2447 canvassing election returns and declaring results of the Special Election held on November 8, 2022. In accordance with Section 4.10 of the Charter, “[i]f a majority of the electors voting on a proposed initiative ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the city.”

The City Manager has consistently and publicly stated that the City has not and would not enforce Chapter 21, Article V. Furthermore, the City Council, City Manager, and Denton Police Department have never adopted a policy or practice to not fully enforce marijuana laws.

The Attorney General of the State of Texas filed lawsuits against Denton and other municipalities that adopted substantially similar ordinances seeking a temporary injunction and permanent injunction asserting

that the municipalities' respective ordinances were inconsistent with the Texas Constitution and State statutes. On April 17, 2025, the Fifteenth Court of Appeals, which has exclusive, statewide appellate jurisdiction over appeals of cases involving the State of Texas as a party, including any potential appeal of the lawsuit filed by the State against Denton, held that: 1) the City of San Marcos's ordinance was preempted by Section 370.003 of the Texas Local Government Code, (2) City of San Marcos's City Council members, including the mayor, acted ultra vires in adopting the ordinance, and (3) the State was entitled to a temporary injunction prohibiting enforcement of the ordinance. On April 24, 2025, the Fifteenth Court of Appeals held that: 1) the City of Austin's ordinance was preempted by Section 370.003 of the Texas Local Government Code, (2) City of Austin's City Council members, including the mayor, acted ultra vires in adopting the ordinance, and (3) the State was entitled to a temporary injunction prohibiting enforcement of the ordinance.

A comparison of Chapter 21, Article V – Marijuana Enforcement of the Denton City Code of Ordinances with the San Marcos and Austin ordinances shows they are substantially identical in relevant part, and there is a substantial likelihood that a similar outcome on the legality and enforceability of Denton's ordinance will result if the litigation against Denton continues. With respect to the pending litigation against Denton, on May 1, 2025, the Fifteenth Court of Appeals denied the City's request for mandamus relief from the District Court of Denton County's order compelling the City of Denton to respond to written discovery.

Section 4.10 of the Charter states that initiative ordinances adopted by the electors may be repealed by the City Council in the same manner as other ordinances. Repealing Chapter 21, Article V will eliminate and moot the underlying legal issue in the State's lawsuit against Denton and likely end the current litigation against the City, thereby avoiding the expenditure of significant legal fees and staff time defending an ordinance that a binding appellate court determined is preempted by state law, has never been adopted by the City Council, and has never been implemented or enforced by City officials.

This ordinance authorizes the City Manager and City Attorney, or their designees, to act on the City's behalf in approving and executing any and all agreements necessary or appropriate to dismiss the State's litigation against the City.

RECOMMENDATION

Staff recommends City Council consider an Ordinance repealing Chapter 21, Article V – Marijuana Enforcement.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

November 22, 2022, the City Council passed Ordinance No. 22-2447 canvassing election returns and declaring results of the Special Election held on November 8, 2022.

June 6, 2023, the City Council considered adoption of an ordinance adopting Chapter 21, Article V, of the City of Denton Code of Ordinances as a City Council adopted ordinance. The Motion to Deny carried 4-3.

EXHIBITS

Exhibit 1: AIS – Repealing an Initiative Ordinance Chapter 21, Article V – Marijuana Enforcement

Exhibit 2: Ordinance

Exhibit 3: City of Denton Code of Ordinances - Chapter 21, Article V – Marijuana Enforcement