



City Manager Update on Proposition B Implementation

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Feb. 21, 2023



Background

- Proposition B was approved by election on Nov. 8, 2022
 - Canvassed on Nov. 22; provisions codified
- Memo issued to Council on Nov. 9
 - Summarized implementation challenges
 - Outlined ongoing approach to enforcement

Marijuana Enforcement a Low Priority

- Prior to Proposition B, marijuana enforcement was a low priority
 - In 2022, DPD significantly revised marijuana enforcement
 - Policy and practices enumerated in General Orders 529 "Marihuana Enforcement"

Limitations on Authority

- Proposition B:
 - Prohibits DPD's ability to enforce state laws related to low-level marijuana possession
- Texas Local Government Code 370.003:
 - Cities/Police Departments are prohibited from adopting a policy that does not fully enforce state and federal laws relating to drugs
 - The City Manager and Chief of Police cannot direct otherwise

Limitations on Authority

- Prohibitions of Proposition B conflict with, and are superseded by, the Texas Code of Criminal Procedure
- Texas Code of Criminal Procedure vests officers with authority and duty to enforce state law, including:
 - Ability to use the smell of marijuana as probable cause to conduct a search/seizure;
 - The right to make an arrest;
 - The right to issue a citation for the possession of marijuana or drug paraphernalia within their statutory authority
- The Chief of Police cannot discipline an officer for enforcing state law.



Challenges in Other Cities

City	Status
Killeen	Bell County voted to file a lawsuit against the City, contending the ordinance was pre-empted by state law.
Harker Heights	The City Council repealed their ordinance on the grounds that it conflicts with state and federal law.
San Marcos	The Hays County District Attorney requested a Texas Attorney General opinion on whether the ordinance is pre-empted by state law.
San Antonio	Petition submitted. City has publicly stated provisions relating to marijuana enforcement are unenforceable due to state law.



Budget Provisions in Proposition B

- Proposition B also prohibits the City from using City funds or personnel to request, conduct, or obtain testing of any cannabis-related substance.
 - Violates the City of Denton Charter which prohibits the appropriation of money from a voter-initiated ordinance
- Council has discretion to amend the budget

Current Enforcement Status

- Marijuana enforcement continues to be a low priority
- From Nov. 1, 2022, through Jan 17, 2023, a total of 52 citations and/or arrests were made by DPD relating to marijuana or paraphernalia.
 - Of those 52, 23 involved an arrest.
 - Of those 23 arrests, all 23 were for primary violations other than marijuana possession, such as warrants, criminal trespass, or public intoxication. Citations were issued for the marijuana/paraphernalia violations in all but one of those cases.



Denton Municipal Court - Deferred

- All Drug Paraphernalia charges are eligible for deferred disposition. If completed, the charge is dismissed and does not appear on any criminal record.
- Deferred requirements:
 - Pay the citation or perform community service
 - Receive no further citations for 90 days.



Denton Municipal Court - Expunction

- All Drug Paraphernalia charges dismissed through deferred disposition are eligible for expunction. When granted, an expunction order erases all records related to the arrest wherever they may be found. Also, the person can legally state that they were never arrested or cited for the charge.
- Expunction requirements:
 - Pay Expunction Fee or Show Indigence.
 - Have completed deferred disposition for the charge.



Summary

1. The City does not have the authority to implement those provisions of Prop B that conflict with state law
2. Denton police officers have the authority to enforce state laws
3. The Denton Police Department will continue to make marijuana enforcement a low priority