



TO: City Council

FROM: Sara Hensley, City Manager

RE: **Proposition B Implementation**

DATE: Nov. 9, 2022

In yesterday's election, an ordinance relating to marijuana enforcement, Proposition B, was approved by voters. This ordinance will become effective after the election is canvassed by the City Council, currently scheduled to be considered during a Special Meeting on Friday, Nov. 18.

Implementation Considerations for Proposition B

While we continue to be dedicated to serving the community by making marijuana possession a low priority and recognize the statement expressed by voters regarding marijuana enforcement, the passage of Proposition B presents a challenge to the City regarding our ability to implement its provisions. These issues have previously been described in briefings to the City Council but can essentially be reduced to the issue of certain provisions of Proposition B being in direct conflict with state law. Chapter 370.003 of the Texas Local Government Code prohibits the City Council and Police Department from adopting a policy that does not fully enforce state and federal laws relating to drugs, including marijuana. While Proposition B imposes explicit prohibitions on the Denton Police Department's ability to enforce laws related to low-level marijuana possession, **those prohibitions are in direct conflict with, and are superseded by, the Texas Code of Criminal Procedure**, which vests police officers with the authority and duty to enforce state law, including the ability to use the smell of marijuana as probable cause to conduct a search or seizure, the right to make an arrest, and where appropriate, the right to issue a citation for the possession of marijuana or drug paraphernalia, regardless of the quantity of marijuana. **In short, the City does not have the authority to implement some provisions of Proposition B** without changes to current drug laws by Congress and the Texas Legislature.

In practice, a Denton Police Officer will continue to have the authority to enforce state laws relating to marijuana. Neither the City, the City Manager, nor the Chief of Police has the authority to direct officers to do otherwise or to discipline an officer when they are acting in accordance with state law.

Proposition B further prescribes obligations on the part of the City Manager. In Section 21-84(b) of the ordinance, the City Manager is directed, along with the Chief of Police, to "update city policies and internal operating procedures in accordance with this ordinance" including updates to the Denton Police Department General Orders. The Chief of Police cannot adopt a General Order that is in conflict with state law and I, as the City Manager to whom the Chief of Police reports, do not have the authority to direct him to act in violation of state law.

In addition, Proposition B prohibits the City from using City funds or personnel to request, conduct, or obtain THC testing of any cannabis-related substance. While Council has budgetary authority, this provision of Proposition B is in direct conflict with the City Charter, which expressly excludes the appropriation of money from an initiative ordinance, though the Council may choose to amend the budget at its discretion. The passage of Proposition B will also not impact the city's existing employee drug testing policies.

Public Statement Regarding Proposition B

Given the above challenges in implementation, the recognition that other law enforcement agencies are not subject to Proposition B, and the legal distinctions between marijuana and other THC derivatives, the City has drafted and released the **attached** public statement.

I am and City staff are concerned with the potential for incorrect information regarding the applicability and enforceability of Proposition B to quickly spread in the community, which could lead to a confrontation between the police and a member of the community should an officer act in accordance with State law, while the community member mistakenly believes that action violates Proposition B. Therefore, staff have shared this statement with the media and community stakeholders in order to mitigate the negative effects stemming from incorrect information.

Ongoing Approach to Marijuana Enforcement

Prior to the passing of Proposition B, the City of Denton Police Department already significantly revised its marijuana enforcement policy and practices which are enumerated in its General Orders. Between June 2021 and July 2022, of the 65 arrests that the Denton Police Department made for marijuana possession under 4 ounces, 15 of these charges accompanied other controlled substances unrelated to marijuana, and weapons were involved in 31 of these cases.

Going forward, Chief Shoemaker has affirmed that enforcement of marijuana possession will continue to be a low priority for the Denton Police Department. However, public safety requires the Police Department's ability to use the smell and possession of marijuana, regardless of the amount, as well as the possession of drug paraphernalia, as probable cause to conduct further investigation, which as noted above, may lead to more serious crimes being charged, including the possession of a firearm and crimes of violence against members of our community.

Next Steps

In accordance with Section 21-86 of the ordinance, I will report to Council within three months' time regarding its implementation.

Attachment

CC: Mack Reinwand, City Attorney
Frank Dixon, Assistant City Manager
Doug Shoemaker, Chief of Police
City Manager's Office



FOR IMMEDIATE RELEASE

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Information on the Passing of Proposition B, Relating to Marijuana Possession

DENTON, TX, Nov. 9, 2022 – Following the passage of Proposition B, which outlines actions to be taken regarding marijuana possession in the City of Denton, there is important information to share to help understand what this means for the Denton community. This ordinance, which was approved by voters, will become effective after the election is canvassed by the City Council, currently scheduled to be considered during a Special Meeting on Friday, Nov. 18.

Current Practices

Prior to the passage of Proposition B, the City of Denton Police Department already significantly revised its marijuana enforcement policy and practices which are enumerated in its general orders. Between June 2021 and July 2022, of the 65 arrests that the Denton Police Department made for marijuana possession under 4 ounces, 15 of these charges accompanied other controlled substances unrelated to marijuana, and weapons were involved in 31.

The existing policy leaves officers with the discretion to continue an investigation after the discovery of marijuana if other crimes are suspected, such as driving while impaired, unlawful carrying of a weapon, or possession of a controlled substance in a drug-free zone (such as a school, park, or daycare).

“As a forward-thinking agency, marijuana possession alone has not been a priority for the Denton Police Department for several years,” said Police Chief Doug Shoemaker. “This will continue to be the case. With that said, officers must maintain discretion to be able to keep our community safe from harm. When marijuana possession pairs with other crimes that affect public safety, including offenses such as driving while intoxicated or firearms violations, such acts cannot and will not be ignored.”

Implementation

With the voter approval of Proposition B, City staff has been working to determine which portions of the ordinance will be incorporated into the Police Department’s General Orders, also known as department policies. This review is necessary since Chapter 370.003 of the Texas Local Government Code prohibits the City Council and Police Department from adopting a policy that does not fully enforce state and federal laws relating to drugs, including marijuana, as well as the Texas Code of Criminal Procedure which vests police officers with the authority and duty to enforce state law, including the possession of marijuana. Because portions of Proposition B conflict with and may be superseded by existing state and federal laws, some provisions of Proposition B may not be implemented without changes to those laws by the United States Congress and Texas Legislature.

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It is also important to note, especially for students and visitors, that City policies and the Denton Police Department's General Orders do not apply to the other law enforcement agencies that have jurisdiction to enforce state law within the City of Denton. These agencies include, but are not limited to, the University of North Texas Police Department, Texas Woman's University Department of Public Safety, the Denton County Sheriff's Office, and the Texas Department of Public Safety, which all have their own policies and practices when it comes to marijuana investigations and arrests and are not subject to Proposition B.

Another important distinction is that the possession of marijuana and the possession of THC products are entirely different offenses. Per Texas state law, possessing any amount of THC, which is often the substance in edibles or vape cartridges, is a felony offense and this is not covered by Proposition B. As a result, possessing a single vape cartridge or a single edible would be classified as a felony. Also, when THC is added to any other substance, such as brownies or cookies, state law takes the total weight of the combined substances into consideration rather than the pure weight of the added THC. Meaning, per state law, if you bake a small amount of THC into a pound of brownies, you could be charged with possessing a pound of THC, a first-degree felony.

The Denton Police Department is dedicated to serving the community in a fair and safe manner. The department understands that, with the voter approval of Proposition B, voters wish to reduce punishments for low-level marijuana possession. The department is committed to continuing the innovative policies that are in place, which have resulted in a significant reduction in arrests since implemented in 2019 and updated in 2022, but must do so within the parameters of state and federal law. The Police Department will continue to assess all aspects of this ordinance, as passed by voters, to determine what may be implemented in accordance with both the current law as well as the voices of the population we serve.

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