

ORDINANCE NO. _____

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.

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 City of 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 a 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, 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); and

WHEREAS, 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; and

WHEREAS, on November 8, 2022, a majority of the votes cast approved Proposition B; and

WHEREAS, 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; and

WHEREAS, Section 4.10 of the Charter states that “[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”; and

WHEREAS, similar voter initiatives to eliminate enforcement of low-level marijuana offenses were passed by the voters in Austin, Elgin, San Marcos, and Killeen; and

WHEREAS, the City Manager has consistently and publicly stated that the City has not and would not enforce Chapter 21, Article V; and

WHEREAS, the City Council, City Manager, and Denton Police Department have never adopted a policy or practice to not fully enforce marijuana laws; and

WHEREAS, the Attorney General of the State of Texas filed lawsuits against Denton and other municipalities seeking a temporary injunction and permanent injunction asserting that the municipalities' respective ordinances were inconsistent with the Constitution of the State of Texas (Article XI, Section 5) and other State statutes, including Texas Local Government Code §370.003 (Municipal or County Policy Regarding Enforcement of Drug Laws), and Texas Health & Safety Code Chapter 481 (Texas Controlled Substances Act); and

WHEREAS, on April 17, 2025, the Fifteenth Court of Appeals held that: 1) the City of San Marcos's ordinance was preempted by Section 370.003 of the Texas Local Government Code, (2) 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; and

WHEREAS, 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 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; and

WHEREAS, 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; and

WHEREAS, on May 1, 2025, the Fifteenth Court of Appeals denied the City of Denton's request for mandamus relief from the District Court of Denton County's order compelling the City of Denton to respond to written discovery; and

WHEREAS, the Fifteenth Court of Appeals 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 of Texas against Denton; and

WHEREAS, 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; and

WHEREAS, the City Council finds that given the decisions by the Fifteenth Court of Appeals and the status of State law in light of same, there is a substantial likelihood that the Court of Appeals will find that: 1) Chapter 21, Article V – Marijuana Enforcement of the Denton City Code of Ordinances is preempted by Section 370.003 of the Texas Local Government Code and the Texas Constitution, (2) the Denton City Council members, including the mayor, acted ultra vires, and (3) the State is entitled to an injunction prohibiting enforcement of the ordinance; and

WHEREAS, the City Council finds that repealing Chapter 21, Article V of the Denton City Code of Ordinances is in the best interest of the City to eliminate the underlying legal issue in dispute and moot and thus end the current litigation against the City, thereby avoiding the expenditure of significant legal fees and staff time defending an ordinance that has never been adopted by the City Council nor implemented or enforced by City officials; and

WHEREAS, to the extent necessary to end the current litigation following the passage of Proposition B by the majority of citizen votes cast and Ordinance No. 22-2447 canvassing election returns and declaring results of the Special Election held on November 8, 2022, the City Manager and the City Attorney, or their designees, are hereby authorized to act on the City's behalf in approving and executing any and all agreements necessary or appropriate to dismiss said litigation against the City; 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: Chapter 21, Article V – Marijuana Enforcement of the Denton City Code of Ordinances is hereby repealed.

SECTION 3: 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 4: This ordinance shall become effective immediately upon its passage and approval.

SECTION 5: The City Secretary is hereby directed to codify the repeal of Chapter 21, Article V – Marijuana Enforcement in the City Code of Ordinances.

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

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: 