

Date: November 15, 2022  
To: Mayor and City Council of the City of Denton  
From: Michael Siegel, General Counsel, Ground Game Texas  
Re: Authority of Denton Voters to Enact Policy

---

Dear Mayor and Council:

We write to thank the voters of Denton, who overwhelmingly passed Proposition B to decriminalize low-level marijuana offenses, and to express our concern about the [November 9, 2022 press release](#) and statement by the Denton City Manager, which appears to reflect the intent of City staff to disregard the electoral outcome and usurp the policy-making authority of City voters. Contrary to the statement in the press release, the City of Denton is fully authorized to exercise its discretion under state law to allocate scarce public resources. The City’s voters, acting as the lead policymaker for the City, were entirely within their rights to end enforcement of low-level marijuana offenses by adopting Proposition B.

As discussed below, the Texas Constitution and the City Charter of Denton guarantee the people of Denton the right to directly legislate on local issues, including marijuana enforcement reform. The City Manager has no authority to ignore or subvert legislation duly enacted by the people. We hope that you will protect the rights of Denton voters and ensure that Prop. B is duly enforced by City personnel.

**I. Prop. B was Enacted by Denton Voters via Authority Provided by the Texas Constitution and the City’s “Home Rule” Charter**

The Texas Constitution, which was founded in principles of liberty and self-determination, allows for Texas cities to adopt “home rule” charters.<sup>1</sup> Under these charters, cities “possess the power of self-government” and may exercise “broad discretionary powers.”<sup>2</sup> At the same time, cities are not permitted to adopt any law that is “inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature.”<sup>3</sup>

The City of Denton adopted its home rule charter in 1914. Under the charter, the voters of Denton granted themselves the power of initiative.<sup>4</sup> “The electors shall have the power to propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the proposed ordinance at the polls, such power being known as the initiative.”<sup>5</sup>

Proposition B qualified for the ballot after thousands of registered Denton city voters signed the petition organized by Ground Game Texas and Decriminalize Denton. On November 8, 2022, 32,610 City of Denton citizens voted to enact Proposition B, prevailing by a margin of

---

<sup>1</sup> TEX. CONST., Art. 11.

<sup>2</sup> *Dallas Merchant’s & Concessionaire’s Ass’n v. City of Dallas*, 852, S.W.2d 489, 490 (Tex. 1993).

<sup>3</sup> *Id.*

<sup>4</sup> CHARTER OF DENTON, Texas, § 4.01.

<sup>5</sup> *Id.*

71% to 29% according to unofficial results. Proposition B should take immediate effect once the results of the election are canvassed.

## **II. The City Manager Does Not Possess Policy-Making Authority and May Not Usurp the Initiative Power of Denton Voters**

Under the Denton City Charter, there are only two policy-makers: the City Council and the People. The Charter provides for a “council-manager government”:

Pursuant to its provisions and subject only to the limitations imposed by the state Constitution and by this charter, **all powers of the City shall be vested in an elective council**, hereinafter referred to as “the council,” which shall enact local legislation, adopt budgets, determine policies, and appoint **the city manager, who shall execute the laws** and administer the government of the City.”<sup>6</sup>

The division of authority is perfectly clear: the City Council creates policy and the city manager is required to execute it. When the People of Denton adopt policy via a citizen initiative, they stand in the place of the Council and exercise the policy-making authority of the City. The city manager must thus execute voter-initiated ordinances.

## **III. Contrary to the November 9 Press Release, the City of Denton May Exercise its Discretion to Adopt Policies to Conserve Scarce Public Safety Resources, Including Proposition B, Which Stops the Wasteful Enforcement of Low-Level Marijuana Offenses**

The core argument of the November 9 press release was that Proposition B would directly conflict with state law and is therefore unenforceable. The statement is flatly contradicted by the Texas Constitution and established law, however.

The City Council of Denton, a home rule city, may exercise its authority, including the “police power,” as it sees fit. As the Texas Supreme Court has said, “A city may, as a valid exercise of its police power, enact reasonable regulations for the purpose of promoting the health, safety, and general welfare of its people.”<sup>7</sup>

Here, Proposition B can be easily defended as a valid exercise of its police power that promotes the health, safety, and general welfare of Denton residents. First, the City may determine that allocating resources for marijuana enforcement is wasteful, because enforcement is expensive and the City has scarce resources to allocate to public safety. Second, the City may weigh the balance of harms and determine that marijuana enforcement does more harm than good, because marijuana possession is a non-violent crime but arresting people and prosecuting them causes considerable harm to each person brought into the criminal justice system. Third, marijuana enforcement is susceptible to racially biased enforcement, which is not only unjust, but also brings

---

<sup>6</sup> CHARTER, Section 1.04.

<sup>7</sup> *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 792 (Tex. 1982).

litigation and financial risk for the City. For these reasons and others, the City may exercise its discretion to not enforce misdemeanor marijuana possession offenses.

The press release cites to Section 370.003 of the Texas Local Government Code, which then refers to drug enforcement laws in Chapters 481 and 483 of the Health Safety Code as well as federal law, for the proposition that the City must “fully enforce” drug laws. **But no City has ever been subject to challenge under Section 370.003, including the City of Austin, which on May 7, 2022, adopted a city ordinance that includes marijuana decriminalization.**<sup>8</sup> The city manager should not engage in unwarranted speculation concerning possible future legal challenges to justify non-enforcement of any aspect of Proposition B. Until a court of competent jurisdiction orders otherwise, the city manager is obligated to enforce Prop. B.

The press release also fails to acknowledge the impact of hemp legalization in Texas and how it impacts the application of Chapters 481 and 483. To put it simply, in 2019, the Texas Legislature legalized hemp, including the sale of smokable hemp products that are virtually indistinguishable from illegal smokable marijuana. **As a result of these laws, police officers may no longer reliably utilize the smell of the substance or the look of the substance in determining whether someone possesses legal hemp or illegal marijuana.** Instead, an expensive chemical test is required to determine the legality of a substance. In this context, city police are far more likely to improperly enforce laws for illegal marijuana possession, which brings multiple risks including waste of scarce resources and liability for false arrest or other constitutional violations.

In this context, the people of Denton were entirely reasonable in enacting Proposition B, to stop enforcement of low-level marijuana offenses and save scarce public resources for more important public needs. The City’s discretion—as exercised by the people on November 8, 2022—is guaranteed by the “home rule” provision of the Texas Constitution. The city manager is entirely without authority to overrule the policy set by Denton voters. We hope the City Council will make this clear and protect the will of the electorate by fully implementing Proposition B.

---

<sup>8</sup> See Austin City Code, Chapter 16-1, Elimination of Marijuana Enforcement (available at [https://library.municode.com/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT16AUFAC2021.CH16-1ELMAEN01](https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TIT16AUFAC2021.CH16-1ELMAEN01)).