



PRESS RELEASE

FOR IMMEDIATE RELEASE: December 6, 2022

Prop A – Open Letter from the City Manager

The Harker Heights City Council voted on November 22, 2022, to repeal the ordinance eliminating the enforcement of misdemeanor laws relating to marijuana possession. In doing so, the Council was not taking any position on State marijuana laws, it was simply performing its duties as required by the Texas Constitution and Texas law. The Texas Legislature establishes the law governing marijuana possession. The Texas Legislature also sets the laws requiring police officers to enforce the law. Those with concerns over current laws should take those concerns to the State Legislature. Simply stated, cities in Texas do not have the authority to amend or ignore State law.

Advocates of the initiative ordinance have made several arguments against the City Council's action such as:

- *The initiative ordinance passed with 64% of the vote and the will of the voters must be followed.*

While the City Council certainly understands that the initiative ordinance passed with 64% of the vote, the ordinance was contrary to and inconsistent with State law. A city ordinance cannot override State law. Texas Local Government Code §370.003 says “the governing body of a municipality, the commissioners court of a county, or a sheriff, municipal police department, municipal attorney, county attorney, district attorney, or a criminal district attorney may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health & Safety Code, and federal law.” The Council had no choice but to repeal the ordinance as it was inconsistent with state law.

- *Harker Heights is a home rule city that possesses the power of “self-government” and “may exercise broad discretionary powers” to include fully adopting this initiative ordinance.*

The Constitution of the State of Texas authorizes the creation of home rule cities. However, the same section of the Constitution that authorizes home rule cities also limits the power of home rule cities. That provision says that home rule cities may not adopt any law that is inconsistent with the Constitution of the State or of the general laws enacted by the Legislature. The initiative ordinance was inconsistent with §370.003. It was also inconsistent with State laws that require police officers to enforce the law. The City also believes that it was inconsistent with another provision of the Texas Constitution that prohibits anyone other than the Legislature from setting aside Texas laws.

- *Current law gives officers discretion, so the initiative ordinance is consistent with an officer's discretion to not arrest for a marijuana offense.*

State law requires that a police officer enforce the law. An officer is duty-bound to do so. As the initiative ordinance restricted, or eliminated, the authority of a police officer to enforce State laws, it was inconsistent with state law. In fact, the initiative ordinance stated that a Harker Heights police officer may be disciplined for following State law.

For these several reasons, the initiative ordinance was contrary to state law. The City Council had no choice but to repeal it. The Bell County District Attorney and County Attorney both reached the same conclusions as the Harker Heights City Council that the initiative ordinance was contrary to State law.

Even if the initiative ordinance had not been repealed, marijuana laws would certainly be fully enforced within the city limits of Harker Heights by county, state, and federal law enforcement agencies. Apart from the legality of the ordinance, one of my biggest concerns was that a person, especially a young person, could be confused that marijuana laws would not be enforced within the City of Harker Heights if the ordinance stayed in place.

Both our police officers and our City Council executed oaths of office to follow the State constitution and the laws of the State of Texas. Our City Council took the action it believed was necessary to follow its oath and to assure that our police officers were able to follow theirs.

The City Council and staff understand that marijuana laws have been a hot topic across the nation stirring emotion among those on both sides of the issue. Laws relating to marijuana possession and the enforcement of State laws are made by the Texas Legislature. For those with interest in changing the laws relating to marijuana, the Texas Legislature is the appropriate and only forum to seek those changes.

Our top goal as a City is always to provide high quality public services. We always seek to do this in a manner that is ethical and legal. Our focus remains unwavering on the core services that the City provides daily. We remain ready to serve our citizens and our businesses.

The City of Harker Heights has no authority to enact an ordinance contrary to state law.

David Mitchell

David Mitchell, City Manager

###