

ORDINANCE NO. 2022-71

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, ORDERING A GENERAL AND SPECIAL ELECTION TO BE HELD ON NOVEMBER 8, 2022 FOR THE PURPOSE OF ELECTING A MAYOR, CITY COUNCIL MEMBER FOR PLACE 1, A CITY COUNCIL MEMBER FOR PLACE 2 AND TO SUBMIT A CITIZEN-INITIATED ORDINANCE TO ELIMINATE LOW-LEVEL MARIJUANA ENFORCEMENT TO THE VOTERS; MAKING PROVISIONS FOR CONDUCTING THE ELECTION; PROVIDING FOR THE APPROVAL OF THIS ORDINANCE AS AN EMERGENCY MEASURE ON ONLY ONE READING; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. A general and special election is ordered to be held by the City of San Marcos (the “City”) at the various polling places and election precincts within the corporate limits of the City, yet to be designated, on November 8, 2022 from the hours of 7:00 a.m. to 7:00 p.m. This General and Special City Election will be conducted jointly with Hays County and will be administered for the City by the Hays County Elections Administrator. At the General Election the qualified voters of the City will elect a Mayor for a term of two years, a City Council Member for Place 1, and a City Council Member for Place 2 with each Council Member position having a term of three years. At the concurrent Special City Election, the voters will also consider a citizen-initiated “ORDINANCE TO ELIMINATE LOW-LEVEL MARIJUANA ENFORCEMENT.” The official canvass of the election shall be held November 17, 2022, following Election Day. In the event it becomes necessary to conduct a Runoff Election, it shall be held on December 13, 2022. Canvass of the returns of the runoff election, if necessary, shall be held on December 15, 2022.

SECTION 2. The ballots for the City election will conform to the requirements of the Texas Election Code, and will also contain the following proposition that corresponds to the citizen-initiated ordinance attached to this ordinance as Exhibit “A”.

PROPOSITION - A

FOR/AGAINST AN ORDINANCE TO ELIMINATE LOW-LEVEL MARIJUANA ENFORCEMENT.

SECTION 3. If approved by the voters, the citizen-initiated ordinance attached hereto as Exhibit “A” will be adopted.

SECTION 4. The election will be held in accordance with the provisions of the Charter and Ordinances of the City of San Marcos and the laws of the State of Texas. The deadline for filing by candidates for the position of Mayor, Council Member, Place 1 and Council Member, Place 2 is 5:00 p.m. on August 22, 2022.

SECTION 5. An executed copy of this Ordinance will serve as proper notice of the election.

SECTION 6. Notice of the election, including a Spanish translation thereof, will be published at least once in a newspaper published in San Marcos on or after October 9, 2022 and on or before October 23, 2022, and will be posted on the bulletin board at City Hall on or before October 19, 2022.

SECTION 7. A writ of election as required by the Texas Election Code will be delivered on or before September 9, 2022 by the Hays County Election Administrator to the presiding and alternate judges of each election precinct in which the election is ordered to be held.

SECTION 8. If any portion of this Ordinance is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance shall remain in full force and effect.

SECTION 9. The importance of this Ordinance creates an emergency and an imperative public necessity, and the provisions of the Charter requiring that ordinances be presented at two separate meetings be waived and, this Ordinance will take effect immediately upon adoption.

CONSIDERED, APPROVED, AND ADOPTED on August 16, 2022.

Jane Hughson
Mayor

Attest:

Approved:

Elizabeth Trevino
Interim City Clerk

Michael J. Cosentino
City Attorney

[THE CITIZEN-INITIATED ORDINANCE IS ATTACHED AS EXHIBIT "A"]

AN ORDINANCE TO ELIMINATE LOW-LEVEL MARIJUANA ENFORCEMENT

BE IT ORDAINED BY THE VOTERS OF THE CITY OF SAN MARCOS:

Part 1. Chapter 54, Article 4 of the City Code is hereby created, to be titled "Marijuana Enforcement" and to read as follows:

ARTICLE 4. - MARIJUANA ENFORCEMENT

Sec. 54.101. - Ending citations and arrests for misdemeanor possession of marijuana.

(a) San Marcos police officers shall not issue citations or make arrests for Class A or Class B misdemeanor possession of marijuana offenses, except in the limited circumstances described in (b).

(b) The only circumstances in which San Marcos police officers are permitted to issue citations or make arrests for Class A or Class B misdemeanor possession of marijuana are when such citations or arrests are part of (1) the investigation of a felony level narcotics case that has been designated as a high priority investigation by an San Marcos police commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.

(c) In every instance other than those described in (b), if a San Marcos police officer has probable cause to believe that a substance is marijuana, an officer may seize the marijuana. If the officer seizes the marijuana, they must write a detailed report and release the individual if possession of marijuana is the sole charge.

(d) San Marcos police officers shall not issue any charge for possession of marijuana unless it meets one or both of the factors described in (b).

Section 54.102. - Citations for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

(a) A class C misdemeanor citation for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

Section 54.103. - Prohibition against using City funds or personnel to conduct THC concentration testing.

(a) No City funds or personnel shall be used to request, conduct, or obtain tetrahydrocannabinol (THC) testing of any cannabis-related substance to determine whether the substance meets the legal definition of marijuana under state law, except in the limited circumstances of a police investigation pursuant to § 54.101(b).

(b) This prohibition shall not limit the ability of San Marcos police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

Section 54.104. - Prohibition against City police using the odor of marijuana or hemp as probable cause for search or seizure.

(a) San Marcos police shall not consider the odor of marijuana or hemp to constitute probable cause for any search or seizure, except in the limited circumstances of a police investigation pursuant to § 54.101(b).

Section 54.105. - Training and policy updates; community involvement.

(a) The City Manager and Chief of Police shall ensure that San Marcos police officers receive adequate training concerning each of the provisions of this ordinance.

(b) The City Manager shall work with the San Marcos Police Chief and other relevant stakeholders identified in (c) to update City policies and internal operating procedures in accordance with this ordinance. Actions that may be necessary include, but are not limited to: updating the San Marcos Police Department General Manual; updating the training bulletin; training officers; and updating internal databases and systems.

(c) The City Manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this ordinance, which shall include community stakeholders including: the Police Chief's Advisory Panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the City; immigrant communities; and communities of color. These meetings shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the City's website.

Section 54.106. - Discipline.

(a) Any violation of this chapter may subject a San Marcos police officer to discipline as provided by the Texas Local Government Code or as provided in City policy.

Section 54.107. - Reporting.

(a) Within three months of the adoption of this ordinance, and every three months thereafter, the City Manager or their designee shall present to the City Council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the City's implementation of this ordinance.

