



City of Dallas

Resolution Regarding Testing Cannabis Update

**Public Safety Committee
February 8, 2021**



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Presentation Overview



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Background



- There have been recent public discussions regarding a proposed resolution to prohibit the testing of low levels of marijuana (Hemp/Cannabis)
- The Dallas County District Attorney's Office currently does not accept charges for misdemeanor marijuana possession without a lab test
- This subject was briefed to Public Safety on October 12, 2020, January 11, 2021 and requested to be brought back for further discussion



Resolution Overview



- City funds and personnel shall not be used for developing THC testing protocols, or pursuing validation for testing of cannabis related substances involving possession of less than 2 ounces
- Testing would be allowed in the following situations:
 - Amounts greater than 2 oz
 - Possession of any amount with intent to distribute
 - Felony-level trafficking cases



Resolution Overview



- Directs City Manager to take steps to eliminate the use of arrests or enforcement action for possession of less than 2 oz of cannabis related substance, provided that there is no evidence of intent to distribute
- Directs City Manager to take appropriated steps to ensure officers are trained, and public is informed of the changes as a result of this resolution



Current Marijuana Laws



- Any usable amount of Marijuana is illegal
- Possession of under 4 oz is eligible for a Cite & Release Citation
- Between 2 oz and 4 oz is a Class A Misdemeanor
- As of June 10, 2019, Hemp is legal to possess in Texas (House Bill 1325)
 - Hemp is Cannabis with a THC concentration of less than 0.3%



January 2021 Marijuana Data



January 1, 2021 to January 31, 2021

- Total #3 of all arrests: 3,075
 - Drug Related Arrests: 737 (24% of all arrests)
 - Marijuana Related Arrests: 277 (9% of all arrests)
 - Less than 2 Oz: 210 (7% of all arrests, 80% of all marijuana arrests)



January Marijuana Enforcement Data



- Of the 210 Marijuana Charges <2.0 oz.
 - 173 were secondary charges
 - 16 were addressed through Cite & Release
 - 21 were for possession of Marijuana only
 - Did not meet Cite and Release requirement
 - Average weight of all 210 MB Marijuana arrests was 7 grams
- Marijuana charges dropped by the DA's office are no longer being sent to SWIFTS for analysis





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Questions & Discussion

COUNCIL CHAMBER

[DATE]

WHEREAS, during the 86th Legislative Session the Texas Legislature passed House Bill 1325, legalizing and regulating hemp, and defining it as any part of the Cannabis sativa L. (cannabis) plant with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent; and

WHEREAS, House Bill 1325 makes it virtually impossible to distinguish, beyond a reasonable doubt, between plant forms of marijuana and hemp without a lab test to measure THC concentration; and

WHEREAS, the limited testing resources available from the State of Texas have made prosecuting cannabis-related substance possession so time-consuming and expensive that Dallas County prosecutors, along with many other prosecutors around the State of Texas, are declining to prosecute all new misdemeanor possession of marijuana charges brought after House Bill 1325 took effect on June 10, 2019, unless there is a lab test confirming that the substance is marijuana rather than hemp; and

WHEREAS, due to the passage of House Bill 1325, the city may have to acquire new testing equipment, in addition to equipment already owned, for prosecutors to prosecute people who are arrested or cited by City of Dallas police officers for marijuana offenses; and

WHEREAS, specific accreditation for THC concentration testing is necessary for the now required lab test results to be admissible as evidence in a court of law, requiring substantial new expenditure of funds and staff time from limited city resources for city personnel to obtain this accreditation; and

WHEREAS, the necessity to invest in new testing equipment, protocols, and accreditations in order to continue to prosecute marijuana offenses represents an unplanned and unfunded mandate from the State of Texas on local governments; and

WHEREAS, the odor of marijuana is largely indistinguishable from hemp, even to trained drug-sniffing dogs; and

WHEREAS, Dallas County prosecutors require the Dallas Police Department to submit lab reports in order to accept marijuana related cases; and

WHEREAS, communities of color are disproportionately impacted by the enforcement of marijuana possession laws in Dallas and across the country; and

WHEREAS, continued arrests and citations by the Dallas Police Department for marijuana offenses of less than two ounces that local prosecutors are, by policy, declining

to prosecute without a lab report result in a drain of both city and county resources, and may cause a significant burden upon the resident who is being arrested or cited, while also creating confusion and mistrust among the larger community; and

WHEREAS, certain marijuana cases, such as felony-level marijuana trafficking cases may be pursued for prosecution by testing evidence for THC concentration level in these cases, without expending resources on marijuana possession cases of less than two ounces, and such cases may still be pursued without City of Dallas lab tests, perhaps through the use of non-city laboratory services; and

WHEREAS, police officers maintain the discretion to confiscate substances believed to be marijuana, regardless of whether a citation is issued or an arrest is made; and

WHEREAS, enforcement of marijuana possession cases of less than two ounces is not a public safety priority of the residents of Dallas or the Dallas City Council, especially compared to other public safety imperatives;

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That it is the policy of the city that city funds and personnel shall not be used for:

- (a) Developing THC concentration testing protocols or pursuing validation for the purpose of testing any cannabis-related substance in the investigation of cannabis-related offenses involving the possession of two ounces or less of a cannabis-related substance to determine whether the substance meets the legal definition of marijuana under state law.
- (b) Accessing, by any means, THC concentration testing of cannabis-related substances in the investigation of cannabis-related offenses involving the possession of two ounces or less of a cannabis-related substance to determine whether the substance meets the legal definition of marijuana under state law.

SECTION 2. That it is the policy of the city that city funds and personnel may be used for:

- (a) Developing THC concentration testing protocols or pursuing validation for the purpose of testing any cannabis-related substance in the investigation of cannabis-related offenses involving the possession of more than two ounces of a cannabis-related substance, the possession of any amount of a cannabis-related substance with the intent to distribute, or felony-level marijuana trafficking cases to determine whether the substance meets the legal definition of marijuana under state law.

- (b) Accessing, by any means, THC concentration testing of cannabis-related substances in the investigation of cannabis-related offenses involving the possession of more than two ounces of a cannabis-related substance, the possession of any amount of a cannabis-related substance with the intent to distribute, or felony-level marijuana trafficking cases to determine whether the substance meets the legal definition of marijuana under state law.

SECTION 3. That the city council directs the city manager to take the steps necessary and appropriate to eliminate, to the furthest extent allowable under state law and as long as there is no immediate threat to a person's safety, the use of arrest or other enforcement action for cannabis-related possession offenses involving the possession of two ounces or less of a cannabis-related substance as long as there is no evidence demonstrating an intent to distribute. Otherwise, the city manager shall take the steps necessary and appropriate to enforce all cannabis-related offenses other than the possession of two ounces or less of marijuana when there is no intent to distribute to effectuate such arrest and other enforcement action is governed by state law.

SECTION 4. That the city council directs the city manager to take steps necessary and appropriate to ensure city police officers are well-trained in, and that the public is informed of, the changes made as a result of this resolution.

SECTION 5. That the city manager is directed to ensure that testing at state or private labs does not inhibit the ability to prosecute cannabis-related offenses involving the possession of more than two ounces of a cannabis-related substance, the possession of any amount of a cannabis-related substance with the intent to distribute, or for felony-level marijuana trafficking cases, in a timely manner, and to report to council on the progress of that activity.

SECTION 6. That for purposes of this resolution, intent to distribute a cannabis-related substance can be inferred from circumstantial evidence such as a suspect possessing a cannabis-related substance in multiple small containers, a suspect possessing drug paraphernalia to aid in the distribution of a cannabis-related substance, etc.

SECTION 7. That this resolution shall take effect immediately from and after its passage in accordance with the Charter of the City of Dallas, and it is accordingly so resolved.