



August 17, 2026

Annette Scippio, East Ward Councilmember
Barbara Burke, Northeast Ward Councilmember
Vivian Joiner, South Ward Councilmember
Scott Andree-Bowen, Southwest Ward Councilmember
Denise Adams, North Ward, Mayor Pro Tempore
Robert Clark, West Ward Councilmember
Regina Hall, Northwest Ward Councilmember
James Taylor, Southeast Ward Councilmember
cc: W. Patrick Pate, City Manager

RE: Mandatory Cite and Release and Low Law Enforcement Priority Policies for Low Level Marijuana Possession

Dear Winston-Salem City Council:

I write on behalf of Emancipate NC and in support of Hate Out of Winston's current advocacy campaign seeking common sense solutions to combat racial disparities in Winston-Salem's enforcement of low level marijuana possession charges. Over the course of several months, Hate Out of Winston has advocated that this Council enact a mandatory cite and release policy. The mandatory cite and release policy would require Winston-Salem Police Department (hereinafter "WSPD") officers to issue a citation, rather than effectuate an arrest, when they have probable cause to believe an individual has committed misdemeanor marijuana possession. Hate Out of Winston's campaign also advocates that this Council direct WSPD to treat enforcement of misdemeanor marijuana possession as a low level priority, instead directing police resources towards combatting violent crime.

In response to Hate Out of Winston's campaign, this Council has cited the fact that North Carolina is a "Dillon's Rule" state as a barrier to the implementation of these two policies. At the request of Hate Out of Winston, Emancipate NC conducted an independent legal analysis of this argument to determine if the application of "Dillon's Rule" would prohibit implementation of the proposed policies.¹

A. North Carolina Is Not a Dillon's Rule State

Foremost, it is important to state at the outset that North Carolina is not a "Dillon's Rule" state. Since the North Carolina General Assembly enacted a comprehensive rewrite of the municipal statutes in 1971, codified as North Carolina General Statutes Chapter 160A, North

¹ This letter should not be construed as Emancipate NC providing legal advice to the City of Winston-Salem, nor should it be construed as creating an attorney-client relationship between Emancipate NC and the City of Winston-Salem. The purpose of this letter is to provide general legal information and education concerning the topics of Dillon's Rule, mandatory cite and release policies, and low level law enforcement policies.



Carolina courts have held that “[t]he narrow Dillon’s Rule of statutory construction used when interpreting municipal powers has been replaced by N.C. Gen. Stat. § 160A–4’s mandate that the language of Chapter 160A” be broadly construed. *BellSouth Telecommunications, Inc. v. City of Laurinburg*, 168 N.C. App. 75, 82–83 (2005) (citing *Homebuilders Ass’n of Charlotte, Inc. v. City of Charlotte*, 336 N.C. 37 (1994)) (emphasis added); see also Frayda Bluestein., *Is North Carolina a Dillon’s Rule State?*, UNC SCHOOL OF GOVERNMENT (October 24, 2012), <https://canons.sog.unc.edu/blog/2012/10/24/is-north-carolina-a-dillons-rule-state/>. Because North Carolina courts have rejected the rule of construction known as “Dillon’s Rule” when analyzing the extent of legislative power granted to municipalities and instead applied the rules of construction outlined in N.C.G.S. Chapter 160A, North Carolina is not considered a “Dillon’s Rule” state.

i. How North Carolina Courts Construe Municipal Authority

The law is well-settled that “a municipality has only such powers as the legislature confers upon it.” *Homebuilders Ass’n of Charlotte, Inc. v. City of Charlotte*, 336 N.C. 37, 41–42 (1994). From the mid-1860’s to 1971, North Carolina courts applied a rule of construction known as Dillon’s Rule to determine legislative grants of authority to municipalities. *Homebuilders Ass’n of Charlotte, Inc.* 336 N.C. 37; *Lanvale Props., LLC v. Cnty. of Cabarrus*, 366 N.C. 142, 153 (2012). The rule was stated in Judge John F. Dillon’s treatise as follows:

[A] municipal corporation possesses and can exercise the following powers and no others:

First, those granted in *express words*; second, those *necessarily or fairly implied* in or *incident* to the powers expressly granted; third, those *essential* to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable.

Dillon, *Commentaries on the Law of Municipal Corporations*, § 237 (5th ed. 1911).

In 1971, the North Carolina General Assembly enacted a comprehensive rewrite of the municipal statutes, codified as North Carolina General Statutes Chapter 160A. Article 8 of this Chapter is entitled “*Delegation and Exercise of the General Police Power.*” Section 160A–174 of Article 8 sets out the general ordinance-making power of municipalities as follows:

(a) a city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

N.C.G.S. § 160A–174(a) (1987). **Ex. A.**

As part of the enactment of Chapter 160A, the NC General Assembly provided the following rule for construing legislative grants of power to municipalities under this chapter and city charters:



Broad Construction. It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. **To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect;** Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

N.C.G.S. § 160A-4 (1987) (emphasis added). **Ex. B.**

N.C.G.S. § 160A-4 “makes it clear that the provisions of chapter 160A and of city charters shall be broadly construed and that grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect. [North Carolina courts] treat this language as a ‘legislative mandate that [North Carolina courts] are to construe in a broad fashion the provisions and grants of power contained in Chapter 160A.’” *Homebuilders Ass’n of Charlotte, Inc.*, 336 N.C. at 43–44 (citing *River Birch Assoc. v. City of Raleigh*, 326 N.C. 100, 109 (1990); *Grace Baptist Church v. City of Oxford*, 320 N.C. 439, 443 (1987); *Smith v. Keator*, 285 N.C. 530, 534, *appeal dismissed*, 419 U.S. 1043 (1974); *Town of West Jefferson v. Edwards*, 74 N.C. App. 377, 385 (1985); *City of Durham v. Herndon*, 61 N.C. App. 275, 278 (1983)). When the North Carolina General Statute is ambiguous or unclear, Chapter 160A-4 mandates “the language of Chapter 160A be construed in favor of extending powers to a municipality where there is an ambiguity in the authorizing language, or the powers clearly authorized reasonably necessitate ‘additional and supplementary powers’ ‘to carry them into execution and effect[.]’” N.C. Gen. Stat. § 160A-4; *Homebuilders Assn. of Charlotte*, 336 N.C. at 45.

B. The City of Winston-Salem Has Authority Under Chapter 160A for a Mandatory Cite and Release Policy

N.C.G.S. § 15A-302 provides “[a]n officer may issue a citation to any person who he has probable cause to believe has committed a misdemeanor or infraction.” Therefore, it is without question that the NC General Assembly has granted WSPD officers the authority to issue citations rather than arrest individuals suspected of misdemeanor marijuana possession. In addition to this expressly granted authority, N.C.G.S. 160A-4 makes clear that a municipal’s power to regulate, by ordinance, “the health, safety, or welfare of its citizens and the peace and dignity of [its] city” “shall be construed to include any additional and supplementary powers that are reasonably necessary.”

In summary, Dillon’s Rule does not apply to North Carolina, and North Carolina statutes grant the City of Winston-Salem explicit authority to issue citations rather than arrests for misdemeanor marijuana possession. As such, the City of Winston-Salem has clear authority to adopt a mandatory cite and release policy.



i. A Mandatory Cite and Release Policy for Low Level Marijuana Possession Comports with State Public Policy

Currently under N.C.G.S. § 90-95(d)(4) an individual convicted of marijuana possession under 1/2 ounce cannot receive jail time. N.C.G.S. § 90-95(d)(4) (“A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but **any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment** as a special condition of probation.”) Yet, without a mandatory cite and release policy, an individual can be arrested and subjected to a secured bond for the crime of marijuana possession under 1/2 ounce. This means an individual suspected of low level marijuana possession can currently face harsher punishment upon arrest than if they were actually convicted of the crime. Subjecting individuals to the possibility of incarceration upon arrest when the NC General Assembly has explicitly forbade incarceration as a punishment if convicted is antithetical to North Carolina public policy and the State’s intent in removing incarceration as an option for low level marijuana possession.

A mandatory cite and release policy would be consistent with North Carolina’s public policy of eliminating incarceration as a punishment for low level marijuana possession. It is the City of Winston-Salem’s duty to ensure it is acting in accordance with North Carolina public policy, and this duty should not be shirked and left to individual officer discretion. Whether an individual’s case is handled in a manner consistent with the spirit of North Carolina’s laws should not be dependent upon which officer they happen to encounter that day. There is well documented data establishing that Black individuals are more likely to be subject to arrest and encounter police for misdemeanors.² There is also well documented data that Black individuals are subjected to secured bonds at higher rates.³ A mandatory cite and release policy would ensure equity and uniformity in the enforcement of low level marijuana possession laws. Other cities have successfully created policies intended to promote citations over arrests for low level misdemeanors.⁴ These policies have successfully lowered incarceration rates.⁵

C. The City of Winston-Salem Has the Authority Under Chapter 160A to Deprioritize Low Level Marijuana Possession

While it is true the City of Winston-Salem does not have the authority to direct WSPD to ignore or not enforce misdemeanor marijuana possession laws, the Council does have the authority to direct WSPD chief to craft a policy de-prioritizing low level marijuana possession. WSPD, like any police department, has limited resources and, for the reasons stated above, it is well within the City’s authority to determine what is best for the “health, safety, or welfare of its citizens and the peace and dignity of the city” is directing police time, money, and efforts towards combating

² <https://cjlil.sog.unc.edu/wp-content/uploads/2023/07/Citation-Project-Final-Report-2023.02.28.pdf>;

³ <https://cjlil.sog.unc.edu/wp-content/uploads/sites/19452/2021/07/Citation-Project-Report-1-Final.pdf>;
<https://www.sentencingproject.org/amicus-brief/amicus-brief-in-support-of-ending-north-carolina-felony-disenfranchisement-lawsuit/>

⁴ <https://ncdoj.gov/wp-content/uploads/2023/12/Model-Citation-Policy.pdf>

⁵ <https://emancipatenc.org/citations-instead-of-arrests-lower-wilson-county-incarceration-rate/>



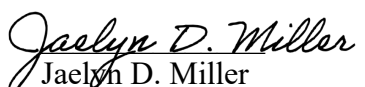
violent crime rather than low level marijuana misdemeanors, some of which do not even carry a penalty of incarceration.

Not only does the City of Winston-Salem have the authority to determine how its resources are allocated for public safety, but it has a moral obligation given the proliferation of hemp and CBD dispensaries throughout the city, to ensure that it is not making money off of the sale of cannabis while also targeting individuals for cannabis use. Marijuana and Hemp are both cannabis products. They look the same and smell the same both burned and unburned. They are indistinguishable by sight or smell alone and can only be differentiated by chemical analysis. **Ex. C.** It is morally bankrupt to allow the city to profit off of a product while directing WSPD to target or prioritize the arrests of individuals utilizing a virtually identical product.

In conclusion, North Carolina is not a “Dillon’s Rule” state. Instead, a municipality’s authority is decided under North Carolina General Statute Chapter 160A. Under this statute the City of Winston-Salem has the necessary authority to adopt a mandatory cite and release policy and to de-prioritize low level marijuana possession, meaning direct WSPD time, money, and staffing resources towards actual violent public safety threats. Doing so would be in accordance with its authority under North Carolina law and North Carolina’s public policy as evidenced by North Carolina removing the punishment of incarceration for low level misdemeanor marijuana possession.

Thank you for taking the time to read this letter and Emancipate NC is available to assist with any research, questions, or concerns the Winston-Salem City Council may have concerning these policies.

Respectfully,


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