

**ORDINANCE NO. 2020-18**

**AN ORDINANCE SUPPORTING THE SAN MARCOS POLICE DEPARTMENT'S INCREASED USE OF THE CITE AND RELEASE PROCESS, WHEN APPROPRIATE, INSTEAD OF ARRESTING INDIVIDUALS SUSPECTED OF HAVING COMMITTED CERTAIN MISDEMEANOR OFFENSES; REQUIRING RECORD KEEPING AND REPORTING OF USE OF THE CITE AND RELEASE PROCESS AND INSTANCES IN WHICH INDIVIDUALS HAVE BEEN ARRESTED FOR CITE AND RELEASE ELIGIBLE OFFENSES; AND PROVIDING AN EFFECTIVE DATE**

**RECITALS:**

1. State law allows use of citation in lieu of arrest for certain misdemeanor offenses.
2. In 2018, the San Marcos Police Department (SMPD) made arrests for citation-eligible offenses, which translates to lost hours of officer time.
3. Data provided by SMPD shows that in 2018, misdemeanor possession of marijuana under 2 oz. and driving while license invalid accounted for more than half of arrests for citation-eligible offenses.
4. The City Council acknowledges that our Peace Officers are allowed to exercise their discretion to issue a citation in lieu of arresting individuals for certain offenses when authorized by State law under article 14.06 of the Texas Code of Criminal Procedure.
5. The City Council supports SMPD's commitment to increase the use of the cite and release process as part of a combined strategy, in cooperation with the Hays County Criminal District Attorney's Office, to divert eligible individuals from being incarcerated, prosecuted, and convicted in the criminal justice system.
6. The City Council deems it necessary to have SMPD gather, report, and publish statistical information to demonstrate trends in the department's use of the cite and release process, including the frequency of use, offense type, justification for arrest (when an arrest is made), and the age, race, and ethnicity of individuals who were arrested and jailed instead of receiving citations and being released for the same offense.

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

**SECTION 1.** The City Council supports the SMPD's increased use of the cite and release process, rather than arrest, in appropriate circumstances, for individuals suspected of committing the following offenses, in accordance with article 14.06 of the Texas Code of Criminal Procedure:

A. Class C misdemeanors other than public intoxication, assault, or family violence.

B. Possession of Marijuana less than 4 oz., Class A or Class B misdemeanor-Texas Health and Safety Code §481.12(b)(1) & (2).

C. Driving while License Invalid, Class B misdemeanor-Texas Transportation Code §521.457.

D. Criminal Mischief, Class B misdemeanor-Texas Penal Code §28.03(b)(2) if the amount of pecuniary loss is less than or equal to \$375.

E. Graffiti, Class B misdemeanor-Texas Penal Code §28.08(b)(2) if the amount of pecuniary loss is less than or equal to \$375.

F. Theft of Property, Class B misdemeanor-Texas Penal Code §31.03(e)(2)(A) if the value of property stolen is less than or equal to \$375.

G. Theft of Services, Class B misdemeanor-Texas Penal Code §31.04(e)(2) if the value of service stolen is less than or equal to \$375.

**SECTION 2.** The City Council recognizes that use of the cite and release process may not be appropriate in all circumstances and that SMPD officers may exercise their discretion to issue a written or verbal warning in lieu of issuing a citation or making an arrest for a person suspected of committing any offense listed in Section 1.

**SECTION 3.** The City Council further recognizes that the use of the cite and release process may not be appropriate in all instances, and that SMPD officers may find it necessary to arrest a person suspected of having committed any of the above-listed offenses only if any of the following circumstances are present:

A. The subject does not provide satisfactory evidence of personal identification to allow for citation. In determining whether the subject is able to provide satisfactory evidence of personal identification, it shall be acknowledged that not all persons are able to produce a government-issued ID. Therefore, although a government-issued ID is preferred, the City shall accept other forms of identification, regardless of expiration date, including but not limited to: any state or federally-issued ID, student ID, or other forms of identification that include an individual's name and address, as well as photos of the aforementioned forms of identification.

B. The subject is not a resident of the county in which the offense was allegedly committed. For the purposes of this Section, an individual who lives, works, or goes to school in the county where the offense was allegedly committed will be deemed by the investigating officer to be a resident of Hays County.

C. The arresting officer believes that the safety of persons (including the

subject) would be imminently endangered by the release of the subject. In making this assessment, the arresting officer shall consider whether the subject has the physical or mental capacity to endanger the safety of themselves or the public, whether the subject is unlawfully carrying a weapon, and/or if the subject has made immediate threats against other individuals in the area. In cases in which the subject appears to suffer from mental illness and/or addiction, a referral to appropriate medical and/or psychiatric services in lieu of arrest shall be considered in accordance with SMPD policy.

**D.** The subject demands to be taken before a magistrate.

**E.** The subject has an outstanding arrest warrant from a criminal law enforcement agency.

**F.** The subject is also suspected of having committed an offense for which the cite and release process is not allowed by state law.

**SECTION 4.** In any case where an arrest is made for the above-listed offenses, the specific reasons for making the arrest instead of issuing a citation shall be included in the incident report. No arresting officer described in this section shall be charged with any criminal offense for non-compliance with this ordinance.

**SECTION 5.** The City Manager shall provide and make available to the public a quarterly report or memorandum concerning the use of the cite and release process in lieu of arrest in instances when a ticket or citation is allowed by state law. This report or memorandum shall be provided to the City Council and made public on a quarterly basis and should document anonymized records of every instance that a resident was issued a citation in lieu of arrest and every instance that a resident was arrested for a nonviolent misdemeanor charge when the suspect had no outstanding warrants, was not intoxicated and legally could have been given a citation, but an arrest was made anyway, and shall include the reasons for the arrests indicated by using one or more of the circumstances in Section 2; identity, Hays County connection, imminent danger, demand for magistrate, arrest warrant, or other offense. The memorandum shall also include the following data for each instance:

**A.** The reason for the stop.

**B.** The particular offense alleged.

**C.** The age, race, and ethnicity of the person arrested.

**D.** The location where the incident occurred.

**E.** The reason for the arrest.

Information regarding specific arrests shall be organized according to race and ethnicity in order to allow racial disparities to be easily analyzed. This report or memorandum should not include information that would jeopardize any ongoing criminal investigation or prosecution, and the

report should include the number of unduplicated officers making such discretionary arrests.

**SECTION 6.** The City Council directs the City Manager to work with the San Marcos Police Chief and other relevant stakeholders mentioned below to update all relevant 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 and training officers on the new guidelines for citation versus arrest, and updating the internal databases and systems to remove any guidelines under the manual that are no longer in effect due to this Ordinance.

**SECTION 7.** The City Council directs the City Manager to arrange regular meetings of the Police Chief's Advisory Panel, other interested stakeholders and community organizations, individuals directly impacted by the policing and arrests of immigrant communities and communities of color, and any representatives that may be designated by the Hays County District Attorney's Office in the development of policies, procedures, and practices related to this Ordinance. These meetings shall be open to public participation.

**SECTION 8.** A progress update shall be provided to City Council within three months after adoption of this ordinance. A written update shall be provided to the City Council within six months after the adoption of this ordinance which includes information regarding all updates to policies, procedures, and practices identified and implemented, as a result of this ordinance.

**SECTION 9.** This ordinance shall become effective on May 31, 2020.

**PASSED AND APPROVED** on first reading on April 7, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on April 21, 2020.



Jane Hughson  
Mayor

Attest:

Approved:



Tammy K. Cook  
Interim City Clerk



Michael J. Cosentino  
City Attorney