

**ORDINANCE NO. 2020-\_\_\_\_\_**

**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.

The only time saved in cite and release is the drive (10 to 15 minutes) to and from the Hays County Law Enforcement Center (HCLEC). The time saved becomes negligible when we use the data from other cities currently using similar cite and release policies.

- Approximately 40% of those issued a citation and released “fail to appear” in court.
- Warrants must then be written for Failure to Appear (FTA). Resulting in more time spent on the offense by the Officer writing the original citation (approximately 30 minutes to an hour).
- Offender is now left unaccountable until the warrant can be served or the offender commits another offense where they are caught once again by law enforcement, resulting in more lost time (completion of new reports and the return on the FTA warrant).
- While the FTA Warrant traditionally has fallen on the Hays County Court system to complete, SMPD Officers have already experienced the County passing on the production of these warrants to the Officers writing the initial citations because the county is not ready or equipped to handle the workload of a cite and release policy/ordinance.

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 14.08 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.

- Hays County is not currently prepared to implement cite and release diversion programs (assessment of each case is required and currently there is no staffing or process in place for the initial assessments).
- The District Attorney's office already makes the decision to divert eligible cases but an increase of cite and release means more staffing will be required to handle the increased workload.

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.

- Justification, we assume, is in addition to, the probable cause already required by state law.
- "Justification" in this context can be quite subjective. Ordinance does not indicate who measures "Justification". To leave a subjective term in the ordinance creates an opportunity for law suits against the Officer for what anyone believes was not "Justified."
- In an effort to protect its members the SMPOA will advise its members to cite and release all offenders so the Officers are never accused of "Not being Justified" in their decision to arrest.
  - Resulting in all street diversions receiving citations and all who have benefited from Officer discretion and their street diversion to be entered into the Criminal Justice System.

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

**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:

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

- Includes the following Offenses and others:
  - Child Left in Vehicle Unattended
  - DUI
  - Exposure
  - Voyeurism (Peeping Tom)

Example: Young female college student (often the victim in these cases), sees someone peering into her window at 2:00am. She calls the police and the suspect is located a block away from her

apartment driving away from the scene. By this ordinance the subject is a resident, he is no longer an imminent danger (he was driving away, never made any threats and he is apologetic), so he is cited and released. The Officer must let him go after the citation is written. The potential for discovering other items, such as a rape kit (duct tape, rope and condoms) during a vehicle inventory impound is now removed by the restrictive nature of the ordinance and a dangerous suspect is free to find another victim or free to return to his intended victim.

- The ordinance restricts the Officers from using tools to protect and provide safety to the victims and citizens of this community.
- The Victim is informed the suspect was located, issued a citation and released. How Safe does the victim now feel knowing the person peering into her window has just been released?

## 2. Possession of Marijuana less than 4 oz, Class A or Class B misdemeanor

- 2oz or less can be considered a personal use amount. 2oz - 4oz is a significant amount of marijuana (street value \$500-\$1,000).
- Amounts greater than 2oz are usually found ready for distribution/dealers.
- POM is a victimless crime:
  - 8 of the last 9 murders in San Marcos were due to low levels (personal use amounts) of marijuana
  - 2019 San Marcos had 3X the national per capita murder rate
  - Some of the unintended victims: Complex who can no longer request market value for their rental units due to murders occurring on the property.
  - Many of the home invasions in San Marcos are due to drug rip offs (usually marijuana).

## 3. Driving while License Invalid, Class B misdemeanor

- DWLI is not a first-time offense.
  - DWLI drivers have already shown non-compliance.

## 4. Criminal Mischief, Class B misdemeanor

- These particular crimes are often aimed/targeted at a particular person (victim). There is a vicious intent in perpetrating the offense against a particular person's property (vengeful/hate).
  - Victims (Victimology reports) are reported as going through the same range of emotions of those experiencing physical crimes against a person except that they may be to a lesser extent.
- Officer discretion is absolutely necessary for many of these cases as they differ by the relationship between the victim and the actor. Restricting the officer's ability to arrest leaves the victims feeling vulnerable, unsafe and unprotected.
- Restitution is not immediate and inconveniences the victim particularly if the offender cannot be located (40% Failure to Appear rate reported by other cities using similar models).
  - 40% of the victims of these crimes will be further inconvenienced while seeking restitution.

- Victim must cover the cost of the deductible if they are insured or the entire cost if they are not insured.
  - Victim is inconvenienced and must file for restitution
  - If granted restitution the offender is often allowed to make payments that are affordable to them.
    - Payments may be granted over several months/years
  - If Offender fails to pay the Victim is further inconvenienced and must contact the DA's office to seek assistance in collecting the restitution.
    - Offenders generally allowed leniency to make payments
    - Generally little recourse for Victims

5. Graffiti, Class A or Class B misdemeanor

- Victims are often targeted by the offenders (hate/anger)
- Citation and release can leave many Victims feeling vulnerable and unsafe
- Victims burdened by costs to remove graffiti
  - Restitution for expense of cleaning generally not timely for Victim
  - Victim must file for restitution and wait for agreement negotiated with DA's office

6. Theft of Property, Class B misdemeanor

7. Theft of Services, Class B misdemeanor

- Ordinance does nothing to address the Victims
- Victims are inconvenienced by process of restitution
  - Victims will not receive restitution in a timely manner
  - Restitution is not guaranteed
- Victims left feeling vulnerable, unsafe and violated

**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.

- While the ordinance allows for discretion to provide warnings, Officer's may find themselves accused of racism or bias if they cannot provide the numerically identical number of written/verbal warnings to each race and ethnicity
  - Resulting in officers foregoing any opportunities to use their discretion for leniency.
  - More citations mean more people entered into the Criminal Justice System

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:

- The use of the term “only” further restricts Officer Discretion and creates convoluted parameters that could be misleading to the public.

1. The subject does not provide satisfactory evidence of personal identification to allow for citation.

- Already guided by the Texas Penal Code 38.02
- “Satisfactory evidence of personal identification” may violate Texas Penal Code 38.02.
- If “Satisfactory evidence of personal identification” refers only to the confirmation of a suspect/offenders residency/work/student status and the person is being considered for arrest they must comply with Texas Penal Code 38.02 identification requirements.
- Misleading to the public.
- Terminology leaves room for wide interpretation: “other forms of identification that include an individual’s name and address”. The use of “AN” implies the name and address used for identification can be any one’s name and address and not necessarily the name and address of the suspect/offender.

2. 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 to be a resident of Hays County . 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, utility or rent bill, 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.

3. There is reason to believe 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, it shall be considered 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.

- Already dictated by Texas Penal Code/Criminal Code of Procedures and department policy

4. The subject demands to be taken before a magistrate.

- Already dictated by Texas Penal Code/Criminal Code of Procedures and department policy
5. The subject has an outstanding arrest warrant from a criminal law enforcement agency.
- Already dictated by Texas Penal Code/Criminal Code of Procedures and department policy
6. The subject is also suspected of having committed an offense for which the cite and release process is not allowed by state law.
- Already dictated by Texas Penal Code/Criminal Code of Procedures and department policy

**SECTION 3.** 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.

- This does not protect Officers from Civil Liabilities
- The use of subjective terminology and publicly published reports as required by this ordinance open the door for any person's interpretation of what they believe to be "justified", "appropriate" and "satisfactory".
- While it is understood the idea to allow officers to use their discretion is permitted by the ordinance the restrictive nature and subjective language used to direct the Officer's actions create opportunities to muddy the waters and make things difficult for all involved:
  - Resulting in a strict and possibly harmful adherence to the ordinance

**SECTION 4.** 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 justifications for the arrests. The memorandum shall also include the following data for each instance:

1. The reason for the stop;
2. The particular offense alleged;
3. The age, race, and ethnicity of the person arrested;
4. The location where the incident occurred.
5. 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.

- The department is not currently equipped to provide the data as requested

- The County also is not ready to implement the cite and release process as an ordinance
  - Their processes are not in place and the database systems to handle the citations and notifications are not in place
  - Difficult to acquire database systems capable of handling systems required by different departments/agencies (San Marcos, Kyle, Buda, HCSO)

**SECTION 5.** 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.

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 6.** 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 7.** This ordinance shall become effective upon approval on second reading.

**PASSED AND APPROVED ON FIRST READING** on April 7, 2020.

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

Jane Hughson

Mayor

Attest: Approved:

Tammy K. Cook Michael J. Cosentino

Interim City Clerk City Attorney