

## **DRAFT San Marcos Ordinance Regarding Arrests and Citations**

### **RECITALS:**

1. State law allows use of citation in lieu of arrest for certain misdemeanor offenses, including possession of marijuana, and driving while license invalid.
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 SMPD's current practice of allowing its officers to exercise their discretion to issue a citation in lieu of arresting individuals for certain offenses when allowed by state law.
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, and the age, race, and ethnicity of individuals who received citations and were released in comparison to those who were arrested and jailed for the same offense.

### **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, for individuals suspected of committing the following offenses, unless any criteria in Section 2 of this ordinance are met:

1. Class C misdemeanors other than public intoxication or assault.
2. Possession of Marijuana less than 4 oz, Class A or Class B misdemeanor
3. Driving while License Invalid, Class B misdemeanor

#### **Section 2.**

The City Council recognizes that 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 if any of the following circumstances are present:

1. The subject does not provide satisfactory evidence of personal identification to allow for citation.
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 that 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 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 whether the subject has the physical or mental capacity to endanger the safety of themselves or the public, whether the subject is 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 may be more appropriate.
4. The subject demands to be taken before a magistrate.
5. The subject has an outstanding arrest warrant from a criminal law enforcement agency.
6. The subject is also suspected of having committed an offense for which the cite and release process is not allowed by state law.

### **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.

### **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 particular offense alleged;
2. The age, race, and ethnicity of the person arrested;
3. The location where the incident occurred.

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 5

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 to discuss SMPD's implementation of policies and practices that increase the use and effectiveness of the cite and release process.

## Section 6.

An 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 including all policies, procedures, and practices identified and implemented, as a result of this ordinance.