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|  | <b>SAN MARCOS POLICE DEPARTMENT</b>             |                  |
|   | <b>Policy 7.1.1 Cite and Release</b>            |                  |
|   | <b>Effective Date:</b> May 31, 2020             | <b>Replaces:</b> |
|   | <b>Approved:</b> <u>Bob Met</u> Chief of Police |                  |
|   | <b>Reference:</b>                               |                  |

**I. POLICY**

In addition to the discretion provided by Texas law and guidance provided by 7.1, Constitutional Safeguards and 7.3, Arrests With and Without a Warrant, officers shall comply with the language of City of San Marcos ordinance 2020-18 Cite and Release.

**II. PURPOSE**

City ordinance 2020-18 supports the department’s increased use of cite and release, 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. The purpose of this policy is to ensure understanding of and compliance with this ordinance.

**III. CITE AND RELEASE REQUIRED**

Ordinance 2020-18 requires the 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 (CCP):

- 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.

**IV. WARNINGS**

Ordinance 2020-18 recognizes that use of the cite and release process may not be appropriate in all circumstances and that 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 III.

## **V. AUTHORITY AND DISCRETION**

Ordinance 2020-18 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.

## **VI. JUVENILES**

Texas law does not provide for juveniles to be cited and released on class A or B misdemeanors; in these cases, detention is appropriate. Ordinance guidance still applies for class C misdemeanors except they cannot be cited for public intoxication, while in school or during a school function.

## **VII. REPORTING**

In any case where an arrest is made for offenses listed in section III, the specific reasons for making the arrest instead of issuing a citation shall be included in the narrative of an incident report. The ordinance also requires specific data collection and reporting that will be generated from fields

already routinely reported in the records management system (RMS) with a few exceptions. Any arrest made for offenses listed in the cite and release ordinance shall also require appropriate fields to be completed in the appropriate cite and release fields of the arrest module of RMS.