

## **Caption**

“A petition to amend the City Charter of San Antonio to adopt a justice policy that will reduce unnecessary arrests and save scarce public resources through a comprehensive set of reforms, including: ending enforcement of low-level marijuana possession; ending enforcement of abortion crimes; banning no-knock warrants; banning chokeholds; and using citations instead of arrests for low-level nonviolent crimes.”

## **Charter Amendment**

BE IT ORDAINED BY THE VOTERS OF THE CITY OF SAN ANTONIO:

Article XV of the Charter of the City of San Antonio is hereby created, to be titled “Justice Policy” and to read as follows:

### **ARTICLE XV. — JUSTICE POLICY**

#### **Sec. 170. - Justice policy.**

It is the policy of the City of San Antonio to use its available resources and authority to accomplish three goals of paramount importance: first, to reduce the City’s contribution to mass incarceration; second, to mitigate racially discriminatory law enforcement practices; and third, to save scarce public resources for greater public needs.

#### **Sec. 171. - Definitions.**

- (a) Justice impact statement. A statement of how major City decisions impact the City’s justice policy. The statement is to be prepared by the Justice Director. The elements of the justice impact statement shall include, at a minimum, the following elements: (1) how the proposed action fulfills the three aims of the City’s justice policy; (2) whether the proposed action will negatively impact any historically over-policed communities; (3) whether the proposed action would increase law enforcement spending as compared to other City programs; and (4) a consideration of alternatives, if any, that would better advance the City’s justice policy;
- (b) Justice policy. All of the policies contained within this Article of the City Charter;

- (c) Law enforcement industry: includes any past or present sworn officer, civilian employee, or contractor of any law enforcement agency, including any local, state, tribal, or federal agency; also includes private security and contractors for law enforcement agencies;
- (d) Mass incarceration: the criminal justice system by which the United States criminalizes and incarcerates more of its own people than any other country in the history of the world. Mass incarceration inflicts harm on the most vulnerable among us and disproportionately impacts people of color;
- (e) Marginalized communities: people who are historically less protected and more subject to persecution within American society, including, Black, indigenous, and people of color, the LGBTQIA community, immigrant communities, people with disabilities, and people living in poverty; and
- (f) Over-policing: the historic and current practice of law enforcement to disproportionately target poor people and people of color, including for offenses that are committed at equal rates among races and income levels.

**Sec. 172. - Justice Director.**

- (a) The City Council, including the Mayor and District Representatives, shall directly appoint a Justice Director to serve as the lead City representative charged with fulfilling the Justice Policy. Such appointment shall occur at a publicly noticed meeting subject to the Texas Open Meetings Act. The City Council shall fix the Justice Director's compensation;
- (b) The Justice Director shall be appointed on the basis of qualifications to fulfill the City's social justice three-part mandate of reducing the City's contribution to mass incarceration, mitigating racist and discriminatory law enforcement practices, and saving scarce public resources for greater public needs;
- (c) No person shall be eligible for appointment as Justice Director if they have worked in the law enforcement industry, or if they disclose significant financial investments in the law enforcement industry;
- (d) Prior to taking action to appoint a Justice Director, the City shall request and publish a Personal Financial Statement Report from each candidate, to include, at a minimum, all fields included in Form PFS-TEC of the Texas Ethics Commission. The report shall cover, at a minimum, the candidate's current

investments and any investments held over the twelve months prior to appointment;

- (e) The Justice Director shall report directly to the City Council;
- (f) The Justice Director may be removed by resolution approved by the majority of the total membership of the City Council, with or without cause.

**Sec. 173. - Resources and support.**

- (a) The Mayor and City Council shall provide the Justice Director with sufficient personnel and resources necessary to carry out this justice policy;
- (b) The Justice Director and any support staff shall have access to offices in the Department of Diversity, Equity, Inclusion and Accessibility.

**Sec. 174. - Justice impact of City decisions.**

- (a) The Justice Director shall provide the City Council with a justice impact statement prior to any City Council vote affecting the City's justice policy. Decisions that require a justice impact statement shall include, but not be limited to: the annual city budget and any amendments thereof; any contract or contract amendment concerning sworn officers of the San Antonio Police Department; and any resolution or ordinance related to law enforcement, criminal justice, policing, crime, public safety, or incarceration;
- (b) In addition to justice impact reports regarding individual City actions, the City Manager shall collaborate with the Justice Director to prepare an annual justice impact statement for City activities, with specific analysis of the justice impact of each City department. The City Manager shall ensure that the Justice Director has access to City information on an ongoing basis to allow for ongoing monitoring and analysis of the City's justice impact.

**Sec. 175. - Community stakeholder involvement.**

- (a) The Justice Director shall arrange quarterly meetings subject to the Texas Open Meetings Act to discuss both the development of policies, procedures, and practices related to this justice policy as well as data gathered concerning the implementation of the justice policy. These meetings shall include the Police Department, a designated individual from the Bexar County District Attorney's

Office, representatives from community organizations, and individuals directly impacted by over-policing and mass incarceration;

- (b) All input raised during such quarterly meetings shall be meaningfully considered, and the Justice Director will report back to City Council on the work completed during such quarterly meetings.

**Sec. 176. - Elimination of marijuana enforcement.**

- (a) San Antonio police officers shall not issue citations or make arrests for Class A or Class B misdemeanor possession of marijuana offenses, except in the limited circumstances described in Section 176(b);
- (b) The only circumstances in which San Antonio police officers are permitted to issue citations or make arrests for Class A or Class B misdemeanor possession of marijuana are when such citations or arrests are part of (1) the investigation of a felony level narcotics case that has been designated as a high priority investigation by an San Antonio police commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.
- (c) San Antonio police shall not consider the odor of marijuana or hemp to constitute probable cause for any search or seizure, except in the limited circumstances of a police investigation pursuant to Section 176(b).
- (d) In every instance other than those described in Section 176(b), and without relying on the impermissible grounds identified in Section 176(c), if a San Antonio police officer has probable cause to believe that a substance is marijuana, an officer may seize the marijuana. If the officer seizes the marijuana, they must write a detailed report and release the individual if possession of marijuana is the sole charge.
- (e) San Antonio police officers shall not issue any charge for possession of marijuana unless it meets one or both of the factors described in Section 176(b);
- (f) A class C misdemeanor citation for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge;
- (g) No City funds or personnel shall be used to request, conduct, or obtain tetrahydrocannabinol (THC) testing of any cannabis-related substance to determine whether the substance meets the legal definition of marijuana under

state law, except in the limited circumstances of a police investigation pursuant to Section 176(b). This prohibition shall not limit the ability of San Antonio police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

**Sec. 177. - Elimination of abortion enforcement.**

- (a) It is the policy of the City of San Antonio to promote the reproductive health, safety, and privacy of all City residents;
- (b) The City hereby finds and declares that a variety of factors negatively impact its ability to legally and appropriately enforce state laws that criminalize abortion, including:
  - (i) The City's goal of promoting reproductive health, safety, and privacy of all City residents;
  - (ii) The legal and practical complexity of evaluating claims that City residents may have violated state laws concerning the criminalization of abortion;
  - (iii) The lack of training and capacity of City police to discern valid and enforceable complaints of unlawful abortion;
  - (iv) The risk of liability arising from improper enforcement of criminal abortion laws;
- (c) In light of the policy and findings identified above, City of San Antonio police officers shall not investigate, make arrests, or otherwise enforce any alleged criminal abortion, except in the circumstances identified in Section 177(d);
- (d) The only circumstances in which City of San Antonio police officers are permitted to investigate, make arrests, or otherwise enforce any state law that criminalizes abortion are when (i) coercion or force is used against a pregnant person or (ii) in cases involving conduct criminally negligent to the health of the pregnant person seeking care;
- (e) Except to the extent required by state or federal law, the City of San Antonio will not gather information concerning abortion-related crimes. Specifically, no city staff, city funds, or city resources will be used to:

- (i) Store or catalog any report of an abortion, miscarriage, or other reproductive healthcare act or outcome;
- (ii) Provide information to any other governmental body or agency about any abortion, miscarriage, or other reproductive healthcare act, unless such information is provided to defend the patient's right to abortion care or the healthcare provider's right to provide that care;
- (iii) Conduct surveillance or collect information related to an individual or organization for the purpose of determining whether an abortion has occurred, except for aggregated data without personally identifying information or personal health information which is collected for purposes unrelated to criminal investigation, enforcement, or prosecution.

**Sec. 178. - Ban on no-knock warrants; additional policies concerning warrants.**

- (a) San Antonio Police officers shall not obtain a "no-knock" search warrant, nor shall they participate in serving a "no-knock" search warrant with other law enforcement agencies;
- (b) No police officers may gain forcible entry into a premises, absent circumstances in which there is verified, imminent threat to human life;
- (c) For all search warrant executions:
  - (i) A law enforcement officer shall be easily recognizable and identifiable as a uniformed law enforcement officer;
  - (ii) A law enforcement officer shall knock and audibly, or in a manner sufficient to provide notice to any person with a disability, announce their identity as a law enforcement officer, authority pursuant to the warrant, and purpose;
  - (iii) A knock and announcement shall be provided in a manner reasonably expected to be heard observed and understood by occupants of the premises to be searched based on the size and nature of the location;
  - (iv) Any subsequent entry and search of the premises shall be recorded by a body-worn camera or other government issued recording device;

- (v) Law enforcement officers shall delay entry for a sufficient amount of time after the announcement, based on the size and nature of the premises and occupants, to allow the occupant a reasonable opportunity to respond, and such delay shall be a minimum of 30 seconds;
  - (vi) An occupant of the premises to be searched shall be afforded an opportunity to comprehend the warrant authorizing entry to the premises prior to entry by a law enforcement officer;
- (d) To account for the potential presence of vulnerable persons:
- (i) **EVALUATION.** An application for a warrant shall assess, and a court issuing a warrant shall evaluate, whether there will be children, individuals with a disability, individuals who are elderly, or other vulnerable individuals present at the location where the warrant is to be executed;
  - (ii) **REQUIREMENTS FOR ISSUANCE.** The City shall seek to execute search warrants only when children, individuals who are elderly, or other vulnerable individuals are not home. A warrant may only authorize the search of a location where a child, individual with a disability, any individual who is elderly, or other vulnerable individual will be present if the court determines, based on particularized facts, that there is a clear necessity for such search and that a safety plan is in place to ensure the safety of the vulnerable individuals;
- (e) All officers shall be equipped with video and audio recording devices, tested for functionality at least 24 hours before execution, turned on at least five minutes before the warrant is executed and to remain on five minutes after the warrant service process is complete (i.e. the entire event in which officers are on the scene);
- (f) Any search warrant authorized by this section shall utilize the least intrusive tactics possible. Only such persons as may be reasonably necessary for the successful execution of the search warrant with all practicable safety may participate in execution of a search warrant;
- (g) **USE OF EXPLOSIVE DEVICES.** Law enforcement officers executing a warrant shall not use or possess flash-bang stun grenades, or other explosive devices, chemical weapons, or any military-grade firearm, unless expressly authorized under the covered warrant based on clear and convincing evidence that the use

of the devices is necessary under the particularized circumstances to protect the life or safety of law enforcement officers or other persons;

(h) For purposes of this section:

- (i) Verifiable exigent circumstances is defined as: an event occurring in real-time that is life-threatening to the officer(s) and/or an occupant(s) of the property;
- (ii) In such cases, the officer(s) must be able to verify the perceived threat through video footage, required documentation and witness statements. Examples of verifiable exigent circumstances could include: hearing a round being chambered in a gun, an occupant screaming something threatening, or seeing through a window an occupant or hostage held by a firearm.

(i) Applications and issuance for all warrants must include:

- (i) Search warrants are directed to law enforcement within the jurisdiction of the property being searched;
- (ii) All search warrants shall contain:
  - (1) the date and time the warrant was issued;
  - (2) The name of the affiant;
  - (3) The identity and description, of the person for whom a search warrant is being issued;
  - (4) The offense, or probable cause, cited within the affidavit;
  - (5) The objects or persons described in the warrant, if found there, to be seized;
  - (6) The location and description of the place to be searched;
  - (7) A list of estimated ages and gender of any additional occupants, as well as any known individuals with cognitive and/or physical disabilities and pets at the property to be searched;

- (8) Intended course of action if no response from suspect within 30 seconds;
- (j) Search warrants not executed within 7 days of issuance are void;
- (k) An officer must provide evidence gathered 24 hours, or less, before executing to verify the person is present at the residence to be searched and verify that there are no significant changes to information contained within the application;
- (l) AVOIDING DESTRUCTION OF PROPERTY. In executing any warrant, law enforcement officers shall seek to avoid the destruction of property occasioned by forcible entry and the execution of the search;
- (m) Property and/or cash cannot be seized during the course of the search unless a lawful arrest is made and these assets will be returned immediately to the arrestee if s/he is not convicted of the crime listed in the arrest;
- (n) If evidence is obtained in violation of this section, the City shall not attempt to utilize such evidence, and shall notify the District Attorney that any such evidence was unlawfully obtained;
- (o) POST-SEARCH REPORT. For each search conducted pursuant to a warrant, the City shall collect the following data:
- (i) The items to be seized under a warrant, as described in the application;
  - (ii) The items seized in the execution of that warrant;
  - (iii) Whether forcible entry was made in the execution of the warrant;
  - (iv) Any destruction of property that occurred in the execution of the warrant;  
and
  - (v) Any injuries that occurred in the execution of the warrant, either by law enforcement, occupants, or others present;
- (p) Each post-search report completed pursuant to Section 178(o) shall be considered public information subject to the Texas Public Information Act.

**Sec. 179. - Ban on chokeholds.**

- (a) San Antonio police officers shall not use a chokehold or neck restraint on another person;
- (b) Any policies pertaining to the use of force adopted by law enforcement agencies must be consistent with this section;
- (c) For the purposes of this section:
  - (i) "Chokehold" means the intentional application of direct pressure to a person's trachea or windpipe for the purpose of restricting another person's airway;
  - (ii) "Neck restraint" refers to any vascular neck restraint or similar restraint, hold, or other tactic in which pressure is applied to the neck for the purpose of constricting blood flow.

**Sec. 180. - Cite and release policy.**

- (a) Except as provided under Section 180(b), a citation, ticket or verbal warning, rather than arrest, shall be issued for individuals charged with committing the following offenses, in accordance with Article 14.06 of the Texas Code of Criminal Procedure:
  - (i) All Class C misdemeanors, except Class C Public Intoxication, which shall be addressed in accordance with Texas Code of Criminal Procedure Section 14.031;
  - (ii) Possession of Controlled Substance less than 4 oz, Penalty Group 2-A (synthetic cannabinoids), Class A or B misdemeanor under Texas Health and Safety Code §§ 481.1161(b)(1) & (2);
  - (iii) Driving while License Invalid, Class A or B misdemeanor under Texas Transportation Code § 521.457;
  - (iv) Theft of Property less than \$750, Class B misdemeanor under Texas Penal Code § 31.03(e)(2)(A);

- (v) Theft of Service less than \$750, Class B misdemeanor under Texas Penal Code § 31.04(e)(2);
- (vi) Contraband in a Correctional Facility, Class B misdemeanor under Texas Penal Code § 38.114(c);
- (vii) Graffiti, with damage less than \$2500, Class A or B misdemeanor under Texas Penal Code § 28.08(b)(2) & (3); and
- (viii) Criminal Mischief with damage less than \$750, Class B misdemeanor under Texas Penal Code § 28.03(b)(2).

(b) An officer may conduct a custodial arrest for offenses listed under Section 1 only if any of the following circumstances are present:

- (i) The subject could 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, library card, utility or rent bill, community organizational membership card, student ID, church ID, or other forms of identification that include an individual's name and address, as well as photos of the aforementioned forms of identification. Additionally, in the absence of a physical ID, a credible verbal verification of a subject's identity and address shall suffice and may be obtained by contacting a family member, friend, or any person who has personal knowledge of the subject;
- (ii) The subject demands to be taken before a magistrate;
- (iii) The subject has an outstanding arrest warrant for a non-citation eligible offense from a criminal law enforcement agency;
- (iv) Before making an arrest for a citation-eligible offense, the officer shall contact a supervisor to obtain approval. In any case where an arrest is made for a citation-eligible offense, the specific reason(s) for the arrest and supervisor approval shall be included in the incident report. If an incident report fails to contain a valid reason for an arrest in cases of the

above-listed offenses, or include reasons for arrests not listed herein, the San Antonio Police Department Internal Affairs Unit shall conduct an investigation into the incident and take appropriate follow-up or disciplinary action with the arresting officer;

- (c) In cases in which the subject is suspected of committing any offense(s) listed in Section 180(a) or Class C Public Intoxication, and the subject appears to suffer from mental illness and/or addiction, the subject should be referred to appropriate medical and/or psychiatric services in lieu of arrest;
- (d) On a quarterly basis, the City shall gather and publish as an open record under the Texas Public Information Act, the following data concerning the cite and release program:
  - (i) Aggregate data showing the number of arrests made for citation-eligible offenses in which arrest was *not* mandated by state law. Such data shall also be aggregated and categorized by race and ethnicity of the person arrested, geographic location of arrest, alleged criminal offense, and reason for arrest;
  - (ii) Aggregate data showing the number of citations, tickets or warnings issued for citation-eligible offenses. Such data shall also be aggregated and categorized by race and ethnicity of the person cited, ticketed or issued a warning, geographic location of incident, and alleged criminal offense;
  - (iii) Anonymized records of every instance that a San Antonio police officer made an arrest for a citation-eligible offense, including:
    - (1) Documented reason for the stop and the arrest;
    - (2) The particular offense alleged;
    - (3) The reason for arrest and whether supervisor approval for the arrest was obtained;
    - (4) The age, race, and ethnicity of the person arrested;
    - (5) The general location, such as the zip code or intersection of the incident;

- (iv) 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 arrests.

**Sec. 181. - Implementation of justice policies.**

- (a) The City Manager and Chief of Police shall ensure that San Antonio police officers receive adequate training concerning each of the provisions of the justice policy;
- (b) The City Manager shall work with the San Antonio Police Chief to update City policies and internal operating procedures in accordance with this justice policy. Actions that may be necessary include, but are not limited to: updating the San Antonio Police Department General Manual; updating the training bulletin; training officers; and updating internal databases and systems.

**Sec. 182. - Officer discipline.**

Any violation of this justice policy may subject a San Antonio police officer to discipline as provided by the Texas Local Government Code or as provided in City policy.

**Sec. 183. - Effective date.**

This Charter amendment shall become effective upon adoption.

**Sec. 184. - Severability.**

If any portion of this Article shall be deemed unlawful by a court of law, that portion shall be severed from the Charter and the rest shall continue in force.