

Consequently, the State of Texas files this Original Petition and Application for Temporary and Permanent Injunction asking the Court to (1) declare the ordinance and the APD General Order *ultra vires* and (2) order Defendants to (a) repeal the Ordinance, (b) cancel the APD General Order, (c) fully enforce the drug laws in chapter 481, (d) not discipline any employee of the City of Austin for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance.

Discovery Control Plan

1. If discovery were needed, it would be intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.3. But this is a case of pure law and discovery is unneeded.

Claims for Relief

2. Plaintiff seeks injunctive relief. Therefore, this suit is not governed by the expedited actions process in Tex. R. Civ. P. 169.

Venue

3. Venue is proper in Travis County under section 15.002(a)(1) and (a)(3) of the Texas Civil Practices and Remedies Code.

Sovereign Immunity Inapplicable

4. Neither sovereign immunity nor governmental immunity applies to the State of Texas's *ultra vires* claim. "The basic justification for th[e] *ultra vires* exception to sovereign immunity is that *ultra vires* acts—or those acts without authority—should not be considered acts of the state at all." *Hall v. McRaven*, 508 SW.3d 232, 238 (Tex. 2017) (internal quotation marks and citations omitted). As a result, "*ultra vires* suits do not attempt to exert control over the state—they attempt to reassert the control of the state over one of its agents." *Id.*

5. Further, Texas Civil Practice and Remedies Code Sec. 37.006(b) states "In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard." This has been consistently construed as a legislative waiver of governmental immunity in situations like the one at issue here. *Tex. Educ. Agency v. Leeper*, 893

S.W.2d 432, 446 (Tex. 1994); *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628 (Tex. 2010).

Parties

6. Plaintiff is the State of Texas. *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (citing *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015) (“As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws.”); *Yett v. Cook*, 115 Tex. 205, 221, 281 S.W. 837, 842 (1926) (“That the state has a justiciable ‘interest’ in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law does not admit of serious doubt.”)).

7. Defendant City of Austin is a home-rule municipality.

8. Defendant Kirk Preston Watson is the Mayor of Austin.

9. Defendant Paige Ellis is the Mayor Pro Tem of Austin and Councilmember for District #8.

10. Defendant Natasha Harper-Madison is Councilmember for District #1.

11. Defendant Vanessa Fuentes is Councilmember for District #2.

12. Defendant Jose Velasquez is Councilmember for District #3.

13. Defendant Jose “Chito” Vela is Councilmember for District #4.

14. Defendant Ryan Alter is Councilmember for District #5.

15. Defendant Mackenzie Kelly is Councilmember for District #6.

16. Defendant Leslie Pool is Councilmember for District #7.

17. Defendant Zohaib “Zo” Qadri is Councilmember for District #9.

18. Defendant Alison Alter is Councilmember for District #10.

19. Defendant Jesus Garza is Interim City Manager of Austin.

20. Defendant Robin Henderson is Interim Chief of Police of Austin.

21. All Defendants are sued in their official capacities.

22. All Defendants may be served with process through Jesus Garza, Interim City Manager, at City Hall, 301 W. 2nd, 3rd Floor, Austin, Texas 78701.

Facts

23. On July 3, 2020, APD General Order 308.9 relating to possession of marijuana became effective (Exhibit 1). The APD General Order was updated and on September 8, 2020 (Exhibit 2) and is still in effect today. It states:

308.9 MISDEMEANOR POSSESSION OF MARIJUANA (POM)

For Class A and B POM offenses, officers should only make an arrest or issue a citation as otherwise permitted by 308.3 and 308.4 of its order if doing so as part of:

(a) the investigation of a high priority, felony-level narcotics case, or

(b) the investigation of a violent felony.

In all other Class A or Class B POM cases, and when officers have probable cause to believe the substance is marijuana, officers shall seize the marijuana, write a detailed report titled “possession of marijuana” and release the individual if POM is the sole charge. Officers shall deposit the marijuana according to GO 618.6.2 Submitting Narcotics and Narcotics Paraphernalia. In the event there are offenses in addition to POM, officers should take appropriate enforcement for those additional offenses, but should not charge for the POM offenses unless it meets one or both of the factors identified in paragraphs (a) or (b) of this order. In addition, the officers will complete a “POM Class A/B with no charges filed” template which is required for the disposal of the marijuana.

accordance with the newly voted Proposition A to eliminate low-level marijuana enforcement that was held in the general election on November 8, 2022, the following will take effect immediately:

24. Through the ballot initiative process, the citizens of Austin placed Proposition A on the May 7, 2022, ballot. Proposition A contained a city ordinance which would regulate how APD

enforces certain marijuana laws governed by Chapter 481 of the Texas Health and Safety Code. Proposition A passed.

25. The Austin City Council codified and published the ordinance, which is now in effect as City of Austin Code of Ordinances Title 16 – Austin Freedom Act of 2021, Chapter 16-1 – Elimination of Marijuana Enforcement (“the Ordinance”).¹

26. The Ordinance reads as follows:

CHAPTER 16-1 – ELIMINATION OF MARIJUANA ENFORCEMENT

Sec. 16-1-1 – ENDING CITATIONS AND ARRESTS FOR MISDEMEANOR POSSESSION OF MARIJUANA.

Austin 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 16-1-1(B).

(A) The only circumstance in which Austin 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 Austin Police Commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.

(B) In every instance other than those described in Section 16-1-1(B), if an Austin 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.

(C) Austin Police Officers shall not issue any charge for possession of marijuana unless it meets at least one of the factors described in Section 16-1-1(B).

¹ Available at https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TIT16AUFAC2021.CH16-1ELMAEN

Sec. 16-1-2 – CITATIONS FOR POSSESSION OF DRUG RESIDUE OR DRUG PARAHERNALIA SHALL NOT BE ISSUES IN LIEU OF POSSESSION OF MARIJUANA CHARGE.

(A) 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.

Sec. 16-1-3 – PROHIBITION AGAINST USING CITY FUNDS OR PERSONNEL TO CONDUCT THE CONCENTRATION TESTING.

(A) 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 16-1-1(B).

(b) This prohibition shall not limit the ability of Austin Police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

Legal Analysis

27. Because Austin is a home-rule municipality, it has “the full power of self-government” and does not need a special grant from the Legislature to enact local ordinances. *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013). However, “no...ordinance passed under [Austin’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

28. Under State law, “The governing body of a municipality ... [or] a municipal police department ... may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law.” Tex. Local Gov’t Code § 370.003.

29. Chapter 481 of the Health and Safety Code provides that possession of marijuana and drug paraphernalia are offenses. Tex. Health and Safety Code §§ 481.121, .125.

30. Section 16-1-1 of the Ordinance prohibits Austin police officers from issuing citations or making arrests for Class A or Class B misdemeanor possession of marijuana. Thus, it is a policy under which Austin will not “fully enforce ... Chapter 481.” Therefore, section 16-1-1 violates § 370.003.

31. Section 16-1-2 of the Ordinance prohibits Austin police officers from issuing Class C misdemeanor citations for “possession of drug residue [sic; there is no such offense] or drug paraphernalia ... in lieu of a possession of marijuana charge.” Thus, it is a policy under which Austin will not “fully enforce ... Chapter 481.” Therefore, section 16-1-2 violates § 370.003.

32. Section 16-1-3 of the Ordinance prohibits city funds and personnel “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 certain circumstances. Thus, section 16-1-3 is a policy under which Austin will not “fully enforce ... Chapter 481.” Therefore, it violates § 370.003.

33. APD General Order 308.9 is also a policy under which Austin will not “fully enforce ... Chapter 481.” Therefore, APD General Order 308.9 violates § 370.003.

34. Because the Ordinance and APD General Order 308.9 violate section 370.003 of the Local Government Code, Defendants “may not adopt” them. Tex. Loc. Gov’t Code § 370.003.

35. Although local ordinances are presumed valid, if an ordinance is unmistakably and clearly at odds with a statute, the ordinance is preempted. *Dall. Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993).

36. In a preemption challenge, a local ordinance - even a reasonable one - “is unenforceable to the extent it conflicts with the state statute.” *Id.* (citation omitted).

37. The Ordinance directly conflicts with the state statute; thus it is unenforceable. *See id.* (citing *City of Brookside Vill. v. Comeau*, 633 S.W.2d 790, 796 (Tex.1982), *cert. denied*, 459 U.S. 1087, 103 S.Ct. 570 (1982)).

38. Moreover, the Ordinance is unconstitutional. “[N]o...ordinance passed under [Austin’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

39. In an *ultra vires* case, a plaintiff must allege, and ultimately prove, that an officer acted without legal authority or failed to perform a ministerial act. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

40. Defendants lack legal authority to adopt the Ordinance and APG General Order 308.9. Tex. Loc. Gov’t Code § 370.003.

41. Defendants lack the constitutional authority to adopt the Ordinance. TEX. CONST. art. XI, § 5.

Request for a Declaratory Judgment

42. The State of Texas requests that the Court issue a declaratory judgment that the Ordinance and APD General Order 308.9 are *ultra vires* and void.

Application for a Temporary Injunction

43. The State is entitled to a temporary injunction. To obtain a temporary injunction, the State must prove (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

44. The State has a cause of action against Defendants for *ultra vires* acts. *Hollins*, 620 S.W.3d at 405.

45. The State has a probable right of recovery. The City of Austin has no authority to pass the Ordinance and the Austin Police Department has no authority to issue APD General Order 308.9. Tex. Loc. Gov’t Code § 370.003; TEX. CONST. art. XI, § 5.

46. “When the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.” *Hollins*, 620 S.W.3d at 410.

47. Further, “An injury is irreparable if the injured party cannot be adequately compensated in damages, or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204; *City of Dallas v. Brown*, 373 S.W.3d 204, 208 (Tex. App.—Dallas 2012, pet. denied).

48. Consequently, the State is entitled to a temporary injunction.

49. The Court should issue a temporary injunction enjoining Defendants from enforcing the Ordinance and APD General Order 308.9 and ordering Defendants to (a) repeal the Ordinance, (b) cancel APD General Order 308.9, (c) fully enforce the drug laws in Chapter 481, (d) not discipline any employee of the City of Austin for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance or the APD General Order.

Application for Permanent Injunction

50. The State of Texas requests trial on the merits, where it will seek a permanent injunction enjoining Defendants from enforcing the Ordinance and APD General Order 308.9 and ordering Defendants to (a) repeal the Ordinance, (b) cancel APD General Order 308.9, (c) fully enforce the drug laws in Chapter 481, (d) not discipline any employee of the City of Austin for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance or the APD General Order.

Prayer

Therefore, the State of Texas seeks the following relief:

- a. A temporary and permanent injunction enjoining Defendants from enforcing Title 16, Chapter 16 of the City of Austin Code of Ordinances.
- b. A temporary and permanent injunction ordering Defendants to repeal the Ordinance.
- c. A temporary and permanent injunction ordering Defendants to cancel APD General Order 308.9.

- d. A temporary and permanent injunction ordering Defendants to fully enforce the drug laws in Chapter 481 of the Texas Health and Safety Code.
- e. A temporary and permanent injunction ordering Defendants not to discipline any Austin employee for enforcing the drug laws in Chapter 481 of the Texas Health and Safety Code.
- f. A temporary and permanent injunction ordering Defendants to modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance or APD General Order 308.9.
- g. All other relief as the Court deems equitable and just.

Date: January 30, 2024

Respectfully submitted.

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Attorney General

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COUNSEL FOR PLAINTIFF

Cause No. _____

THE STATE OF TEXAS,
Plaintiff,

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In the District Court of

v.

CITY OF AUSTIN; KIRK PRESTON
WATSON, Mayor of Austin; PAIGE ELLIS,
Mayor Pro Tem of Austin; NATASHA
HARPER-MADISON, VANESSA
FUENTES, JOSE VELASQUEZ, JOSE
“CHITO” VELA, RYAN ALTER,
MACKENZIE KELLY, LESLIE POOL,
ZOHAI B “ZO” QADRI, and ALISON
ALTER, Members of the City Council of
Austin; JESUS GARZA, Interim City Manager
of Austin; and ROBIN HENDERSON, Interim
Chief of Police of Austin; in their official
capacities,
Defendants.

Travis County, Texas

_____ Judicial District

Declaration of Heather Dyer

My name is Heather Dyer. I am over eighteen years of age, am of sound mind, and am capable of making this declaration. I am Special Counsel in the Special Litigation Division of the Office of the Texas Attorney General.

I have read the above Original Verified Petition and Application for Temporary Injunction and Permanent Injunction. I verify that the facts stated therein are within my personal knowledge and are true and correct.

DocuSigned by:
Heather Lee Dyer
333855FEB71E478

Heather Dyer

Sworn and subscribed before me on 1/30/2024 | 12:19 PM CST, 2024.



DocuSigned by:
Jessica Yvarra
872F1316A774B3...

Notary Public

308 Misdemeanor Citation

308.9 Misdemeanor Possession of Marijuana

For Class A and B POM offenses, officers should only make an arrest or issue a citation as otherwise permitted by section 308.3 and 308.4 of this general order if doing so as part of:

- (a) the investigation of a high priority, felony-level narcotics case, or
- (b) the investigation of a violent felony.

In all other Class A or B POM cases, and when officers have probable cause to believe the substance is marijuana, officers shall seize the marijuana, write a detailed report titled "possession of marijuana" and release the individual if POM is the sole charge. Officers shall deposit the marijuana as evidence. In the event there are offenses in addition to POM, officers should take appropriate enforcement action for those additional offenses, but should not charge for the POM offense unless it meets one or both of the factors identified in paragraphs (a) or (b) of this general order.

CHAPTER 16-1. - ELIMINATION OF MARIJUANA ENFORCEMENT.

CHAPTER 16-1. - ELIMINATION OF MARIJUANA ENFORCEMENT.

§ 16-1-1 - ENDING CITATIONS AND ARRESTS FOR MISDEMEANOR POSSESSION OF MARIJUANA.

Austin 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 16-1-1(B).

- (A) The only circumstances in which Austin 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 Austin Police Commander, assistant chief of police, or chief of police; and/or
 - (2) the investigation of a violent felony.
- (B) In every instance other than those described in Section 16-1-1(B), if an Austin 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.
- (C) Austin Police Officers shall not issue any charge for possession of marijuana unless it meets one or both of the factors described in Section 16-1-1(B).

Source: Ord. No. 20220118-002, Pt. 1, 1-28-22/election of 5-7-22.

§ 16-1-2 - CITATIONS FOR POSSESSION OF DRUG RESIDUE OR DRUG PARAPHERNALIA SHALL NOT BE ISSUED IN LIEU OF A POSSESSION OF MARIJUANA CHARGE.

- (A) 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.

Source: Ord. No. 20220118-002, Pt. 1, 1-28-22/election of 5-7-22.

§ 16-1-3 - PROHIBITION AGAINST USING CITY FUNDS OR PERSONNEL TO CONDUCT THC CONCENTRATION TESTING.

EXHIBIT 2

- (A) 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 16-1-1(B).
- (B) This prohibition shall not limit the ability of Austin Police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

Source: Ord. No. 20220118-002, Pt. 1, 1-28-22/election of 5-7-22.

Cause No. _____

THE STATE OF TEXAS,
Plaintiff,

v.

CITY OF KILLEEN; DEBBIE NASH-KING,
Mayor of Killeen; NINA COBB, Mayor Pro
Tem of Killeen; JOSE L. SEGARRA, RAMON
ALVAREZ, JESSICA GONZALEZ, JOSEPH
SOLOMON, MICHAEL BOYD, and RIAKOS
ADAMS, Members of the City Council of
Killeen; KENT CAGLE, City Manager of
Killeen; and PEDRO LOPEZ, Chief of Police
of Killeen; in their official capacities,
Defendants.

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In the District Court of

Bell County, Texas

_____ Judicial District

**Plaintiff’s Original Verified Petition,
Application for Temporary Injunction and Permanent Injunction**

The City of Killeen (“Killeen”), a home-rule city, adopted an ordinance designed to “eliminate low-level marijuana enforcement,” in the words of its Chief of Police. This ordinance, and a corresponding “special order” of the Chief of Police, constitute a policy under which Killeen will not fully enforce laws relating to drugs, including Chapter 481.” Chapter 481 makes possession of marijuana and drug paraphernalia an offense. Thus, the Ordinance and the “special order” violate and are preempted by section 370.003 of the Texas Local Government Code: “The governing body of a municipality [or a] municipal police department ... may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law.” The ordinance is also unconstitutional. “[N]o...ordinance passed under [Killeen’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

Consequently, the State of Texas files this Original Petition and Application for Temporary and Permanent Injunction asking the Court to (1) declare the Ordinance and the “special order” *ultra vires* and void; and (2) order Defendants to (a) repeal the Ordinance, (b) cancel the “special

order,” (c) fully enforce the drug laws in chapter 481, (d) not discipline any employee of the City of Killeen for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures that were updated in response to section 22-84 of the Ordinance.

Discovery Control Plan

1. If discovery were needed, it would be intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.3. But this is a case of pure law and discovery is unneeded.

Claims for Relief

2. Plaintiff seeks injunctive relief. Therefore, this suit is not governed by the expedited actions process in Tex. R. Civ. P. 169.

Venue

3. Venue is proper in Bell County under section 15.002(a)(1) and (a)(3) of the Texas Civil Practices and Remedies Code.

Sovereign Immunity Inapplicable

4. Neither sovereign immunity nor governmental immunity applies to the State of Texas’s *ultra vires* claim. “The basic justification for th[e] *ultra vires* exception to sovereign immunity is that *ultra vires* acts—or those acts without authority—should not be considered acts of the state at all.” *Hall v. McRaven*, 508 SW.3d 232, 238 (Tex. 2017) (internal quotation marks and citations omitted). As a result, “*ultra vires* suits do not attempt to exert control over the state—they attempt to reassert the control of the state over one of its agents.” *Id.*

5. Further, Texas Civil Practice and Remedies Code Sec. 37.006(b) states “In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard.” This has been consistently construed as a legislative waiver of governmental immunity in situations like the one at issue here. *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994); *Tex. Lottery Comm’n v. First State Bank of DeQueen*, 325 S.W.3d 628 (Tex. 2010).

Parties

6. Plaintiff is the State of Texas. *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (citing *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015) (“As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws.”); *Yett v. Cook*, 115 Tex. 205, 221, 281 S.W. 837, 842 (1926) (“That the state has a justiciable ‘interest’ in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law does not admit of serious doubt.”)).

7. Defendant City of Killeen is a home-rule municipality.

8. Defendant Debbie Nash-King is the Mayor of Killeen.

9. Defendant Nina Cobb is the Mayor Pro Tem of Killeen.

10. Defendant Jose L. Segarra is Councilmember at Large.

11. Defendant Ramon Alvarez is Councilmember at Large.

12. Defendant Jessica Gonzalez is Councilmember for District #1.

13. Defendant Joseph Solomon is Councilmember for District #2.

14. Defendant Michael Boyd is Councilmember for District #4.

15. Defendant Riakos Adams is Councilmember at Large.

16. Defendant Kent Cagle is City Manager of Killeen.

17. Defendant Pedro Lopez is Chief of Police of Killeen.

18. All Defendants are sued in their official capacities.

19. All Defendants may be served with process through Kent Cagle, City Manager, at 101 North College Street, Killeen, Texas 76541.

Facts

20. Through the ballot initiative process, the citizens of Killeen placed Proposition A on the November 8, 2022, ballot. Proposition A contained a city ordinance which would regulate how

the Killeen Police Department enforces certain marijuana laws governed by Chapter 481 of the Texas Health and Safety Code. Proposition A passed.

21. On November 10, 2022, the Chief of Police of the Killeen Police Department issued “Special Order: 22-07” (Exhibit 1).¹ “Special Order: 22-07” paraphrased some parts of the Ordinance included in Proposition A. Specifically, it stated:

In accordance with the newly voted Proposition A to eliminate low-level marijuana enforcement that was held in the general election on November 8, 2022, the following will take effect immediately:

- No arrests will be made for misdemeanor possession of Marijuana*
 - In lieu of a marijuana arrest, officers will not arrest for possession of drug paraphernalia or drug residue^[2]
- City funds and city employees are prohibited from requesting, conducting or obtaining testing for THC.*
- The odor of marijuana or hemp shall not be considered for probable cause for any search or seizure.*^[3]

* These do not apply in instances where a felony level narcotics case has been designated a high priority investigation by a Captain or above and/or the investigation of a violent felony.

22. The Killeen City Council amended the ordinance on December 6, 2022. As codified and published, the modified ordinance is now in effect as City of Killeen Code of Ordinances Chapter 22 – Police, Article V – Marijuana Enforcement (“the Ordinance”).⁴(Exhibit 2)

¹ Exhibit 1 was created from a news article in the Killeen Daily Herald with Special Order 22-07 embedded in the article. The article can be accessed here: https://kdhnews.com/news/local/kpd-special-order-ends-low-level-marijuana-enforcement/article_481d1d0e-61d8-11ed-b3e6-1b437a0a6b61.html

² “Possession of drug residue” is not an offense.

³ A similar provision was in Proposition A but was not adopted by the City Council. See “Editor’s Note” to Section 22-83, quoted below.

23. The Ordinance reads as follows:

ARTICLE V. - MARIJUANA ENFORCEMENT

Sec. 22-80. - Ending citations and arrests for misdemeanor possession of marijuana.

- (a) Killeen 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 (b).
- (b) The only circumstances in which Killeen 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 a Killeen police commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.
- (c) In every instance other than those described in (b), if a Killeen 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.
- (d) Killeen police officers shall not issue any charge for possession of marijuana unless it meets at least one of the factors described in (b).

Section 22-81. - Citations for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

- (a) 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.

Section 22-82. - Prohibition against using City funds or personnel to conduct THC concentration testing.

⁴ Available at https://library.municode.com/tx/killeen/codes/code_of_ordinances?nodeId=PTIICOOR_CH

- (a) 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 22-80(b).
- (b) This prohibition shall not limit the ability of Killeen police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

Section 22-83. - Reserved.

Editor's note— Ord. No. 22-089, § I, adopted Dec. 6, 2022, repealed § 22-83, which pertained to prohibition against city police using the odor of marijuana or hemp as probable cause for search or seizure and derived from an ord. adopted Nov. 8, 2022.

Section 22-84. - Training and policy updates; community involvement.

- (a) The city manager and chief of police shall ensure that Killeen police officers receive adequate training concerning each of the provisions of this ordinance.
- (b) The city manager shall work with the Killeen Police Chief and other relevant stakeholders identified in (c) to update city policies and internal operating procedures in accordance with this ordinance. Actions that may be necessary include, but are not limited to: updating the Killeen Police Department General Manual; updating the training bulletin; training officers; and updating internal databases and systems.
- (c) The city manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this ordinance, which shall include community stakeholders including: the police chiefs advisory panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the city; immigrant communities; and communities of color. These meetings shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the city's website.

Section 22-85. - Discipline.

(a) Any violation of this chapter may subject a Killeen police officer to discipline as provided by the Texas Local Government Code or as provided in city policy.

Section 22-86. - Reporting.

(a) Within three (3) months of the adoption of this ordinance, and once per year thereafter, the city manager or their designee shall present to the city council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the city's implementation of this ordinance.

Legal Analysis

24. Because Killeen is a home-rule municipality, it has “the full power of self-government” and does not need a special grant from the Legislature to enact local ordinances. *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013). However, “no...ordinance passed under [Killeen’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

25. Under State law, “The governing body of a municipality ... [or] a municipal police department ... may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law.” Tex. Local Gov’t Code § 370.003.

26. Chapter 481 of the Health and Safety Code provides that possession of marijuana and drug paraphernalia are offenses. Tex. Health and Safety Code §§ 481.121, .125.

27. Section 22-80 of the Ordinance prohibits Killeen police officers from issuing citations or making arrests for Class A or Class B misdemeanor possession of marijuana. Thus, it is a policy under which Killeen will not “fully enforce ... Chapter 481.” Therefore, section 22-80 violates § 370.003.

28. Section 22-81 of the Ordinance prohibits Killeen police officers from issuing Class C misdemeanor citations for “possession of drug residue [sic; there is no such offense] or drug paraphernalia ... in lieu of a possession of marijuana charge.” Thus, it is a policy under which Killeen will not “fully enforce ... Chapter 481.” Therefore, section 22-81 violates § 370.003.

29. Section 22-82 of the Ordinance prohibits city funds and personnel “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 certain circumstances. Thus, section 22-82 is a policy under which Killeen will not “fully enforce ... Chapter 481.” Therefore, it violates § 370.003.

30. Section 22-84 of the Ordinance requires that Killeen police officers “receive adequate training concerning each of the provisions of this ordinance,” requires city policies and internal operating procedures to be updated “in accordance with this ordinance”, and requires “regular meetings to discuss the development of policies, procedures, and practices related to this ordinance, which shall include community stakeholders ... community organizations [and] communities of color.” The Ordinance violates state law, so having meetings to discuss implementation of the Ordinance is a policy under which Killeen will not “fully enforce ... Chapter 481.” Therefore, section 22-84 violates § 370.003.

31. Section 22-85 of the Ordinance states, “Any violation of this chapter may subject a Killeen police officer to discipline.” This is policy under which Killeen will not “fully enforce ... Chapter 481.” In fact, Killeen threatens officers who do enforce Chapter 481 with “discipline.” Therefore, section 22-85 violates § 370.003.

32. Section 22-86 requires the city manager to submit regular reports to the city council “concerning the city’s implementation of this ordinance.” The Ordinance violates state law, so reports discussing implementation of the Ordinance is a policy under which Killeen will not “fully enforce ... Chapter 481.” Therefore, section 22-86 violates § 370.003.

33. “Special Order: 22-07” is also a policy under which Killeen will not “fully enforce ... Chapter 481.” Therefore, “Special Order: 22-07” violates § 370.003.

34. Because the Ordinance and “Special Order: 22-07” violate section 370.003 of the Local Government Code, Defendants “may not adopt” them. Tex. Loc. Gov’t Code § 370.003.

35. Although local ordinances are presumed valid, if an ordinance is unmistakably and clearly at odds with a statute, the ordinance is preempted. *Dall. Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993).

36. In a preemption challenge, a local ordinance - even a reasonable one - “is unenforceable to the extent it conflicts with the state statute.” *Id.* (citation omitted).

37. The Ordinance directly conflicts with the state statute; thus it is unenforceable. *See id.* (citing *City of Brookside Vill. v. Comeau*, 633 S.W.2d 790, 796 (Tex.1982), *cert. denied*, 459 U.S. 1087, 103 S.Ct. 570 (1982)).

38. Moreover, the Ordinance is unconstitutional. “[N]o...ordinance passed under [Killeen’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

39. In an *ultra vires* case, a plaintiff must allege, and ultimately prove, that an officer acted without legal authority or failed to perform a ministerial act. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

40. Defendants lack legal authority to adopt the Ordinance and the Special Order. Tex. Loc. Gov’t Code § 370.003.

41. Defendants lack the constitutional authority to adopt the Ordinance. TEX. CONST. art. XI, § 5.

Request for a Declaratory Judgment

42. The State of Texas requests that the Court issue a declaratory judgment that the Ordinance and the Special Order are *ultra vires* and void.

Application for Temporary Injunction

43. The State is entitled to a temporary injunction. To obtain a temporary injunction, the State must prove (1) a cause of action against the defendant; (2) a probable right to the relief sought;

and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

44. The State has a cause of action against Defendants for *ultra vires* acts. *Hollins*, 620 S.W.3d at 405.

45. The State has a probable right of recovery. The City of Killeen has no authority to pass the Ordinance and the Killeen Police Department has no authority to issue “Special Order: 22-07.” Tex. Loc. Gov’t Code § 370.003; TEX. CONST. art. XI, § 5.

46. “When the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.” *Hollins*, 620 S.W.3d at 410.

47. Further, “An injury is irreparable if the injured party cannot be adequately compensated in damages, or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204; *City of Dallas v. Brown*, 373 S.W.3d 204, 208 (Tex. App.—Dallas 2012, pet. denied).

48. Consequently, the State is entitled to a temporary injunction.

49. The Court should issue a temporary injunction enjoining Defendants from enforcing the Ordinance and the Special Order and ordering Defendants to (a) repeal the Ordinance, (b) cancel the “special order,” (c) fully enforce the drug laws in Chapter 481, (d) not discipline any employee of the City of Killeen for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures that were updated in response to section 22-84 of the Ordinance.

Application for Permanent Injunction

50. The State of Texas requests trial on the merits, where it will seek a permanent injunction enjoining Defendants from enforcing the Ordinance and the Special Order and ordering Defendants to (a) repeal the Ordinance, (b) cancel the “special order,” (c) fully enforce the drug laws in Chapter 481, (d) not to discipline any employee of the City of Killeen for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures that were updated in response to section 22-84 of the Ordinance.

Prayer

Therefore, the State of Texas seeks the following relief:

- a. A temporary and permanent injunction enjoining Defendants from enforcing Article V, Chapter 22 of the City of Killeen Code of Ordinances.
- b. A temporary and permanent injunction ordering Defendants to repeal the Ordinance.
- c. A temporary and permanent injunction ordering Defendants to cancel “Special Order: 22-07.”
- d. A temporary and permanent injunction ordering Defendants to fully enforce the drug laws in Chapter 481 of the Texas Health and Safety Code.
- e. A temporary and permanent injunction ordering Defendants not to discipline any Killeen employee for enforcing the drug laws in Chapter 481 of the Texas Health and Safety Code.
- f. A temporary and permanent injunction ordering Defendants to modify city policies and internal operating procedures that were updated in response to section 22-84 of the Ordinance.
- g. All other relief as the Court deems equitable and just.

Date: January 30, 2024

Respectfully submitted.

KEN PAXTON
Attorney General

/s/ JACOB PRZADA
JACOB PRZADA
Special Counsel
Tex. State Bar No. 24125371

BRENT WEBSTER
First Assistant Attorney General

HEATHER DYER
Special Counsel
Tex. State Bar No. 24123044

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RYAN D. WALTERS
Chief, Special Litigation Division

COUNSEL FOR PLAINTIFF

Cause No. _____

THE STATE OF TEXAS,
Plaintiff,

v.

CITY OF KILLEEN; DEBBIE NASH-KING,
Mayor of Killeen; NINA COBB, Mayor Pro
Tem of Killeen; JOSE L. SEGARRA, RAMON
ALVAREZ, JESSICA GONZALEZ, JOSEPH
SOLOMON, MICHAEL BOYD, and RIAKOS
ADAMS, Members of the City Council of
Killeen; KENT CAGLE, City Manager of
Killeen; and PEDRO LOPEZ, Chief of Police
of Killeen; in their official capacities,
Defendants.

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In the District Court of

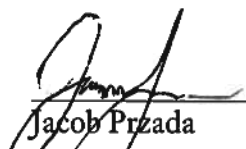
Bell County, Texas

_____ Judicial District

Declaration of Jacob Przada

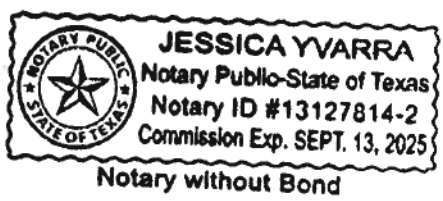
My name is Jacob Przada. I am over eighteen years of age, am of sound mind, and am capable of making this declaration. I am Special Counsel in the Special Litigation Division of the Office of the Texas Attorney General.

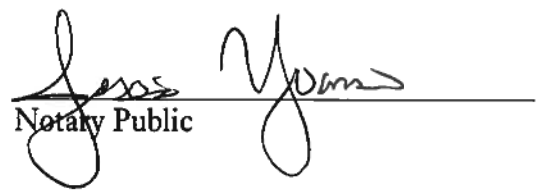
I have read the above Original Verified Petition and Application for Temporary Injunction and Permanent Injunction. I verify that the facts stated therein are within my personal knowledge and are true and correct.



Jacob Przada

Sworn and subscribed before me on Jan 30, 2023.





Notary Public

KILLEEN POLICE DEPARTMENT

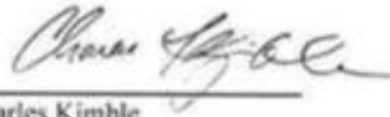
SPECIAL ORDER: 22-07

To: All Department Employees
Subject: **Misdemeanor Marijuana Arrests**
Date: November 10, 2022

In accordance with the newly voted in Proposition A to eliminate low-level marijuana enforcement that was held in the general election on November 8, 2022, the following will take effect immediately:

- No arrests will be made for misdemeanor possession of Marijuana*
 - In lieu of a marijuana arrest, officers will not arrest for possession of drug paraphernalia or drug residue
- City funds and city employees are prohibited from requesting, conducting or obtaining testing for THC.*
- The odor of marijuana or hemp shall not be considered for probable cause for any search or seizure.*

*These do not apply in instances where a felony level narcotics case has been designated a high priority investigation by a Captain or above and/or the investigation of a violent felony.



Charles Kimble
Chief of Police

ARTICLE V. - MARIJUANA ENFORCEMENT

Sec. 22-80. - Ending citations and arrests for misdemeanor possession of marijuana.

- (a) Killeen 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 (b).
- (b) The only circumstances in which Killeen 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 a Killeen police commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.
- (c) In every instance other than those described in (b), if a Killeen 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.
- (d) Killeen police officers shall not issue any charge for possession of marijuana unless it meets at least one (1) of the factors described in (b).

(Ord. of 11-8-22)

Sec. 22-81. - Citations for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

- (a) 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.

(Ord. of 11-8-22)

Sec. 22-82. - Prohibition against using city funds or personnel to conduct THC concentration testing.

- (a) 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 22-80(b).
- (b) This prohibition shall not limit the ability of Killeen police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

(Ord. of 11-8-22)

Sec. 22-83. - Reserved.

EXHIBIT

2

Editor's note— Ord. No. 22-089, § I, adopted Dec. 6, 2022, repealed § 22-83, which pertained to prohibition against city police using the odor of marijuana or hemp as probable cause for search or seizure and derived from an ord. adopted Nov. 8, 2022.

Sec. 22-84. - Training and policy updates; community involvement.

- (a) The city manager and chief of police shall ensure that Killeen police officers receive adequate training concerning each of the provisions of this ordinance.
- (b) The city manager shall work with the Killeen Police Chief and other relevant stakeholders identified in (c) to update city policies and internal operating procedures in accordance with this ordinance. Actions that may be necessary include, but are not limited to: updating the Killeen Police Department General Manual; updating the training bulletin; training officers; and updating internal databases and systems.
- (c) The city manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this ordinance, which shall include community stakeholders including: the police chiefs advisory panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the city; immigrant communities; and communities of color. These meetings shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the city's website.

(Ord. of 11-8-22)

Sec. 22-85. - Discipline.

- (a) Any violation of this chapter may subject a Killeen police officer to discipline as provided by the Texas Local Government Code or as provided in city policy.

(Ord. of 11-8-22)

Sec. 22-86. - Reporting.

- (a) Within three (3) months of the adoption of this ordinance, and once per year thereafter, the city manager or their designee shall present to the city council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the city's implementation of this ordinance.

(Ord. of 11-8-22)

Cause No. _____

THE STATE OF TEXAS,	§	In the District Court of
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
CITY OF DENTON; GERARD	§	
HUDSPETH, Mayor of Denton; BRIAN	§	
BECK, Mayor Pro Tem of Denton; VICKI	§	Denton County, Texas
BYRD, PAUL MELTZER, JOE	§	
HOLLAND, BRANDON CHASE	§	
McGEE, and CHRIS WATTS, Members of	§	
the City Council of Denton; SARA	§	
HENSLEY, City Manager of Denton; and	§	
DOUG SHOEMAKER, Chief of Police of	§	_____ Judicial District
Denton; in their official capacities,	§	
<i>Defendants.</i>		

**Plaintiff’s Original Verified Petition,
Application for Temporary Injunction and Permanent Injunction**

The City of Denton (“Denton”), a home-rule city, adopted an ordinance designed to eliminate marijuana enforcement, knowing full well that “the City does not have the authority to implement” the ordinance. *See* Letter from City Manager to City Council (Exhibit 1). This ordinance and any corresponding Denton Police Department general order or directive, constitute a policy under which Denton will not fully enforce laws relating to drugs, including Chapter 481. Chapter 481 makes possession of marijuana and drug paraphernalia an offense. Thus, the ordinance and any corresponding Denton Police Department general order or directive violate and are preempted by section 370.003 of the Texas Local Government Code: “The governing body of a municipality [or a] municipal police department ... may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law.” The ordinance is also unconstitutional. “[N]o...ordinance passed under [Denton’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

Consequently, the State of Texas files this Original Petition and Application for Temporary and Permanent Injunction asking the Court to (1) declare the ordinance and any corresponding

Denton Police Department general order or directive *ultra vires* and (2) order Defendants to (a) repeal the Ordinance, (b) cancel any corresponding Denton Police Department general order or directive, (c) fully enforce the drug laws in chapter 481, (d) not discipline any employee of the City of Denton for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the ordinance.

Discovery Control Plan

1. If discovery were needed, it would be intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.3. But this is a case of pure law and discovery is unneeded.

Claims for Relief

2. Plaintiff seeks injunctive relief. Therefore, this suit is not governed by the expedited actions process in Tex. R. Civ. P. 169.

Venue

3. Venue is proper in Denton County under section 15.002(a)(1) and (a)(3) of the Texas Civil Practices and Remedies Code.

Sovereign Immunity Inapplicable

4. Neither sovereign immunity nor governmental immunity applies to the State of Texas's *ultra vires* claim. "The basic justification for th[e] *ultra vires* exception to sovereign immunity is that *ultra vires* acts—or those acts without authority—should not be considered acts of the state at all." *Hall v. McRaven*, 508 SW.3d 232, 238 (Tex. 2017) (internal quotation marks and citations omitted). As a result, "*ultra vires* suits do not attempt to exert control over the state—they attempt to reassert the control of the state over one of its agents." *Id.*

5. Further, Texas Civil Practice and Remedies Code Sec. 37.006(b) states "In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard." This has been consistently construed as a legislative waiver of governmental immunity in situations like the one at issue here. *Tex. Educ. Agency v. Leeper*, 893

S.W.2d 432, 446 (Tex. 1994); *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628 (Tex. 2010).

Parties

6. Plaintiff is the State of Texas. *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (citing *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015) (“As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws.”); *Yett v. Cook*, 115 Tex. 205, 221, 281 S.W. 837, 842 (1926) (“That the state has a justiciable ‘interest’ in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law does not admit of serious doubt.”)).

7. Defendant City of Denton is a home-rule municipality.

8. Defendant Gerard Hudspeth is the Mayor of Denton.

9. Defendant Brian Beck is the Mayor Pro Tem of Denton and Councilmember for District #2.

10. Defendant Vicki Byrd is Councilmember for District #1.

11. Defendant Paul Meltzer is Councilmember for District #3.

12. Defendant Joe Holland is Councilmember for District #4.

13. Defendant Brandon Chase McGee is a Councilmember At-Large.

14. Defendant Chris Watts is a Councilmember At-Large.

15. Defendant Sara Hensley is City Manager of Denton.

16. Defendant Doug Shoemaker is Chief of Police of Denton.

17. All Defendants are sued in their official capacities.

18. All Defendants may be served with process through Sara Hensley, City Manager, at 215 E. McKinney Street, Denton, Texas 76201.

Facts

19. Through the ballot initiative process, the citizens of Denton placed Proposition B on the November 8, 2022, ballot. Proposition B contained a city ordinance which would regulate how Denton Police Department enforces certain marijuana laws governed by Chapter 481 of the Texas Health and Safety Code. Proposition B passed.

20. The day after the election, Denton City Manager Sara Hensley sent a memo to Denton City Council advising them that the ordinance was approved by voters and would become effective after the election is canvassed by City Council. The memo outlines reasons why the City does not have the authority to implement some of the provisions of Proposition B. For instance, Ms. Hensley acknowledges that “Proposition B imposes explicit prohibitions on Denton Police Department’s ability to enforce laws related to low-level marijuana possession,” but concedes that **“those prohibitions are in direct conflict with, and are superseded by, the Texas Code of Criminal Procedure.”** (Exhibit 1).

21. Ms. Hensley, perhaps in an effort to appease both the voters and the State, writes that “[i]n practice, a Denton Police Officer will continue to have authority to enforce state laws relating to marijuana. **Neither the City, the City Manager, nor the Chief of Police has the authority to direct officers to do otherwise or to discipline an officer when they are acting in accordance with state law.**” Exhibit 1 (emphasis added). Meanwhile, the Ordinance provides for discipline of Denton City Police Officers for violating it.

22. The Denton City Council codified and published the ordinance anyway. The ordinance is now in effect as City of Denton Code of Ordinances Chapter 21 – Offenses, Article V - Marijuana Enforcement (“the Ordinance”).¹

23. The Ordinance reads as follows:

¹ Available at https://library.municode.com/tx/denton/codes/code_of_ordinances/423747?nodeId=SPACOR_CH21OF_ARTVMAEN

ARTICLE V. - MARIJUANA ENFORCEMENT

Sec. 21-80. - Ending citations and arrests for misdemeanor possession of marijuana.

- (a) Denton 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 subsection (b).
- (b) The only circumstances in which Denton 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 a Denton Police Commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.
- (c) In every instance other than those described in (b), if a Denton 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.
- (d) Denton Police Officers shall not issue any charge for possession of marijuana unless it meets at least one of the factors described in subsection (b).

Section 21-81. - Citations for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

- (a) 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.

Section 21-82. - Prohibition against using city funds or personnel to conduct THC concentration testing.

- (a) 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 subsection 21-80(b).

- (b) This prohibition shall not limit the ability of Denton Police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

Section 21-83. - Prohibition against city police using the odor of marijuana or hemp has probable cause for search or seizure.

- (a) Denton 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 subsection 21-80(b).

Section 21-84. - Training and policy updates; community involvement.

- (a) The city manager and chief of police shall ensure that Denton Police Officers receive adequate training concerning each of the provisions of this ordinance.
- (b) The city manager shall work with the Denton Police Chief and other relevant stakeholders identified in (c) to update city policies and internal operating procedures in accordance with this article. Actions that may be necessary include, but are not limited to: updating the Denton Police Department General Manual; updating the training bulletin; training officers; and updating internal databases and systems.
- (c) The city manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this article, which shall include community stakeholders including: the police chief's advisory panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the city; immigrant communities; and communities of color. These meetings shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the city's website.

Section 21-85. - Discipline.

(a) Any violation of this chapter may subject a Denton Police Officer to discipline as provided by the Texas Local Government Code or as provided in city policy.

Section 21-86. - Reporting.

(a) Within three (3) months of the adoption of this article, and once per year thereafter, the city manager or their designee shall present to the city council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the city's implementation of this article.

Legal Analysis

24. Because Denton is a home-rule municipality, it has “the full power of self-government” and does not need a special grant from the Legislature to enact local ordinances. *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013). However, “no...ordinance passed under [Denton’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

25. Under State law, “The governing body of a municipality ... [or] a municipal police department ... may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law.” Tex. Local Gov’t Code § 370.003.

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27. Section 21-80 of the Ordinance prohibits Denton police officers from issuing citations or making arrests for Class A or Class B misdemeanor possession of marijuana. Thus, it is a policy under which Denton will not “fully enforce ... Chapter 481.” Therefore, section 21-80 violates § 370.003.

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paraphernalia ... in lieu of a possession of marijuana charge.” Thus, it is a policy under which Denton will not “fully enforce ... Chapter 481.” Therefore, section 22-81 violates § 370.003.

29. Section 21-82 of the Ordinance prohibits city funds and personnel “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 certain circumstances. Thus, section 21-82 is a policy under which Denton will not “fully enforce ... Chapter 481.” Therefore, it violates § 370.003.

30. Section 21-84 of the Ordinance requires that Denton Police Officers “receive adequate training concerning each of the provisions of this article”, requires city policies and internal operating procedures to be updated “in accordance with this article”, and requires “regular meetings to discuss the development of policies, procedures, and practices related to this article, which shall include community stakeholders ... community organizations [and] communities of color.” The Ordinance violates state law, so having meetings to discuss implementation of the Ordinance is a policy under which Denton will not “fully enforce ... Chapter 481.” Therefore, section 21-84 violates § 370.003.

31. Section 21-85 of the Ordinance states, “Any violation of this chapter may subject a Denton Police Officer to discipline....” This is a policy under which Denton will not “fully enforce...Chapter 481.” In fact, Denton threatens officers who do not enforce Chapter 481 with “discipline.” Therefore, section 21-85 violates § 370.003.

32. Section 21-86 requires the city manager to submit regular reports to the city council “concerning the city’s implementation of this ordinance.” The Ordinance violates state law, so reports discussing implementation of the Ordinance is a policy under which Denton will not “fully enforce ... Chapter 481.” Therefore, section 21-86 violates § 370.003.

33. Because the Ordinance violates section 370.003 of the Local Government Code, Defendants “may not adopt” it. Tex. Loc. Gov’t Code § 370.003.

34. Although local ordinances are presumed valid, if an ordinance is unmistakably and clearly at odds with a statute, the ordinance is preempted. *Dall. Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993).

35. In a preemption challenge, a local ordinance - even a reasonable one - “is unenforceable to the extent it conflicts with the state statute.” *Id.* (citation omitted).

36. The Ordinance directly conflicts with the state statute; thus it is unenforceable. *See id.* (citing *City of Brookside Vill. v. Comeau*, 633 S.W.2d 790, 796 (Tex.1982), *cert. denied*, 459 U.S. 1087, 103 S.Ct. 570 (1982)).

37. Moreover, the Ordinance is unconstitutional. “[N]o...ordinance passed under [Denton’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

38. In an *ultra vires* case, a plaintiff must allege, and ultimately prove, that an officer acted without legal authority or failed to perform a ministerial act. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

39. Defendants lack legal authority to adopt the Ordinance and any corresponding police department general order or directive. Tex. Loc. Gov’t Code § 370.003.

40. Defendants lack the constitutional authority to adopt the Ordinance. TEX. CONST. art. XI, § 5.

Request for a Declaratory Judgment

41. The State of Texas requests that the Court issue a declaratory judgment that the Ordinance and any corresponding police department general order or directive are *ultra vires* and void.

Application for a Temporary Injunction

42. The State is entitled to a temporary injunction. To obtain a temporary injunction, the State must prove (1) a cause of action against the defendant; (2) a probable right to the relief sought;

and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

43. The State has a cause of action against Defendants for *ultra vires* acts. *Hollins*, 620 S.W.3d at 405.

44. The State has a probable right of recovery. The City of Denton has no authority to pass the Ordinance and the Denton Police Department has no authority to issue a corresponding general order or directive. Tex. Loc. Gov't Code § 370.003; TEX. CONST. art. XI, § 5.

45. “When the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.” *Hollins*, 620 S.W.3d at 410.

46. Further, “An injury is irreparable if the injured party cannot be adequately compensated in damages, or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204; *City of Dallas v. Brown*, 373 S.W.3d 204, 208 (Tex. App.—Dallas 2012, pet. denied).

47. Consequently, the State is entitled to a temporary injunction.

48. The Court should issue a temporary injunction enjoining Defendants from enforcing the Ordinance and any corresponding Denton Police Department general order or directive and ordering Defendants to (a) repeal the Ordinance, (b) cancel any corresponding Denton Police Department general order or directive, (c) fully enforce the drug laws in Chapter 481, (d) not discipline any employee of the City of Denton for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance.

Application for Permanent Injunction

49. The State of Texas requests trial on the merits, where it will seek a permanent injunction enjoining Defendants from enforcing the Ordinance and any corresponding Denton Police Department general order or directive and ordering Defendants to (a) repeal the Ordinance, (b)

cancel any corresponding Denton Police Department general order or directive, (c) fully enforce the drug laws in Chapter 481, (d) not discipline any employee of the City of Denton for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance.

Prayer

Therefore, the State of Texas seeks the following relief:

- a. A temporary and permanent injunction enjoining Defendants from enforcing Chapter 21, Article V of the City of Denton Code of Ordinances.
- b. A temporary and permanent injunction ordering Defendants to repeal the Ordinance.
- c. A temporary and permanent injunction ordering Defendants to cancel any corresponding Denton Police Department general order or directive.
- d. A temporary and permanent injunction ordering Defendants to fully enforce the drug laws in Chapter 481 of the Texas Health and Safety Code.
- e. A temporary and permanent injunction ordering Defendants not to discipline any Denton employee for enforcing the drug laws in Chapter 481 of the Texas Health and Safety Code.
- f. A temporary and permanent injunction ordering Defendants to modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance.
- g. All other relief as the Court deems equitable and just.

Date: January 30, 2024

Respectfully submitted.

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Attorney General

/S/ JACOB PRZADA
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Chief, Special Litigation Division

COUNSEL FOR PLAINTIFF

Cause No. _____

THE STATE OF TEXAS,
Plaintiff,

v.

CITY OF DENTON; GERARD
HUDSPETH, Mayor of Denton; BRIAN
BECK, Mayor Pro Tem of Denton; VICKI
BYRD, PAUL MELTZER, JOE
HOLLAND, BRANDON CHASE
McGEE, and CHRIS WATTS, Members of
the City Council of Denton; SARA
HENSLEY, City Manager of Denton; and
DOUG SHOEMAKER, Chief of Police of
Denton; in their official capacities,
Defendants.

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In the District Court of


Denton County, Texas

_____ Judicial District

Declaration of Jacob Przada

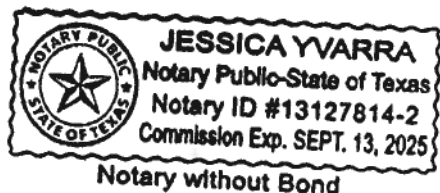
My name is Jacob Przada. I am over eighteen years of age, am of sound mind, and am capable of making this declaration. I am Special Counsel in the Special Litigation Division of the Office of the Texas Attorney General.

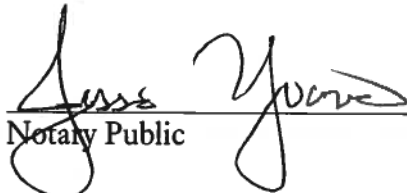
I have read the above Original Verified Petition and Application for Temporary Injunction and Permanent Injunction. I verify that the facts stated therein are within my personal knowledge and are true and correct.



Jacob Przada

Sworn and subscribed before me on Jan. 30, 2024.





Notary Public



TO: City Council
FROM: Sara Hensley, City Manager
RE: **Proposition B Implementation**
DATE: Nov. 9, 2022

In yesterday's election, an ordinance relating to marijuana enforcement, Proposition B, was approved by voters. This ordinance will become effective after the election is canvassed by the City Council, currently scheduled to be considered during a Special Meeting on Friday, Nov. 18.

Implementation Considerations for Proposition B

While we continue to be dedicated to serving the community by making marijuana possession a low priority and recognize the statement expressed by voters regarding marijuana enforcement, the passage of Proposition B presents a challenge to the City regarding our ability to implement its provisions. These issues have previously been described in briefings to the City Council but can essentially be reduced to the issue of certain provisions of Proposition B being in direct conflict with state law. Chapter 370.003 of the Texas Local Government Code prohibits the City Council and Police Department from adopting a policy that does not fully enforce state and federal laws relating to drugs, including marijuana. While Proposition B imposes explicit prohibitions on the Denton Police Department's ability to enforce laws related to low-level marijuana possession, **those prohibitions are in direct conflict with, and are superseded by, the Texas Code of Criminal Procedure**, which vests police officers with the authority and duty to enforce state law, including the ability to use the smell of marijuana as probable cause to conduct a search or seizure, the right to make an arrest, and where appropriate, the right to issue a citation for the possession of marijuana or drug paraphernalia, regardless of the quantity of marijuana. **In short, the City does not have the authority to implement some provisions of Proposition B** without changes to current drug laws by Congress and the Texas Legislature.

In practice, a Denton Police Officer will continue to have the authority to enforce state laws relating to marijuana. Neither the City, the City Manager, nor the Chief of Police has the authority to direct officers to do otherwise or to discipline an officer when they are acting in accordance with state law.

Proposition B further prescribes obligations on the part of the City Manager. In Section 21-84(b) of the ordinance, the City Manager is directed, along with the Chief of Police, to "update city policies and internal operating procedures in accordance with this ordinance" including updates to the Denton Police Department General Orders. The Chief of Police cannot adopt a General Order that is in conflict with state law and I, as the City Manager to whom the Chief of Police reports, do not have the authority to direct him to act in violation of state law.

In addition, Proposition B prohibits the City from using City funds or personnel to request, conduct, or obtain THC testing of any cannabis-related substance. While Council has budgetary authority, this provision of Proposition B is in direct conflict with the City Charter, which expressly excludes the appropriation of money from an initiative ordinance, though the Council may choose to amend the budget at its discretion. The passage of Proposition B will also not impact the city's existing employee drug testing policies.

Public Statement Regarding Proposition B

Given the above challenges in implementation, the recognition that other law enforcement agencies are not subject to Proposition B, and the legal distinctions between marijuana and other THC derivatives, the City has drafted and released the **attached** public statement.

I am and City staff are concerned with the potential for incorrect information regarding the applicability and enforceability of Proposition B to quickly spread in the community, which could lead to a confrontation between the police and a member of the community should an officer act in accordance with State law, while the community member mistakenly believes that action violates Proposition B. Therefore, staff have shared this statement with the media and community stakeholders in order to mitigate the negative effects stemming from incorrect information.

Ongoing Approach to Marijuana Enforcement

Prior to the passing of Proposition B, the City of Denton Police Department already significantly revised its marijuana enforcement policy and practices which are enumerated in its General Orders. Between June 2021 and July 2022, of the 65 arrests that the Denton Police Department made for marijuana possession under 4 ounces, 15 of these charges accompanied other controlled substances unrelated to marijuana, and weapons were involved in 31 of these cases.

Going forward, Chief Shoemaker has affirmed that enforcement of marijuana possession will continue to be a low priority for the Denton Police Department. However, public safety requires the Police Department's ability to use the smell and possession of marijuana, regardless of the amount, as well as the possession of drug paraphernalia, as probable cause to conduct further investigation, which as noted above, may lead to more serious crimes being charged, including the possession of a firearm and crimes of violence against members of our community.

Next Steps

In accordance with Section 21-86 of the ordinance, I will report to Council within three months' time regarding its implementation.

Attachment

CC: Mack Reinwand, City Attorney
Frank Dixon, Assistant City Manager
Doug Shoemaker, Chief of Police
City Manager's Office



FOR IMMEDIATE RELEASE

Stuart Birdseye • (940) 349-8009 • Stuart.Birdseye@cityofdenton.com

Information on the Passing of Proposition B, Relating to Marijuana Possession

DENTON, TX, Nov. 9, 2022 – Following the passage of Proposition B, which outlines actions to be taken regarding marijuana possession in the City of Denton, there is important information to share to help understand what this means for the Denton community. This ordinance, which was approved by voters, will become effective after the election is canvassed by the City Council, currently scheduled to be considered during a Special Meeting on Friday, Nov. 18.

Current Practices

Prior to the passage of Proposition B, the City of Denton Police Department already significantly revised its marijuana enforcement policy and practices which are enumerated in its general orders. Between June 2021 and July 2022, of the 65 arrests that the Denton Police Department made for marijuana possession under 4 ounces, 15 of these charges accompanied other controlled substances unrelated to marijuana, and weapons were involved in 31.

The existing policy leaves officers with the discretion to continue an investigation after the discovery of marijuana if other crimes are suspected, such as driving while impaired, unlawful carrying of a weapon, or possession of a controlled substance in a drug-free zone (such as a school, park, or daycare).

“As a forward-thinking agency, marijuana possession alone has not been a priority for the Denton Police Department for several years,” said Police Chief Doug Shoemaker. “This will continue to be the case. With that said, officers must maintain discretion to be able to keep our community safe from harm. When marijuana possession pairs with other crimes that affect public safety, including offenses such as driving while intoxicated or firearms violations, such acts cannot and will not be ignored.”

Implementation

With the voter approval of Proposition B, City staff has been working to determine which portions of the ordinance will be incorporated into the Police Department’s General Orders, also known as department policies. This review is necessary since Chapter 370.003 of the Texas Local Government Code prohibits the City Council and Police Department from adopting a policy that does not fully enforce state and federal laws relating to drugs, including marijuana, as well as the Texas Code of Criminal Procedure which vests police officers with the authority and duty to enforce state law, including the possession of marijuana. Because portions of Proposition B conflict with and may be superseded by existing state and federal laws, some provisions of Proposition B may not be implemented without changes to those laws by the United States Congress and Texas Legislature.

OUR CORE VALUES

Inclusion • Collaboration • Quality Service • Strategic Focus • Fiscal Responsibility

It is also important to note, especially for students and visitors, that City policies and the Denton Police Department's General Orders do not apply to the other law enforcement agencies that have jurisdiction to enforce state law within the City of Denton. These agencies include, but are not limited to, the University of North Texas Police Department, Texas Woman's University Department of Public Safety, the Denton County Sheriff's Office, and the Texas Department of Public Safety, which all have their own policies and practices when it comes to marijuana investigations and arrests and are not subject to Proposition B.

Another important distinction is that the possession of marijuana and the possession of THC products are entirely different offenses. Per Texas state law, possessing any amount of THC, which is often the substance in edibles or vape cartridges, is a felony offense and this is not covered by Proposition B. As a result, possessing a single vape cartridge or a single edible would be classified as a felony. Also, when THC is added to any other substance, such as brownies or cookies, state law takes the total weight of the combined substances into consideration rather than the pure weight of the added THC. Meaning, per state law, if you bake a small amount of THC into a pound of brownies, you could be charged with possessing a pound of THC, a first-degree felony.

The Denton Police Department is dedicated to serving the community in a fair and safe manner. The department understands that, with the voter approval of Proposition B, voters wish to reduce punishments for low-level marijuana possession. The department is committed to continuing the innovative policies that are in place, which have resulted in a significant reduction in arrests since implemented in 2019 and updated in 2022, but must do so within the parameters of state and federal law. The Police Department will continue to assess all aspects of this ordinance, as passed by voters, to determine what may be implemented in accordance with both the current law as well as the voices of the population we serve.

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Visit www.cityofdenton.com for more news and to stay updated.

ARTICLE V. - MARIJUANA ENFORCEMENT

Sec. 21-80. - Ending citations and arrests for misdemeanor possession of marijuana.

- (a) Denton 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 subsection (b).
- (b) The only circumstances in which Denton 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 a Denton Police Commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.
- (c) In every instance other than those described in subsection (b), if a Denton 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.
- (d) Denton Police Officers shall not issue any charge for possession of marijuana unless it meets at least one of the factors described in subsection (b).

(Ord. No. 22-1198, § 2, 7-26-22, ratified 11-8-22)

Sec. 21-81. - Citations for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

- (a) 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.

(Ord. No. 22-1198, § 2, 7-26-22, ratified 11-8-22)

Sec. 21-82. - Prohibition against using city funds or personnel to conduct THC concentration testing.

- (a) 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 subsection 21-80(b).
- (b) This prohibition shall not limit the ability of Denton Police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

(Ord. No. 22-1198, § 2, 7-26-22, ratified 11-8-22)

EXHIBIT 2

Sec. 21-83. - Prohibition against city police using the odor of marijuana or hemp as probable cause for search or seizure.

- (a) Denton 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 subsection 21-80(b).

(Ord. No. 22-1198, § 2, 7-26-22, ratified 11-8-22)

Sec. 21-84. - Training and policy updates; community involvement.

- (a) The city manager and chief of police shall ensure that Denton Police Officers receive adequate training concerning each of the provisions of this article.
- (b) The city manager shall work with the Denton Police Chief and other relevant stakeholders identified in subsection (c) to update city policies and internal operating procedures in accordance with this article. Actions that may be necessary include, but are not limited to: updating the Denton Police Department General Manual; updating the training bulletin; training officers; and updating internal databases and systems.
- (c) The city manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this article, which shall include community stakeholders including: the police chief's advisory panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the city; immigrant communities; and communities of color. These meetings shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the city's website.

(Ord. No. 22-1198, § 2, 7-26-22, ratified 11-8-22)

Sec. 21-85. - Discipline.

- (a) Any violation of this chapter may subject a Denton Police Officer to discipline as provided by the Texas Local Government Code or as provided in city policy.

(Ord. No. 22-1198, § 2, 7-26-22, ratified 11-8-22)

Sec. 21-86. - Reporting.

- (a) Within three (3) months of the adoption of this article, and once per year thereafter, the city manager or their designee shall present to the city council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the city's implementation of this article.

(Ord. No. 22-1198, § 2, 7-26-22, ratified 11-8-22)

Elgin Police Department general order or directive *ultra vires* and void; and (2) order Defendants to (a) repeal the Ordinance, (b) cancel any corresponding Elgin Police Department general order or directive, (c) fully enforce the drug laws in chapter 481, (d) not discipline of any employee of the City of Elgin for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they were updated in response to the Ordinance.

Discovery Control Plan

1. If discovery were needed, it would be intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.3. But this is a case of pure law and discovery is unneeded.

Claims for Relief

2. Plaintiff seeks injunctive relief. Therefore, this suit is not governed by the expedited actions process in Tex. R. Civ. P. 169.

Venue

3. Venue is proper in Bastrop County under section 15.002(a)(1) and (a)(3) of the Texas Civil Practices and Remedies Code.

Sovereign Immunity Inapplicable

4. Neither sovereign immunity nor governmental immunity applies to the State of Texas's *ultra vires* claim. "The basic justification for th[e] *ultra vires* exception to sovereign immunity is that *ultra vires* acts—or those acts without authority—should not be considered acts of the state at all." *Hall v. McRaven*, 508 SW.3d 232, 238 (Tex. 2017) (internal quotation marks and citations omitted). As a result, "*ultra vires* suits do not attempt to exert control over the state—they attempt to reassert the control of the state over one of its agents." *Id.*

5. Further, Texas Civil Practice and Remedies Code Sec. 37.006(b) states "In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard." This has been consistently construed as a legislative waiver of governmental immunity in situations like the one at issue here. *Tex. Educ. Agency v. Leeper*, 893

S.W.2d 432, 446 (Tex. 1994); *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628 (Tex. 2010).

Parties

6. Plaintiff is the State of Texas. *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (citing *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015) (“As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws.”); *Yett v. Cook*, 115 Tex. 205, 221, 281 S.W. 837, 842 (1926) (“That the state has a justiciable ‘interest’ in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law does not admit of serious doubt.”)).

7. Defendant City of Elgin is a home-rule municipality.

8. Defendant Theresa Y. McShan is the Mayor of Elgin.

9. Defendant Sue Brashar is the Mayor Pro Tem of Elgin and a Councilmember for Ward 4.

10. Defendant Joy Casnovsky is a Councilmember for Ward 1.

11. Defendant Arthur Gibson III is a Councilmember for Ward 1.

12. Defendant YaLecia Lov is a Councilmember for Ward 2.

13. Defendant Chuck Swain is a Councilmember for Ward 2.

14. Defendant Matthew Callahan is a Councilmember for Ward 3.

15. Defendant Al Rodriguez is a Councilmember for Ward 3.

16. Defendant Forest Lee Dennis is a Council member for Ward 4.

17. Defendant Thomas Mattis is City Manager of Elgin.

18. Defendant Chris Noble is Chief of Police of Elgin.

19. All Defendants are sued in their official capacities.

20. All Defendants may be served with process through Thomas Mattis, City Manager, at 310 N. Main Street, Elgin, Texas 78621.

Facts

21. Through the ballot initiative process, the citizens of Elgin placed Proposition A on the November 8, 2022, ballot. Proposition A contained a city ordinance which would regulate how Elgin Police Department enforces certain marijuana laws governed by Chapter 481 of the Texas Health and Safety Code. Proposition A passed.

22. The Elgin City Council codified and published the ordinance, which is now in effect as City of Elgin Code of Ordinances Chapter 24 – Miscellaneous Offenses, Article V - Marijuana Enforcement (“the Ordinance”).¹ (Exhibit 1).

23. The Ordinance reads as follows:

ARTICLE V. - MARIJUANA ENFORCEMENT

Sec. 24-102. - Ending citations and arrests for misdemeanor possession of marijuana.

(a) Elgin 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 subsection (b).

(b) The only circumstances in which Elgin 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 Elgin police commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.

¹ Available at

https://library.municode.com/tx/elgin/codes/code_of_ordinances?nodeId=PTIICOOR_CH24_MIOF_ARTVMAEN

(c) In every instance other than those described in (b), if an Elgin 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.

(d) Elgin police officers shall not issue any charge for possession of marijuana unless it meets at least one of the factors described in subsection (b).

Section 24-103. - Citations for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

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.

Section 24-104. - Prohibition against using city funds or personnel to conduct THC concentration testing.

(a) 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 subsection 24-102(b).

(b) This prohibition shall not limit the ability of Elgin police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

Section 24-105. - Prohibition against city police using the odor of marijuana or hemp has probable cause for search or seizure.

Elgin 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 subsection 24-102(b).

Section 24-106. - Training and policy updates; community involvement.

- (a) The city manager and chief of police shall ensure that Elgin police officers receive adequate training concerning each of the provisions of this article.
- (b) The city manager shall work with the Elgin Police Chief and other relevant stakeholders identified in subsection (c) to update city policies and internal operating procedures in accordance with this article. Actions that may be necessary include, but are not limited to: Updating the Elgin Police Department General Manual; updating the training bulletin; training officers; and updating internal databases and systems.
- (c) The city manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this article, which shall include community stakeholders including: the police chiefs advisory panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the city; immigrant communities; and communities of color. These meetings shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the city's website.

Section 24-107. - Discipline.

Any violation of this chapter may subject an Elgin police officer to discipline as provided by the Texas Local Government Code or as provided in city policy.

Section 24-108. - Reporting.

Within three months of the adoption of this article, and once per year thereafter, the city manager or their designee shall present to the city council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the city's implementation of this article.

Legal Analysis

24. Because Elgin is a home-rule municipality, it has “the full power of self-government” and does not need a special grant from the Legislature to enact local ordinances. *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013). However, “no...ordinance passed under

[Elgin's] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State." TEX. CONST. art. XI, § 5.

25. Under State law, "The governing body of a municipality ... [or] a municipal police department ... may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law." Tex. Local Gov't Code § 370.003.

26. Chapter 481 of the Health and Safety Code provides that possession of marijuana and drug paraphernalia are offenses. Tex. Health and Safety Code §§ 481.121, .125.

27. Section 24-102 of the Ordinance prohibits Elgin police officers from issuing citations or making arrests for Class A or Class B misdemeanor possession of marijuana. Thus, it is a policy under which Elgin will not "fully enforce ... Chapter 481." Therefore, section 24-102 violates § 370.003.

28. Section 24-103 of the Ordinance prohibits Elgin police officers from issuing Class C misdemeanor citations for "possession of drug residue [sic; there is no such offense] or drug paraphernalia ... in lieu of a possession of marijuana charge." Thus, it is a policy under which Elgin will not "fully enforce ... Chapter 481." Therefore, section 24-103 violates § 370.003.

29. Section 24-104 of the Ordinance prohibits city funds and personnel "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 certain circumstances. Thus, section 24-104 is a policy under which Elgin will not "fully enforce ... Chapter 481." Therefore, it violates § 370.003.

30. Section 24-106 of the Ordinance requires that Elgin police officers "receive adequate training concerning each of the provisions of this article," requires city policies and internal operating procedures to be updated "in accordance with this article," and requires "regular meetings to discuss the development of policies, procedures, and practices related to this article, which shall include community stakeholders ... community organizations [and] communities of color." The Ordinance violates state law, so having meetings to discuss implementation of the

Ordinance is a policy under which Elgin will not “fully enforce ... Chapter 481.” Therefore, section 24-106 violates § 370.003.

31. Section 24-107 of the Ordinance states, “Any violation of this chapter may subject a Elgin police officer to discipline....” This is a policy under which Elgin will not “fully enforce...Chapter 481.” In fact, Elgin threatens officers who do not enforce Chapter 481 with “discipline.” Therefore, section 24-107 violates § 370.003.

32. Section 24-108 requires the city manager to submit regular reports to the city council “concerning the city’s implementation of this ordinance.” The Ordinance violates state law, so reports discussing implementation of the Ordinance is a policy under which Elgin will not “fully enforce ... Chapter 481.” Therefore, section 24-108 violates § 370.003.

33. Because the Ordinance violates section 370.003 of the Local Government Code, Defendants “may not adopt” it. Tex. Loc. Gov’t Code § 370.003.

34. Although local ordinances are presumed valid, if an ordinance is unmistakably and clearly at odds with a statute, the ordinance is preempted. *Dall. Merchant's & Concessionaire's Ass’n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993).

35. In a preemption challenge, a local ordinance - even a reasonable one - “is unenforceable to the extent it conflicts with the state statute.” *Id.* (citation omitted).

36. The Ordinance directly conflicts with the state statute; thus it is unenforceable. *See id.* (citing *City of Brookside Vill. v. Comeau*, 633 S.W.2d 790, 796 (Tex.1982), *cert. denied*, 459 U.S. 1087, 103 S.Ct. 570 (1982)).

37. Moreover, the Ordinance is unconstitutional. “[N]o...ordinance passed under [Elgin’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

38. In an *ultra vires* case, a plaintiff must allege, and ultimately prove, that an officer acted without legal authority or failed to perform a ministerial act. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

39. Defendants lack legal authority to adopt the Ordinance and any corresponding police department general order or directive. Tex. Loc. Gov't Code § 370.003.

40. Defendants lack the constitutional authority to adopt the Ordinance. TEX. CONST. art. XI, § 5.

Request for a Declaratory Judgment

41. The State of Texas requests that the Court issue a declaratory judgment that the Ordinance and any corresponding police department general order or directive are *ultra vires* and void.

Application for a Temporary Injunction

42. The State is entitled to a temporary injunction. To obtain a temporary injunction, the State must prove (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

43. The State has a cause of action against Defendants for *ultra vires* acts. *Hollins*, 620 S.W.3d at 405.

44. The State has a probable right of recovery. The City of Elgin has no authority to pass the Ordinance and the Elgin Police Department has not authority to issue a corresponding general order or directive. Tex. Loc. Gov't Code § 370.003; TEX. CONST. art. XI, § 5.

45. “When the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.” *Hollins*, 620 S.W.3d at 410.

46. Further, “An injury is irreparable if the injured party cannot be adequately compensated in damages, or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204; *City of Dallas v. Brown*, 373 S.W.3d 204, 208 (Tex. App.—Dallas 2012, pet. denied).

47. Consequently, the State is entitled to a temporary injunction.

48. The Court should issue a temporary injunction enjoining Defendants from enforcing the Ordinance and any corresponding Elgin Police Department general order or directive and ordering Defendants to (a) repeal the Ordinance, (b) cancel any corresponding Elgin Police Department general order or directive, (c) fully enforce the drug laws in Chapter 481, (d) not discipline any employee of the City of Elgin for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance.

Application for Permanent Injunction

49. The State of Texas requests trial on the merits, where it will seek a permanent injunction enjoining Defendants from enforcing the Ordinance and any corresponding Elgin Police Department general order or directive and ordering Defendants to (a) repeal the Ordinance, (b) cancel any corresponding Elgin Police Department general order or directive, (c) fully enforce the drug laws in Chapter 481, (d) not discipline any employee of the City of Elgin for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance.

Prayer

Therefore, the State of Texas seeks the following relief:

- a. A temporary and permanent injunction enjoining Defendants from enforcing Chapter 24, Article V of the City of Elgin Code of Ordinances.
- b. A temporary and permanent injunction ordering Defendants to repeal the Ordinance.
- c. A temporary and permanent injunction ordering Defendants to cancel any corresponding Elgin Police Department general order.
- d. A temporary and permanent injunction ordering Defendants to fully enforce the drug laws in Chapter 481 of the Texas Health and Safety Code.

- e. A temporary and permanent injunction ordering Defendants not to discipline any Elgin employee for enforcing the drug laws in Chapter 481 of the Texas Health and Safety Code.
- f. A temporary and permanent injunction ordering Defendants to modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance.
- g. All other relief as the Court deems equitable and just.

Date: January 31, 2024

Respectfully submitted.

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Attorney General

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COUNSEL FOR PLAINTIFF

ARTICLE V. - MARIJUANA ENFORCEMENT

Sec. 24-102. - Ending citations and arrests for misdemeanor possession of marijuana.

- (a) Elgin 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 (b).
- (b) The only circumstances in which Elgin 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 Elgin police commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.
- (c) In every instance other than those described in subsection (b), if an Elgin 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.
- (d) Elgin police officers shall not issue any charge for possession of marijuana unless it meets at least one of the factors described in (b).

(Ord. No. 2022-08-02-24, Pt. 2, 8-2-2022)

Sec. 24-103. - Citations for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

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.

(Ord. No. 2022-08-02-24, Pt. 2, 8-2-2022)

Sec. 24-104. - Prohibition against using city funds or personnel to conduct THC concentration testing.

- (a) 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 24-102(b).
- (b) This prohibition shall not limit the ability of Elgin police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

(Ord. No. 2022-08-02-24, Pt. 2, 8-2-2022)

EXHIBIT 1

Sec. 24-105. - Prohibition against city police using the odor of marijuana or hemp as probable cause for search or seizure.

Elgin 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 24-102(b).

(Ord. No. 2022-08-02-24, Pt. 2, 8-2-2022)

Sec. 24-106. - Training and policy updates; community involvement.

- (a) The city manager and chief of police shall ensure that Elgin police officers receive adequate training concerning each of the provisions of this article.
- (b) The city manager shall work with the Elgin Police Chief and other relevant stakeholders identified in subsection (c) to update city policies and internal operating procedures in accordance with this article. Actions that may be necessary include, but are not limited to: Updating the Elgin Police Department General Manual; updating the training bulletin; training officers; and updating internal databases and systems.
- (c) The city manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this article, which shall include community stakeholders including: The police chiefs advisory panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the city; immigrant communities; and communities of color. These meetings shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the city's website.

(Ord. No. 2022-08-02-24, Pt. 2, 8-2-2022)

Sec. 24-107. - Discipline.

Any violation of this chapter may subject an Elgin police officer to discipline as provided by the Texas Local Government Code or as provided in city policy.

(Ord. No. 2022-08-02-24, Pt. 2, 8-2-2022)

Sec. 24-108. - Reporting.

Within three months of the adoption of this article, and once per year thereafter, the city manager or their designee shall present to the city council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the city's implementation of this article.

(Ord. No. 2022-08-02-24, Pt. 2, 8-2-2022)

Cause No. _____

THE STATE OF TEXAS,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	In the District Court of
	§	
CITY OF SAN MARCOS; JANE	§	
HUGHSON, Mayor of San Marcos;	§	
MATTHEW MENDOZA, SAUL	§	
GONZALES, ALYSSA GARZA, SHANE	§	
SCOTT, MARK GLEASON, and JUDE	§	Hays County, Texas
PRATHER, Members of the City Council	§	
of San Marcos; STEPHANIE REYES,	§	
City Manager of San Marcos; and STAN	§	
STANDRIDGE, Chief of Police of San	§	
Marcos; in their official capacities,	§	_____ Judicial District
<i>Defendants.</i>	§	

**Plaintiff’s Original Verified Petition,
Application for Temporary Injunction and Permanent Injunction**

The City of San Marcos (“San Marcos”), a home-rule city, adopted an ordinance designed to eliminate marijuana enforcement. This ordinance and any corresponding San Marcos Police Department general order or directive, constitute a policy under which San Marcos will not fully enforce laws relating to drugs, including Chapter 481. Chapter 481 makes possession of marijuana and drug paraphernalia an offense. Thus, the ordinance and any corresponding San Marcos Police Department general order or directive violate and are preempted by section 370.003 of the Texas Local Government Code: “The governing body of a municipality [or a] municipal police department ... may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law.” The ordinance is also unconstitutional. “[N]o...ordinance passed under [San Marcos’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

Consequently, the State of Texas files this Original Petition and Application for Temporary and Permanent Injunction asking the Court to (1) declare the ordinance and any corresponding San

Marcos Police Department general order or directive *ultra vires* and void; and (2) order Defendants to (a) repeal the Ordinance, (b) cancel any corresponding San Marcos Police Department general order or directive, (c) fully enforce the drug laws in chapter 481, (d) not discipline of any employee of the City of San Marcos for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the ordinance.

Discovery Control Plan

1. If discovery were needed, it would be intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.3. But this is a case of pure law and discovery is unneeded.

Claims for Relief

2. Plaintiff seeks injunctive relief. Therefore, this suit is not governed by the expedited actions process in Tex. R. Civ. P. 169.

Venue

3. Venue is proper in Hays County under section 15.002(a)(1) and (a)(3) of the Texas Civil Practices and Remedies Code.

Sovereign Immunity Inapplicable

4. Neither sovereign immunity nor governmental immunity applies to the State of Texas's *ultra vires* claim. "The basic justification for th[e] *ultra vires* exception to sovereign immunity is that *ultra vires* acts—or those acts without authority—should not be considered acts of the state at all." *Hall v. McRaven*, 508 SW.3d 232, 238 (Tex. 2017) (internal quotation marks and citations omitted). As a result, "*ultra vires* suits do not attempt to exert control over the state—they attempt to reassert the control of the state over one of its agents." *Id.*

5. Further, Texas Civil Practice and Remedies Code Sec. 37.006(b) states "In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard." This has been consistently construed as a legislative waiver of governmental immunity in situations like the one at issue here. *Tex. Educ. Agency v. Leeper*, 893

S.W.2d 432, 446 (Tex. 1994); *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628 (Tex. 2010).

Parties

6. Plaintiff is the State of Texas. *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (citing *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015) (“As a sovereign entity, the State has an intrinsic right to enact, interpret, and enforce its own laws.”); *Yett v. Cook*, 115 Tex. 205, 221, 281 S.W. 837, 842 (1926) (“That the state has a justiciable ‘interest’ in its sovereign capacity in the maintenance and operation of its municipal corporations in accordance with law does not admit of serious doubt.”)).

7. Defendant City of San Marcos is a home-rule municipality.
8. Defendant Jane Hughson is the Mayor of San Marcos.
9. Defendant Matthew Mendoza is a Councilmember At-Large.
10. Defendant Saul Gonzales is a Councilmember At-Large.
11. Defendant Alyssa Garza is a Councilmember At-Large.
12. Defendant Shane Scott is a Councilmember At-Large.
13. Defendant Mark Gleason is a Councilmember At-Large.
14. Defendant Jude Prather is a Councilmember At-Large.
15. Defendant Stephanie Reyes is City Manager of San Marcos.
16. Defendant Stan Standridge is Chief of Police of San Marcos.
17. All Defendants are sued in their official capacities.
18. All Defendants may be served with process through Stephanie Reyes, City Manager, at 630 E. Hopkins Street, San Marcos, Texas 78666.

Facts

19. Through the ballot initiative process, the citizens of San Marcos placed Proposition A on the November 8, 2022, ballot. Proposition A contained a city ordinance which would regulate how the San Marcos Police Department enforces certain marijuana laws governed by Chapter 481 of the Texas Health and Safety Code. Proposition A passed.

20. The San Marcos City Council codified and published the ordinance, which is now in effect as City of San Marcos Code of Ordinances Chapter 54 – Miscellaneous Offenses, Article 4 - Marijuana Enforcement (“the Ordinance”).¹ (Exhibit 1)

21. San Marcos published its agenda along with presentations for its March 7, 2023 Work Session. (Exhibit 2). The “City of San Marcos, Police Department 2022 Annual Review” presentation explicitly states that “**No policy was adopted as required by the ordinance due to State law conflict.**” (emphasis added). Despite the San Marcos Police Department acknowledging that it has no authority to enforce the ordinance, the ordinance is still codified and published and has not been repealed.

22. On information and belief, on November 22, 2022, San Marcos Police Chief Stan Standridge issued a memorandum to police department personnel detailing the police department’s policy complying with the Ordinance.

23. Further, Chief Standridge, told *Community Impact* that “the police department does comply with the voter-approved ordinance...” and that “[t]he department is in full compliance with the ordinance.” See Zara Flores, *San Marcos Police Department Clarifies Misdemeanor Marijuana Enforcement Following Voter-Approved Ordinance*, *Community Impact* (March 21, 2023),

<https://communityimpact.com/austin/san-marcos-buda-kyle/government/2023/03/09/san-marcos-police-department-clarifies-misdemeanor-marijuana-enforcement-following-voter-approved->

¹ Available at

https://library.municode.com/tx/san_marcos/codes/code_of_ordinances?nodeId=SPAGEOR_CH54MIOF_ART4MAEN

- (a) 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 54.101(b).
- (b) This prohibition shall not limit the ability of San Marcos police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

Section 54.104. - Prohibition against city police using the odor of marijuana or hemp has probable cause for search or seizure.

- (a) San Marcos 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 subsection 54.101(b).

Section 54.105. - Training and policy updates; community involvement.

- (a) The city manager and chief of police shall ensure that San Marcos police officers receive adequate training concerning each of the provisions of this ordinance.
- (b) The city manager shall work with the San Marcos police chief and other relevant stakeholders identified in subsection (c) to update 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; training officers; and updating internal databases and systems.
- (c) The city manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this ordinance, which shall include community stakeholders including: the police chief's advisory panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the city; immigrant communities; and communities of color. These meetings

shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the city's website.

Section 54.106. - Discipline.

(a) Any violation of this chapter may subject a San Marcos police officer to discipline as provided by the Texas Local Government Code or as provided in city policy.

Section 54.107. - Reporting.

(a) Within three months of the adoption of this ordinance, and every three months thereafter, the city manager or their designee shall present to the city council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the city's implementation of this ordinance.

Legal Analysis

25. Because San Marcos is a home-rule municipality, it has “the full power of self-government” and does not need a special grant from the Legislature to enact local ordinances. *S. Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013). However, “no...ordinance passed under [San Marcos’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

26. Under State law, “The governing body of a municipality ... [or] a municipal police department ... may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law.” Tex. Local Gov’t Code § 370.003.

27. Chapter 481 of the Health and Safety Code provides that possession of marijuana and drug paraphernalia are offenses. Tex. Health and Safety Code §§ 481.121, .125.

28. Section 54.101 of the Ordinance prohibits San Marcos police officers from issuing citations or making arrests for Class A or Class B misdemeanor possession of marijuana. Thus, it is a

policy under which San Marcos will not “fully enforce ... Chapter 481.” Therefore, section 54.101 violates § 370.003.

29. Section 54.102 of the Ordinance prohibits San Marcos police officers from issuing Class C misdemeanor citations for “possession of drug residue [sic; there is no such offense] or drug paraphernalia ... in lieu of a possession of marijuana charge.” Thus, it is a policy under which San Marcos will not “fully enforce ... Chapter 481.” Therefore, section 54.102 violates § 370.003.

30. Section 54.103 of the Ordinance prohibits city funds and personnel “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 certain circumstances. Thus, section 54.103 is a policy under which San Marcos will not “fully enforce ... Chapter 481.” Therefore, it violates § 370.003.

31. Section 54.105 of the Ordinance requires that San Marcos police officers “receive adequate training concerning each of the provisions of this ordinance,” requires city policies and internal operating procedures to be updated “in accordance with this ordinance,” and requires “regular meetings to discuss the development of policies, procedures, and practices related to this article, which shall include community stakeholders ... community organizations [and] communities of color.” The Ordinance violates state law, so having meetings to discuss implementation of the Ordinance is a policy under which San Marcos will not “fully enforce ... Chapter 481.” Therefore, section 54.105 violates § 370.003.

32. Section 54.106 of the Ordinance states, “Any violation of this chapter may subject a San Marcos police officer to discipline....” This is a policy under which San Marcos will not “fully enforce...Chapter 481.” In fact, San Marcos threatens officers who do not enforce Chapter 481 with “discipline.” Therefore, section 54.106 violates § 370.003.

33. Section 54.107 requires the city manager to submit regular reports to the city council “concerning the city’s implementation of this ordinance.” The Ordinance violates state law, so reports discussing implementation of the Ordinance is a policy under which San Marcos will not “fully enforce ... Chapter 481.” Therefore, section 54.107 violates § 370.003.

34. Because the Ordinance and any corresponding police department general order or directive violate section 370.003 of the Local Government Code, Defendants “may not adopt” it. Tex. Loc. Gov’t Code § 370.003.

35. Although local ordinances are presumed valid, if an ordinance is unmistakably and clearly at odds with a statute, the ordinance is preempted. *Dall. Merchant's & Concessionaire's Ass’n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993).

36. In a preemption challenge, a local ordinance - even a reasonable one - “is unenforceable to the extent it conflicts with the state statute.” *Id.* (citation omitted).

37. The Ordinance directly conflicts with the state statute; thus it is unenforceable. *See id.* (citing *City of Brookside Vill. v. Comeau*, 633 S.W.2d 790, 796 (Tex.1982), *cert. denied*, 459 U.S. 1087, 103 S.Ct. 570 (1982)).

38. Moreover, the Ordinance is unconstitutional. “[N]o...ordinance passed under [San Marcos’s] charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.” TEX. CONST. art. XI, § 5.

39. In an *ultra vires* case, a plaintiff must allege, and ultimately prove, that an officer acted without legal authority or failed to perform a ministerial act. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

40. Defendants lack legal authority to adopt the Ordinance and any corresponding police department general order or directive. Tex. Loc. Gov’t Code § 370.003.

41. Defendants lack the constitutional authority to adopt the Ordinance. TEX. CONST. art. XI, § 5.

Request for a Declaratory Judgment

42. The State of Texas requests that the Court issue a declaratory judgment that the Ordinance and any corresponding police department general order or directive are *ultra vires* and void.

Application for a Temporary Injunction

43. The State is entitled to a temporary injunction. To obtain a temporary injunction, the State must prove (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

44. The State has a cause of action against Defendants for *ultra vires* acts. *Hollins*, 620 S.W.3d at 405.

45. The State has a probable right of recovery. The City of San Marcos has no authority to pass the Ordinance and the San Marcos Police Department has no authority to issue a corresponding general order or directive. Tex. Loc. Gov't Code § 370.003; TEX. CONST. art. XI, § 5.

46. “When the State files suit to enjoin *ultra vires* action by a local official, a showing of likely success on the merits is sufficient to satisfy the irreparable-injury requirement for a temporary injunction.” *Hollins*, 620 S.W.3d at 410.

47. Further, “An injury is irreparable if the injured party cannot be adequately compensated in damages, or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204; *City of Dallas v. Brown*, 373 S.W.3d 204, 208 (Tex. App.—Dallas 2012, pet. denied).

48. Consequently, the State is entitled to a temporary injunction.

49. The Court should issue a temporary injunction enjoining Defendants from enforcing the Ordinance and any corresponding San Marcos Police Department general order or directive and ordering Defendants to (a) repeal the Ordinance, (b) cancel any corresponding San Marcos Police Department general order or directive, (c) fully enforce the drug laws in Chapter 481, (d) not discipline any employee of the City of San Marcos for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance.

Application for Permanent Injunction

50. The State of Texas requests trial on the merits, where it will seek a permanent injunction enjoining Defendants from enforcing the Ordinance and any corresponding San Marcos Police Department general order or directive and ordering Defendants to (a) repeal the Ordinance, (b) cancel any corresponding San Marcos Police Department general order or directive, (c) fully enforce the drug laws in Chapter 481, (d) not discipline any employee of the City of San Marcos for enforcing the drug laws in Chapter 481, and (e) modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance.

Prayer

Therefore, the State of Texas seeks the following relief:

- a. A temporary and permanent injunction enjoining Defendants from enforcing Chapter 54, Article 4 of the City of San Marcos Code of Ordinances.
- b. A temporary and permanent injunction ordering Defendants to repeal the Ordinance.
- c. A temporary and permanent injunction ordering Defendants to cancel any corresponding San Marcos Police Department general order or directive.
- d. A temporary and permanent injunction ordering Defendants to fully enforce the drug laws in Chapter 481 of the Texas Health and Safety Code.
- e. A temporary and permanent injunction ordering Defendants not to discipline any San Marcos employee for enforcing the drug laws in Chapter 481 of the Texas Health and Safety Code.
- f. A temporary and permanent injunction ordering Defendants to modify city policies and internal operating procedures to the extent that they have been updated in response to the Ordinance.
- g. All other relief as the Court deems equitable and just.

Date: January 30, 2024

Respectfully submitted.

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Chief, Special Litigation Division

COUNSEL FOR PLAINTIFF

Cause No. _____

THE STATE OF TEXAS, §
Plaintiff, §

v. §

CITY OF SAN MARCOS; JANE §
HUGHSON, Mayor of San Marcos; §
MATTHEW MENDOZA, SAUL §
GONZALES, ALYSSA GARZA, SHANE §
SCOTT, MARK GLEASON, and JUDE §
PRATHER, Members of the City Council §
of San Marcos; STEPHANIE REYES, §
City Manager of San Marcos; and STAN §
STANDRIDGE, Chief of Police of San §
Marcos; in their official capacities, §
Defendants. §

In the District Court of

Hays County, Texas

_____ Judicial District

Declaration of Heather Dyer

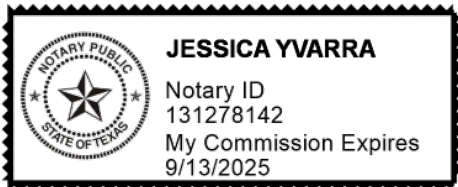
My name is Heather Dyer. I am over eighteen years of age, am of sound mind, and am capable of making this declaration. I am Special Counsel in the Special Litigation Division of the Office of the Texas Attorney General.

I have read the above Original Verified Petition and Application for Temporary Injunction and Permanent Injunction. I verify that the facts stated therein are within my personal knowledge and are true and correct.

DocuSigned by:
Heather Lee Dyer
333855FEB7AF478...
Heather Dyer

Sworn and subscribed before me on _____, 2024.

1/30/2024 | 12:19 PM CST



DocuSigned by:
Jessica Yvarra
972F43415A774B3...
Notary Public

ARTICLE 4. - MARIJUANA ENFORCEMENT

Sec. 54.101. - Ending citations and arrests for misdemeanor possession of marijuana.

- (a) San Marcos 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 subsection (b).
- (b) The only circumstances in which San Marcos 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 Marcos police commander, assistant chief of police, or chief of police; and/or (2) the investigation of a violent felony.
- (c) In every instance other than those described in subsection (b), if a San Marcos 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.
- (d) San Marcos police officers shall not issue any charge for possession of marijuana unless it meets one or both of the factors described in subsection (b).

(Ord. No. 2022-71, § 2 (Exh. A), 8-16-22)

Sec. 54.102. - Citations for possession of drug residue or drug paraphernalia shall not be issued in lieu of a possession of marijuana charge.

- (a) 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.

(Ord. No. 2022-71, § 2 (Exh. A), 8-16-22)

Sec. 54.103. - Prohibition against using city funds or personnel to conduct thc concentration testing.

- (a) 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 54.101(b).
- (b) This prohibition shall not limit the ability of San Marcos police to conduct toxicology testing to ensure public safety, nor shall it limit THC testing for the purpose of any violent felony charge.

(Ord. No. 2022-71, § 2 (Exh. A), 8-16-22)

EXHIBIT
1

Sec. 54.104. - Prohibition against city police using the odor of marijuana or hemp as probable cause for search or seizure.

- (a) San Marcos 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 54.101(b).

(Ord. No. 2022-71, § 2 (Exh. A), 8-16-22)

Sec. 54.105. - Training and policy updates; community involvement.

- (a) The city manager and chief of police shall ensure that San Marcos police officers receive adequate training concerning each of the provisions of this ordinance.
- (b) The city manager shall work with the San Marcos police chief and other relevant stakeholders identified in subsection (c) to update 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; training officers; and updating internal databases and systems.
- (c) The city manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this ordinance, which shall include community stakeholders including: the police chief's advisory panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the city; immigrant communities; and communities of color. These meetings shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the city's website.

(Ord. No. 2022-71, § 2 (Exh. A), 8-16-22)

Sec. 54.106. - Discipline.

- (a) Any violation of this chapter may subject a San Marcos police officer to discipline as provided by the Texas Local Government Code or as provided in city policy.

(Ord. No. 2022-71, § 2 (Exh. A), 8-16-22)

Sec. 54.107. - Reporting.

- (a) Within three months of the adoption of this ordinance, and every three months thereafter, the city manager or their designee shall present to the city council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the city's implementation of this ordinance.

(Ord. No. 2022-71, § 2 (Exh. A), 8-16-22)



City of San Marcos

630 East Hopkins
San Marcos, TX 78666

Work Session - Final-Amended City Council

Tuesday, March 7, 2023

3:00 PM

City Council Chambers

630 E. Hopkins St. - Work Session

This will be an in-person and online meeting. To view the meeting please go to <http://sanmarcostx.gov/421/City-Council-Videos-Archives> or watch on Grande channel 16 or Spectrum channel 10.

I. Call To Order

II. Roll Call

III. Citizen Comment Period

Persons wishing to participate (speak) during the Citizen Comment portion of the meeting must email citizencomment@sanmarcostx.gov the day prior to the meeting between 8:00AM and 5:00PM. A call in number to join by phone or link will be provided for participation on a mobile device, laptop or desktop computer. Those wishing to speak in person may sign up in person in the City Clerk's office before 12:00PM the day of the meeting.

PRESENTATIONS

1. Receive a work session presentation by Chief Standridge and Chief Stephens related to key public safety updates in the Police Department and Fire Department.
2. Hold discussion regarding allocating to non-profit agencies Human Services Grant funding of \$500,000.00 from the City's General Fund.

EXECUTIVE SESSION

3. Executive Session in accordance with the following:
 - A. Sec. §551.072 of the Texas Government Code: Real Property: to hold discussion regarding Community Development Block Grant-Disaster Recovery (CDBG-DR) Affordability Period; and Sec. §551.071 Consultation with attorney regarding CDBG-DR Affordability Period.

IV. Question and Answer Session with Press and Public.

This is an opportunity for the Press and Public to ask questions related to items on this agenda. Persons wishing to participate remotely in the Q&A session must email citizencomment@sanmarcostx.gov the day prior to the meeting between 8:00AM and 5:00PM. A call in number to join by phone or link will be provided for participation on a mobile device, laptop or desktop computer. If attending in person, no sign up is required.

EXHIBIT 2

V. Adjournment.

POSTED ON THURSDAY, MARCH 2, 2023 @4:00PM

ELIZABETH TREVINO, CITY CLERK

VI. ADDENDUM

Executive Session was added after the agenda was posted on Thursday, March 2, 2023 @4:00PM

ADDENDUM POSTED ON SATURDAY, MARCH 4, 2023 @2:30PM

ELIZABETH TREVINO, CITY CLERK

Notice of Assistance at the Public Meetings

The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 855-461-6674 or sent by e-mail to ADArequest@sanmarcostx.gov



Legislation Text

File #: ID#23-183, **Version:** 1

AGENDA CAPTION:

Receive a work session presentation by Chief Standridge and Chief Stephens related to key public safety updates in the Police Department and Fire Department.

Meeting date: March 7, 2023

Department: Police and Fire

Amount & Source of Funding

Funds Required: N/A

Account Number: N/A

Funds Available: N/A

Account Name: N/A

Fiscal Note:

Prior Council Action: N/A

City Council Strategic Initiative: [Please select from the dropdown menu below]

Community Safety

Choose an item.

Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]

Economic Development - Choose an item.

Environment & Resource Protection - Choose an item.

Land Use - Choose an item.

Neighborhoods & Housing - Choose an item.

Parks, Public Spaces & Facilities - Choose an item.

Transportation - Choose an item.

Core Services

Not Applicable

Master Plan: *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

Background Information:

This work session presentation will provide Chief Standridge the opportunity to provide Council and the community with updates related to the Cite and Release ordinance, the Marihuana decriminalization ordinance and also provide importance departmental updates. The second half of the presentation will allow Chief Stephens to provide key updates on Fire Department issues.

Council Committee, Board/Commission Action:

N/A

Alternatives:

N/A

Recommendation:

N/A



City of San Marcos

Police Department 2022 Annual Review

March 7, 2023



PRESENTATION OVERVIEW

- Marijuana decriminalization update
- Celebrating success
- Our 'North Star'
- Violent crime update
- Staffing updates and concerns
- 2023 strategies and considerations



“An ordinance to eliminate low-level marijuana enforcement”

- 54.105
 - “(c) The City Manager shall arrange regular meetings to discuss the development of policies, procedures, and practices related to this ordinance, which shall include community stakeholders including: the Police Chief's Advisory Panel; other interested stakeholders and community organizations; individuals directly impacted by arrests within the City; immigrant communities; and communities of color. These meetings shall be open to public participation, have minutes and agendas publicly accessible, and have audio and video recordings uploaded to the City's website.”



“An ordinance to eliminate low-level marijuana enforcement”

- 54.107
 - “Within three months of the adoption of this ordinance, and every three months thereafter, the City Manager or their designee shall present to the City Council, at a public meeting subject to the Texas Open Meetings Act, a report concerning the City’s implementation of this ordinance.”



“An ordinance to eliminate low-level marijuana enforcement”

- No policy was adopted as required by the ordinance due to State law conflict:
 - Sec. 370.003. MUNICIPAL OR COUNTY POLICY REGARDING ENFORCEMENT OF DRUG LAWS. The governing body of a municipality, the commissioners court of a county, or a sheriff, municipal police department, municipal attorney, county attorney, district attorney, or criminal district attorney may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law.



“An ordinance to eliminate low-level marijuana enforcement”

- Memorandum was distributed to all police personnel on November 22, 2022
- Attorney General opinion sought on December 8, 2022
 - Subsequently dropped by current District Attorney



“An ordinance to eliminate low-level marijuana enforcement”

Since ordinance adoption

(From effective date of November 17, 2022 to February 28, 2023)

SMPD has charged two (2) people with Possession of Marijuana (POM).

1. Class B Misdemeanor POM
Manufacture Delivery Controlled Substance Penalty Group 1
2. Class B Misdemeanor POM
Driving While License Invalid Enhanced

SMPD has charged (6) people with Possession of Drug Paraphernalia. Five of the six were methamphetamine pipes.



CELEBRATING SUCCESS

“We become neighbors when we are willing to cross the road for one another.”

– Henri J. Nouwen



COMMUNITY OUTREACH:

- Behavioral Advisory Team (BAT) – County-wide collaboration
- Homeless Outreach Team (HOT)

- Blue Santa



Blue Santa
reached
357 families
926 children



sanmarcostx.gov



2022 ANNUAL AWARDS

- Distinguished Service awards: 10
- Life Saving Medals: 10 medals | 7 individuals
 - Dispatcher Jessica Robison | Tourniquet Application | 4.18.22
 - Officer Daniel George | Drug Overdose | 7.15.22
 - Officer Todd Poirier | Suicide Attempt | 11.7.22
- Community Partnership Awards: 4





RECORD BREAKING TRAINING

- *The most classes—department wide—in a decade*
- 221 Classes
 - Incident Command
 - Trauma/Medical Aid
 - Active Attack/Rescue Task Forces
 - Active Bystander for Law Enforcement (ABLE)
- 1,631 Students
- 10,605 Class Hours



POINTING TO PROGRESS

SMPD has made significant progress in pursuit of accreditation and accountability.



Our North Star

An unwavering definition of purpose to ensure movement in the right direction.

Giving our B.E.S.T. to our community, to our department, to our families, and to ourselves.

B.E.S.T. = Better Everyday Stronger Together
Established 2022



2022 USE OF FORCE REPORT

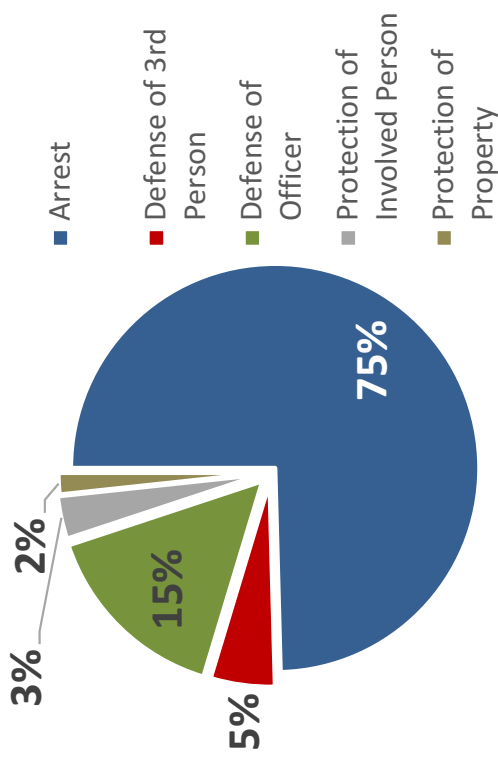
- Duty-related citizen contacts = 65,500+
- Use of Force incidents = 59
- Use of Force incidents = .09%

– Most types of services rendered at time of use of force includes citizen call for service and arrest

Type of Force Used	2021	2022	Difference
Pepper spray (Chemical)	5	8	3
Deadly Force	2	2	0
Impact Munition (Less Lethal)	2	5	3
K-9 Bite	1	3	2
Other*	33	20	-13
PIT	3	1	-2
Strikes	7	16	9
Taser	48	35	-13
Wrap Restraint	23	19	-4

*Other = incidents that are non-reportable but include injury

Reason for Use of Force



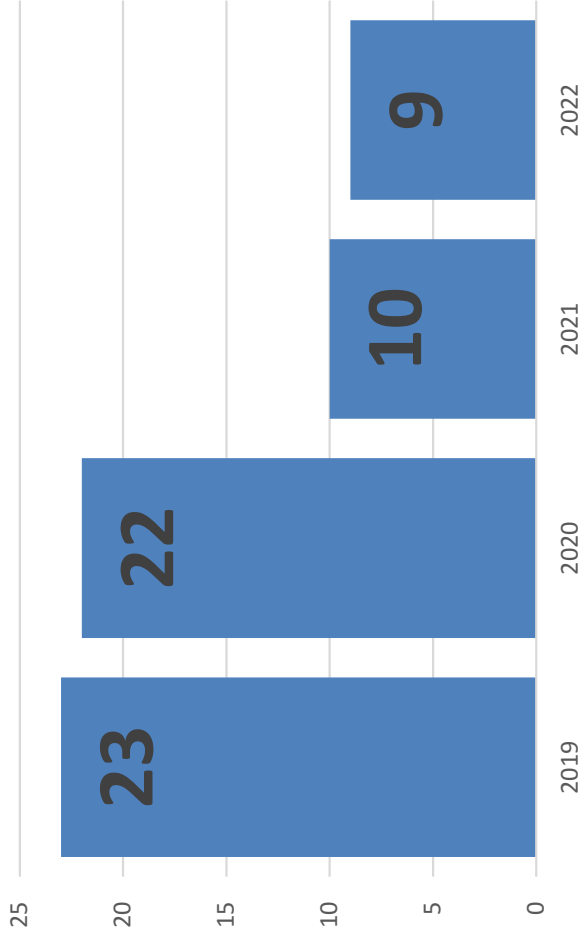
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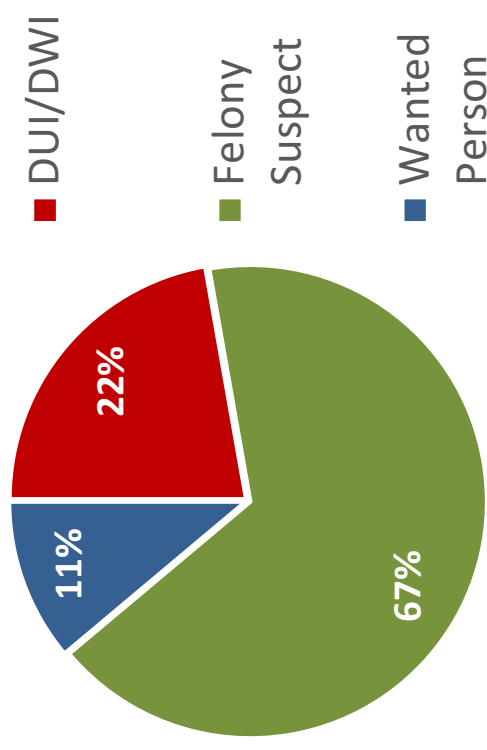
2022 PURSUIT REPORT

- In 2021, SMPD revised its policy on pursuits to focus on violent offenses, balancing criminal apprehension with community safety.

Number of Pursuits: 2019-2022



Reason Initiated for Pursuit 2022



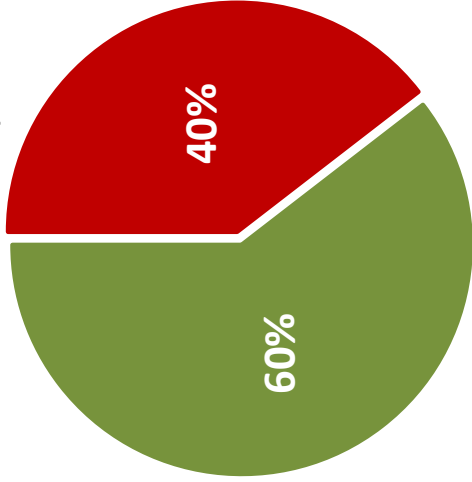
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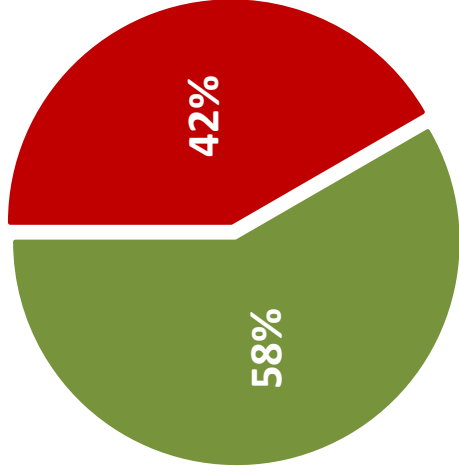
2022 OFFICER CRASH REPORT

- Total number of crashes 2021: 43
 - Total number of crashes 2022: 36
- 16% change**

2021 Officer Crash Report



2022 Officer Crash Report



■ Preventable

■ Non-Preventable

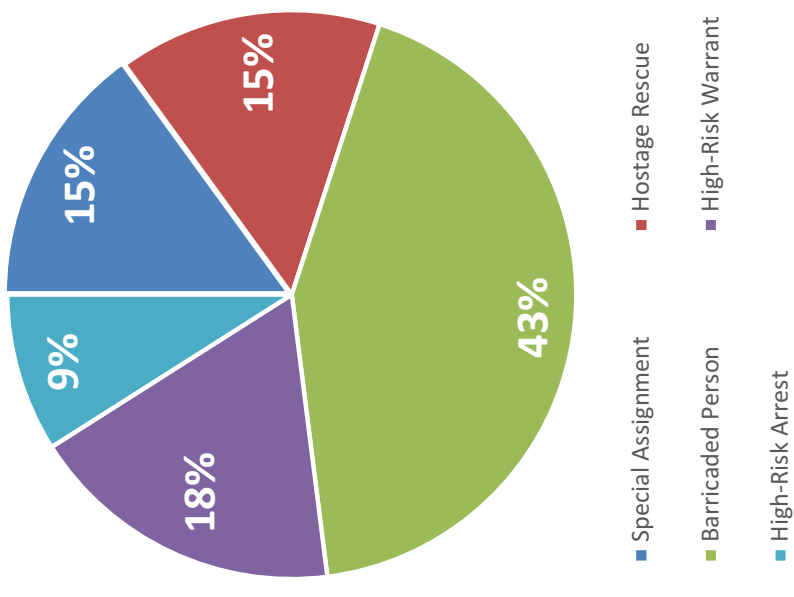
In 2022, 15 crashes were deemed preventable. 10 of these (67%) resulted in corrective and/or disciplinary actions



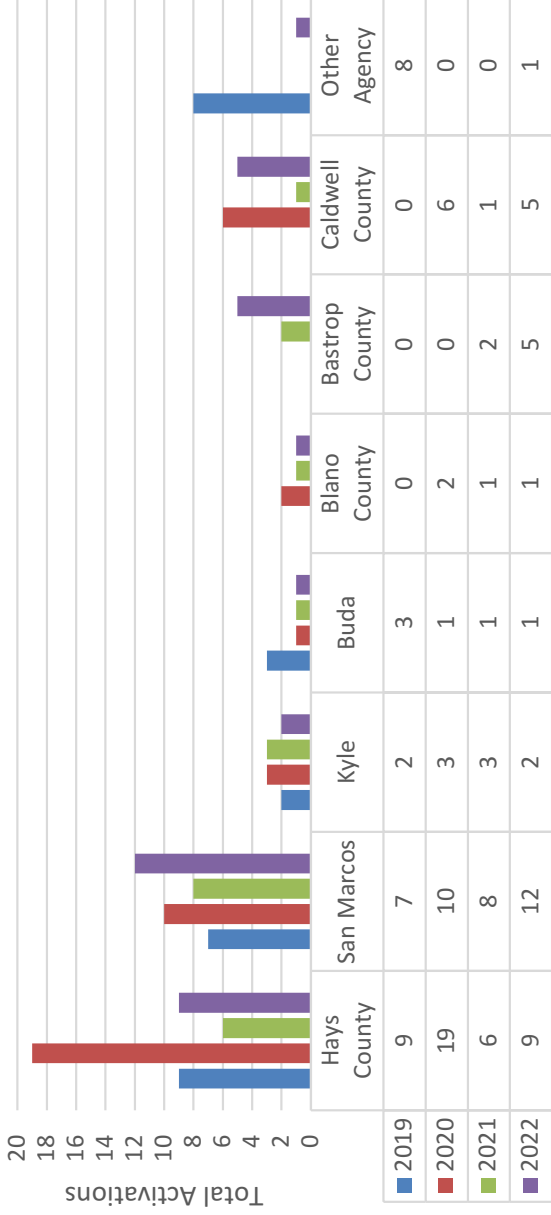
2022 SWAT CALLS

- 37 operations
- Total of personnel hours used = 2,352

Special Threat Situations - 2022



2019-2022 SWAT Activations



■ 2019 ■ 2020 ■ 2021 ■ 2022



KEEPING THE MAIN THING, THE MAIN THING

Violent crime continues to
climb, but...

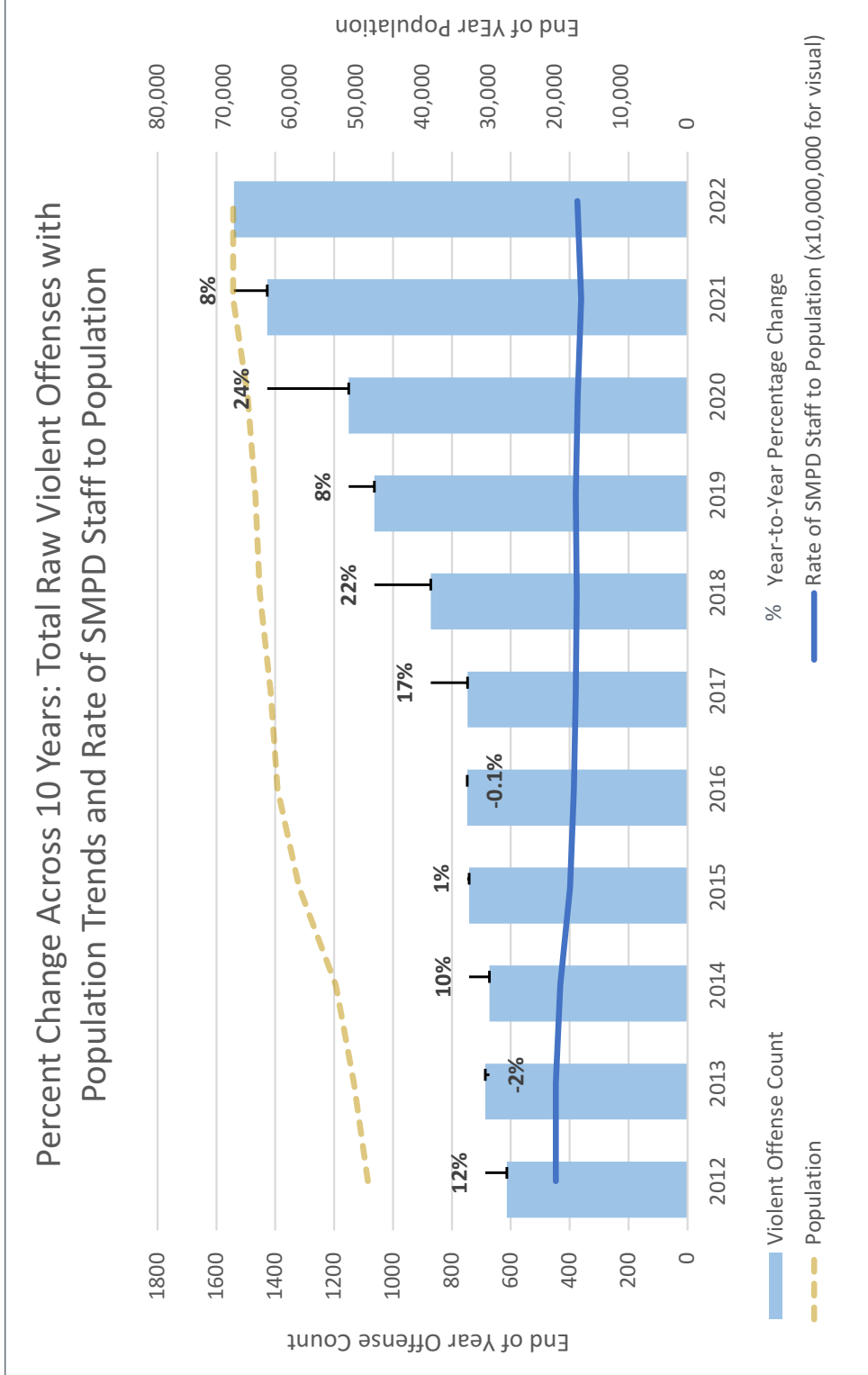


TEN-YEAR CRIME TRENDS-VIOLENT

Violent crimes are climbing faster than population increases

2018-2022 has seen a steep climb in offense counts

Rate of SMPD staff to SM population is decreasing





2012-2022 PERCENT CHANGES

- 2012: 613 violent offenses
- 2022: 1,541 violent offenses

151% increase in offenses

- 2012: 48,272 census population
- 2022: 68,580 census population

42% increase in population

- 2012: 96 sworn officers
- 2022: 114 sworn officers

19% increase in officer strength

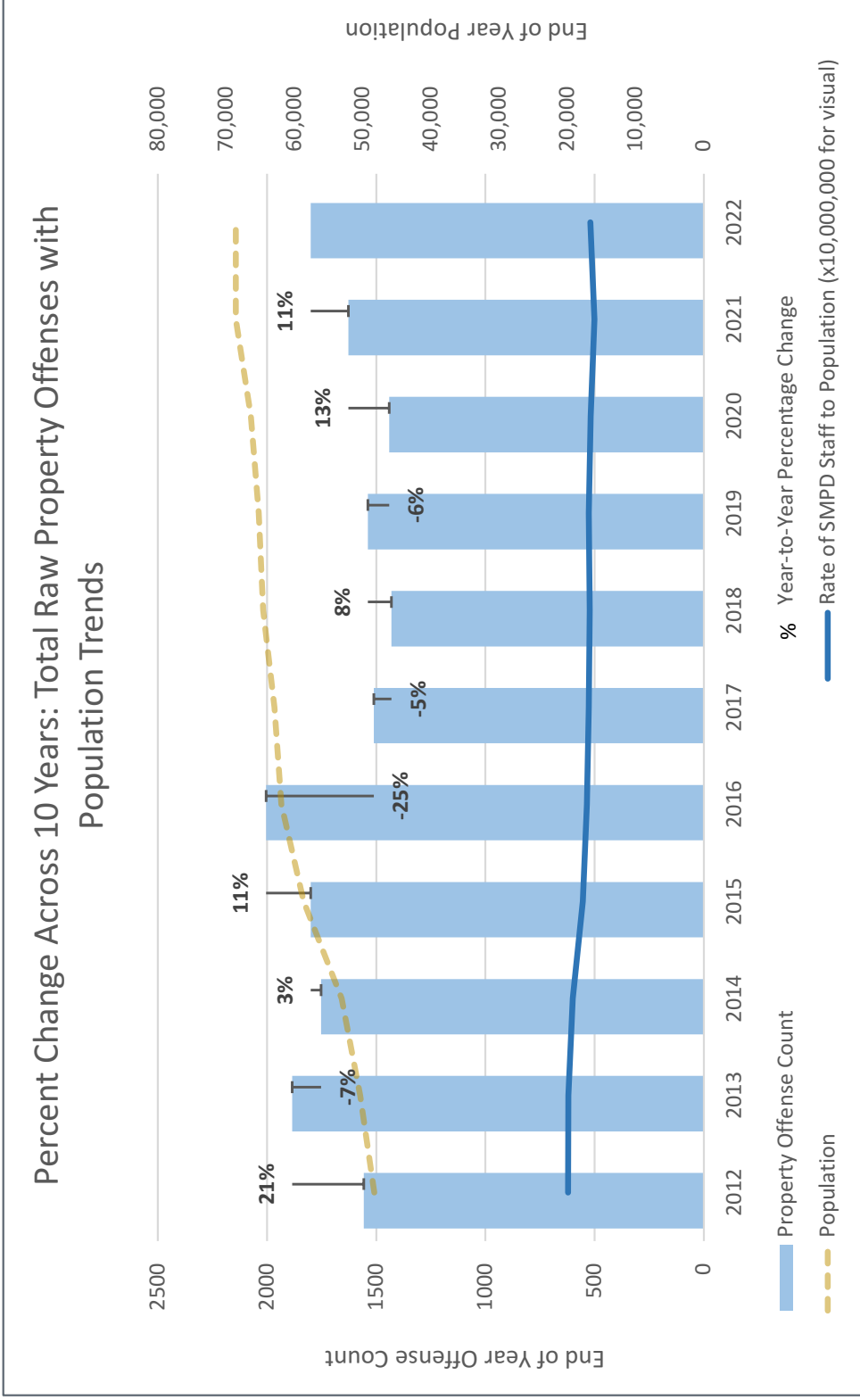


2018-2022 PERCENT CHANGES

- 2018: 872 violent offenses
 - 2022: 1,541 violent offenses
- 77% increase in offenses**
- 2018: 64,589 census population
 - 2022: 68,580 census population
- 6% increase in population**
- 2018: 108 sworn officers
 - 2022: 114 sworn officers
- 6% increase in officer strength**



TEN-YEAR CRIME TRENDS-PROPERTY



There was a substantial drop in offenses in 2017

2018-2022 has seen a relative climb in offenses potentially related to population growth

Decreased property offenses may be due to decreased civilian reporting

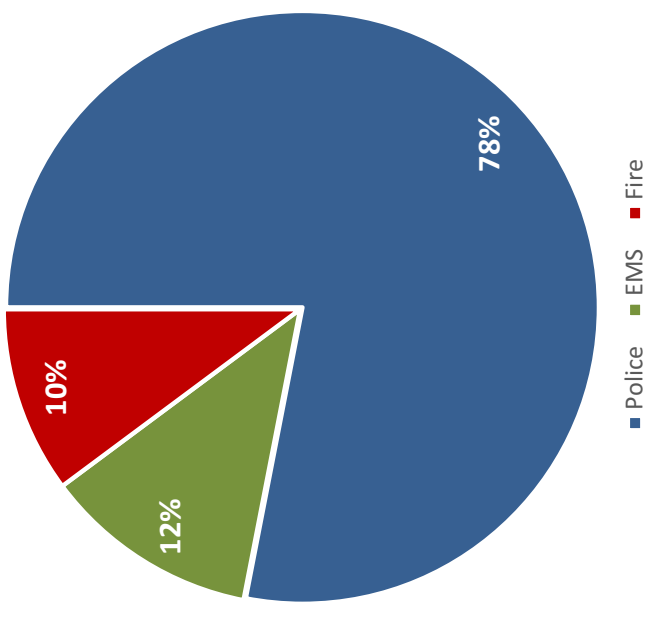
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9-1-1 CALL CENTER

- San Marcos received over 84,000 calls for service* in 2022
 - Total calls to non-emergency: 88,175
 - Total calls to 9-1-1 emergency: 44,232
 - Total incoming calls: 132,407
 - Total incoming calls 2021: 139,587
 - 2021 to 2022 difference: -5%
 - Landmark day/hour: 3.2 calls/min

Calls for Service 2022



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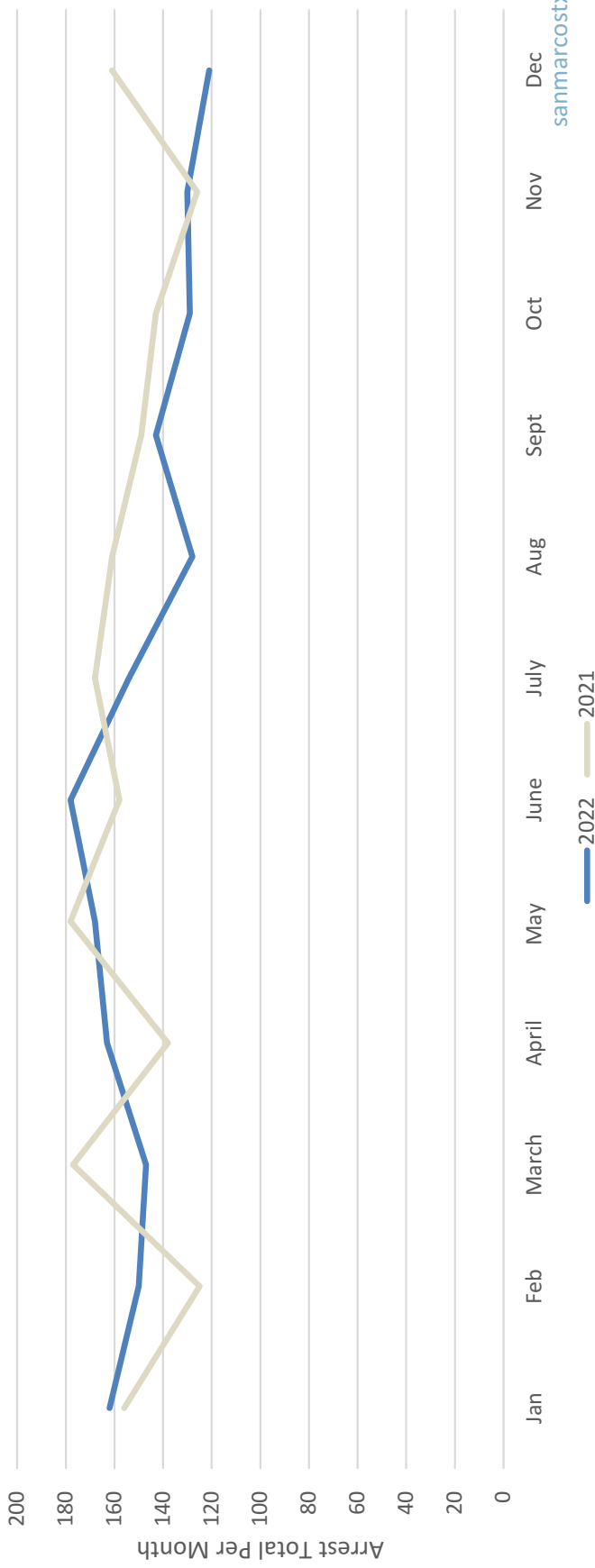
*Calls for service are calls that lead to services dispatched.



2022 ARRESTS

- Total Number of Arrests 2021: 1,840
 - Total Number of Arrests 2022: 1,773
- 4% change**

2022 vs. 2021 Arrest Comparisons by Month





2022 DISTURBING TRENDS

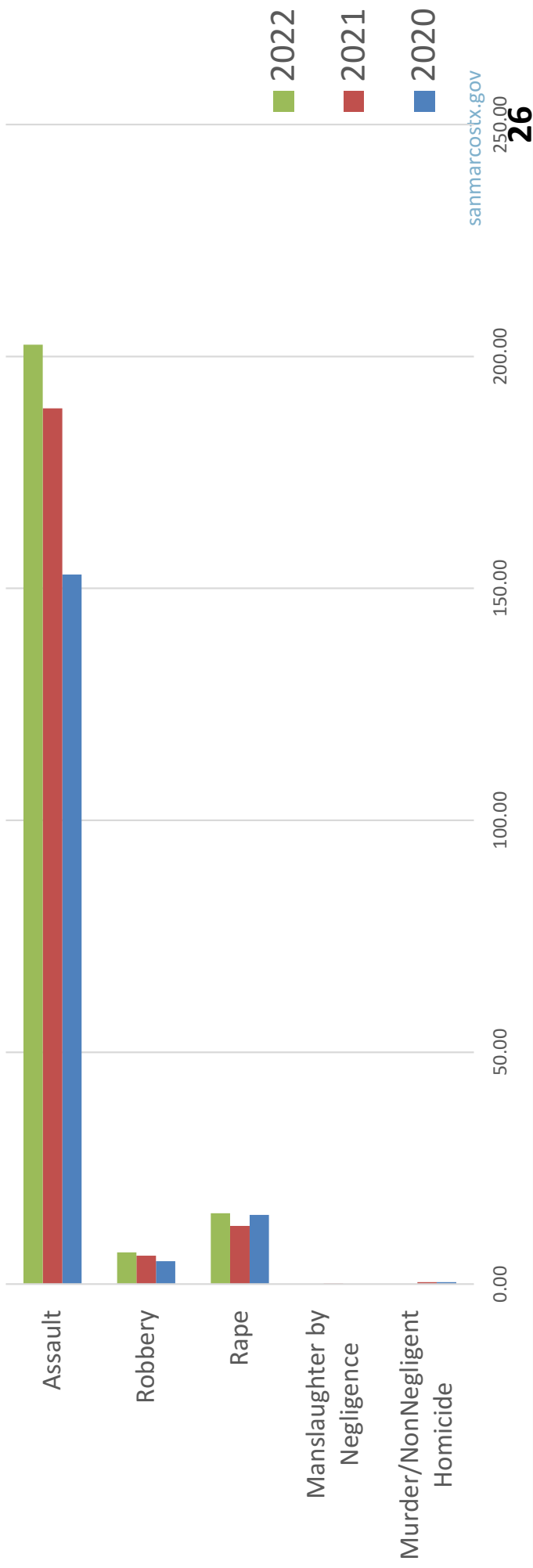
- Road Rage
 - The PD typically receives 5-8 reports per year
 - In 2021, there were 13 incidents reported
 - By February 8, 2022, there were already 8 incidents reported
- Stolen Firearms
 - Throughout 2022, there were 85 firearms stolen from vehicles
- Fentanyl
 - 4 fatal fentanyl overdoses
 - 514 pills and 1,600 grams of powder fentanyl seized



2022 CRIME TRENDS-VIOLENT

- 2020 Violent Crime Rate (per 10,000): 173 } **20% increase**
- 2021 Violent Crime Rate (per 10,000): 208 } **8% increase**
- 2022 Violent Crime Rate (per 10,000): 225

Violent Crime Rate (per 10,000): 3-year Comparison

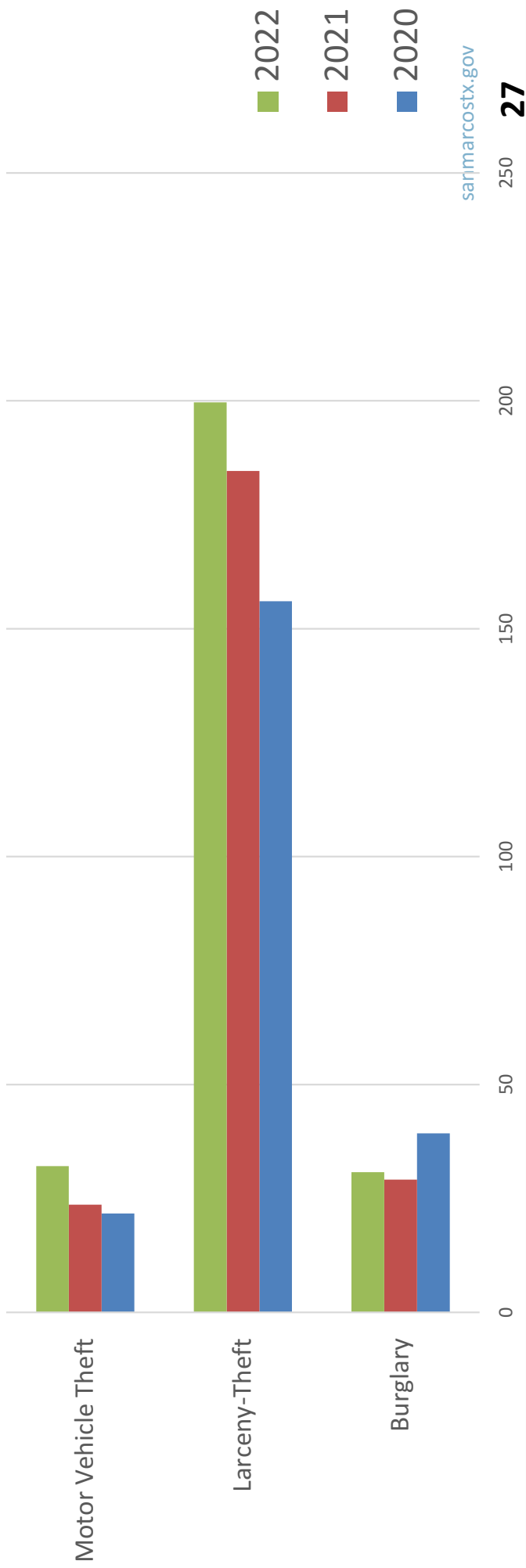




2022 CRIME TRENDS-PROPERTY

- 2020 Property Crime Rate (per 10,000): 217 } **9% increase**
- 2021 Property Crime Rate (per 10,000): 237 } **11% increase**
- 2022 Property Crime Rate (per 10,000): 263

Property Crime Rate (per 10,000): 3-year Comparison





EFFORTS TO REDUCE CRIME

- The Collaborative Approaches to a Resilient Environment (C.A.R.E.) initiative in 2021 brought forward information about San Marcos' violent crime and areas for focus
- This information brought about:
 - Intelligence-led policing
 - Data-Driven Approach to Crime and Traffic Safety (DDACTS)
 - Crime Reduction Unit (CRU)
 - Violent Criminal Apprehension Team (ViCAT)
 - Increased efforts for Community Collaboration
 - Investing in technology



LEVERAGING TECHNOLOGY

- Total Cost: \$109,693.93
 - ✓ GrayKey – forensics tool that provides lawful access to locked devices
 - ✓ DroneSense – live video streaming across multiple devices
 - ✓ BriefCam – rapid video review using electronic searches
 - ✓ Magnum Mobile Services – pan tilt zoom camera for investigations
 - ✓ WASP3 Tactical Contact Microphone – audio through walls
 - ✓ Pole Cameras – monitor direct point/locations for known activity
 - ✓ FLOCK Cameras – license plate readers on ingress/egress roads



STAFFING UPDATES AND CONCERNS

“Hire character. Train skill.”

Peter Schutz



CONTINUED STAFFING CONCERNS

- Officers-2022:
 - 115 authorized officers
 - 11 new hires
 - 6 retirements
 - 4 resignations
 - 2022 Net Officer Gain = 1
- 18% Average Officer Vacancy
- Dispatchers-2022:
 - 28 floor positions
 - 15 completed training
 - 4 still in training
 - 8 vacancies
 - 1 frozen vacancy
- 43% Average Dispatcher Vacancy



CONTINUED STAFFING CONCERNS

- Functional vacancies occur when we hire new employees, but they remain in the training pipeline, or they are out on FMLA.
 - Currently (6) in Field Training (FTO) – 20 weeks long
 - Currently (7) in Basic Academy (6 months, 6-week mini academy, 20 weeks FTO)
 - 2 out on FMLA
 - 5 FMLA's expected in the coming months (newborns)



ON-BOARDING TIMELINES

- Officer-in-training
 - Recruiting and Testing (2-3 Months)
 - Academy and Mini-Academy (9 Months)
 - Field Training (20-25 Weeks)

Up to 2 Years
- Dispatcher-in-training
 - Phase 1: Phones (6 Weeks)
 - Phase 2: TLETS (4 Weeks)
 - Phase 3: Fire/EMS (3 Weeks)
 - Phase 4: Police Radios (8 Weeks)

Over 5 Months



LOOKING AHEAD

What follows are strategies that are both in progress and/or being considered for 2023.



2023 STRATEGIES IN PROGRESS

- Start the (3) new Public Safety Specialists (PSS) on March 23
- Operationalize the (9) downtown cameras
- Purchase pan tilt zoom cameras for high crime areas
- Continue to migrate Violent Criminal Apprehension Team (ViCAT) toward proactive investigations

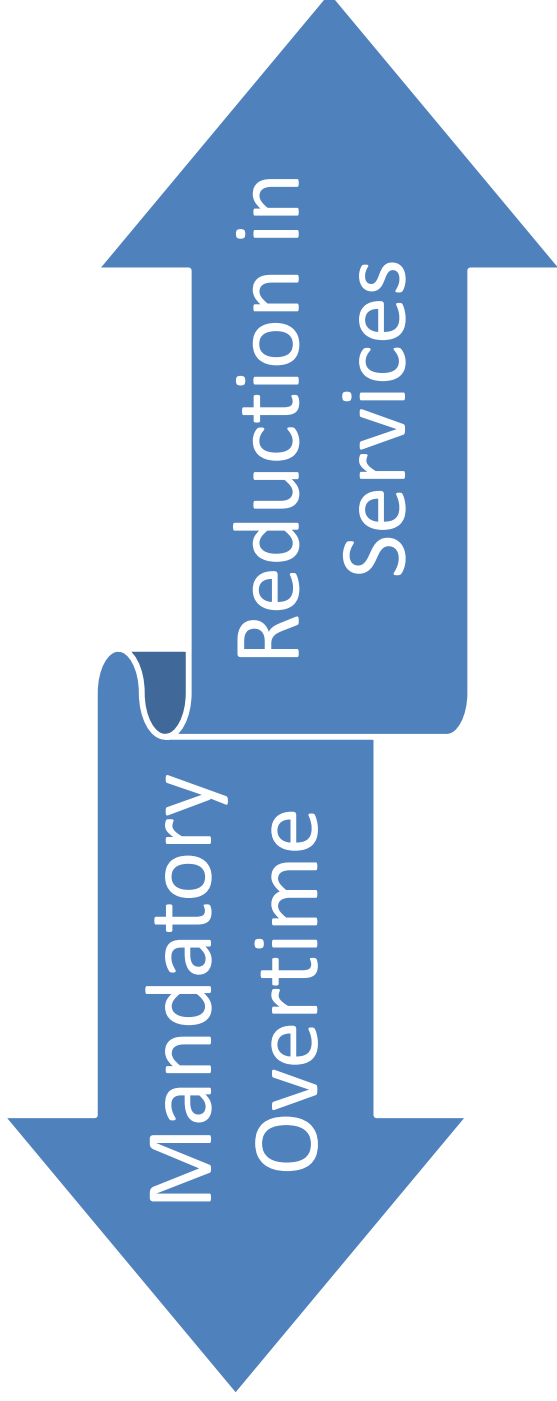


2023 STRATEGIES TO CONSIDER

- Per staffing report, released in 2021, the department needed 10 additional sworn. Council allocated (2) for fiscal year 2023 adopted budget
- Department also will continue to evaluate civilian positions that can be hired faster and with fewer expenses.



2023 STRATEGIES TO CONSIDER



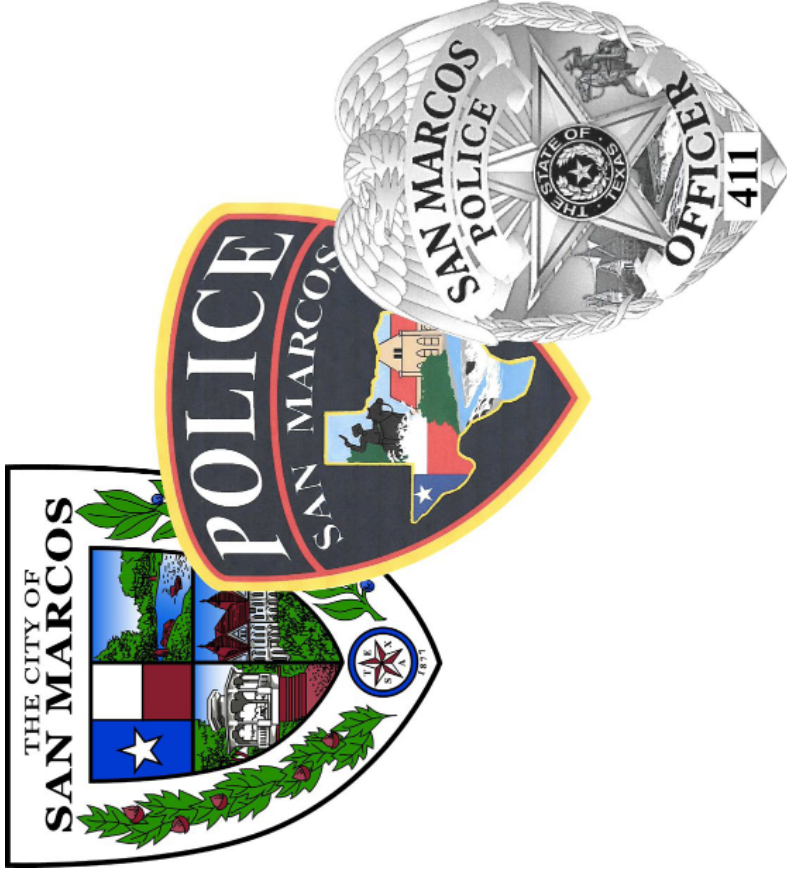


REDUCTION IN SERVICES

- In planning:
 - Priority 3 – stop responding to noise violations during high call load
 - Priority 3 – stop sending officers to crashes with no injuries or tows, absent a known disturbance
 - Priority 4 – refer all illegally parked vehicles to Parking Enforcement, even after hours for next-day follow up
 - Priority 4 – restore online reporting in two weeks



QUESTIONS





City of San Marcos

City Council Work Session

March 7, 2023



Overview

- Fire Incident Reporting System
- Incident Types
- Call Volume
- Station Locations
- Prevention
- Support Services
- Training
- Staffing

Operations



Texas Fire Incident Reporting System (TEXFIRS)

- National Fire Incident Reporting System (NFIRS)
 - The U.S. Fire Administration (USFA):
 - Analyze the severity and reach of the **nation's fire problem.**
 - Use NFIRS information to develop **national public education campaigns.**
 - Make recommendations for **national codes and standards.**
 - Determine **consumer product failures.**
 - Identify the focus for **research efforts.**
 - Support **federal legislation.**



Incident Types – (NFIRS)



Fire



Explosion



EMS/Rescue



Hazardous
Condition



Service Call



Good Intent



False Alarm



Severe Weather

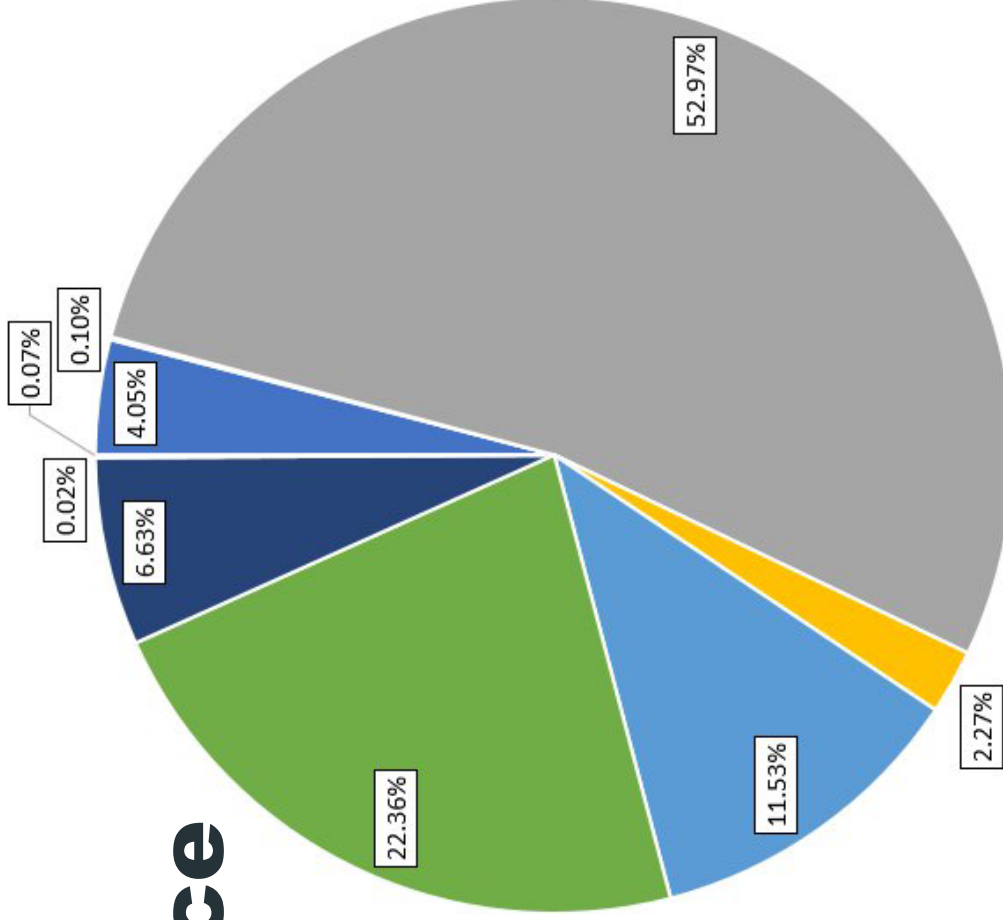


Special Incident
Type



2022 Calls for Service

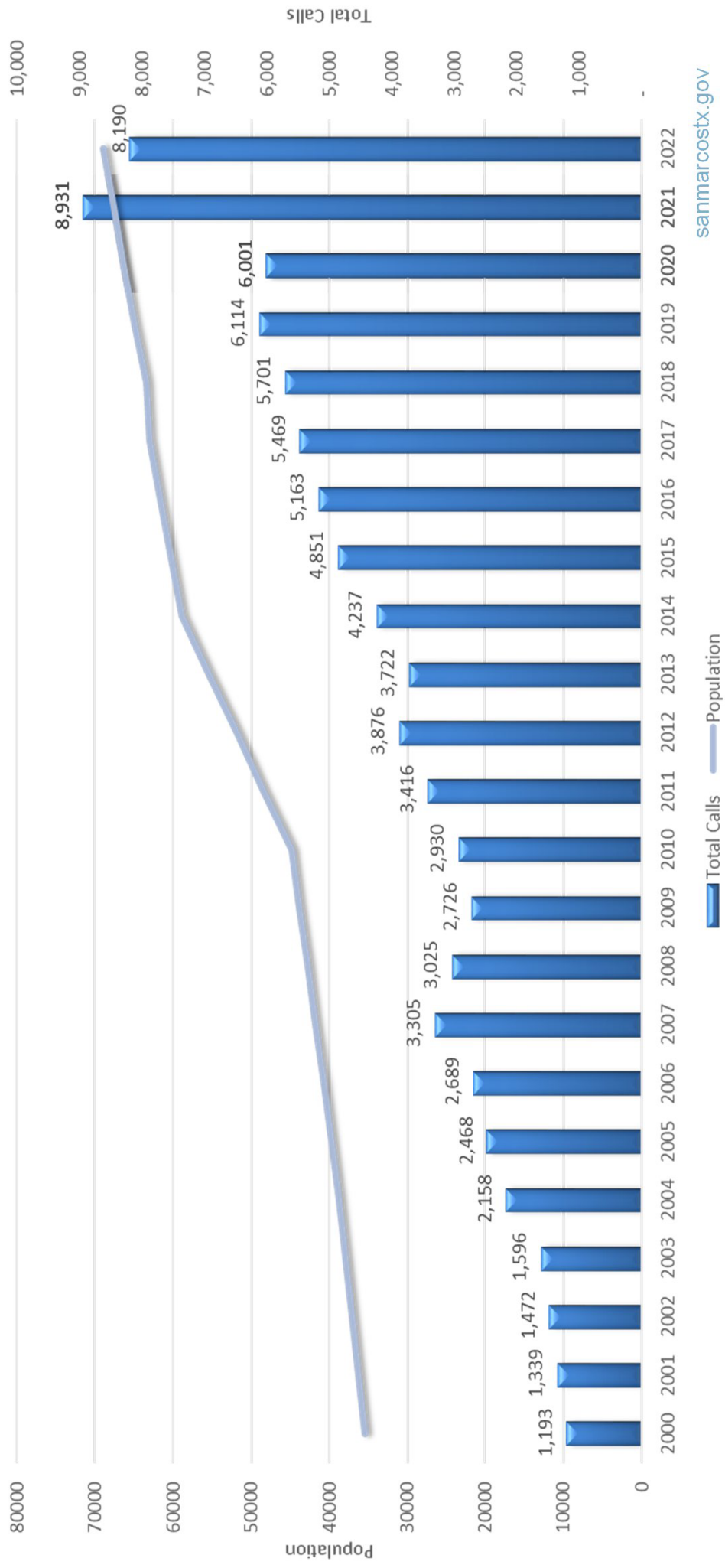
- Fire - 332
- Overpressure Rupture, Explosion, Overheat (No Fire) - 8
- Rescue and Emergency Medical Services (EMS) Incidents - 4,338
- Hazardous Conditions (No Fire) - 186
- Service Call - 944
- Good Intent Call - 1,831
- False Alarm and False Call - 543
- Severe Weather and Natural Disaster - 2
- Special Incident Type - 6



Total: 8,190

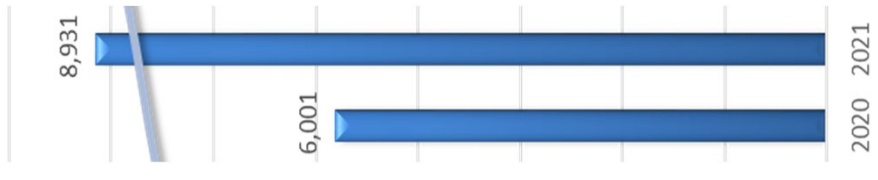
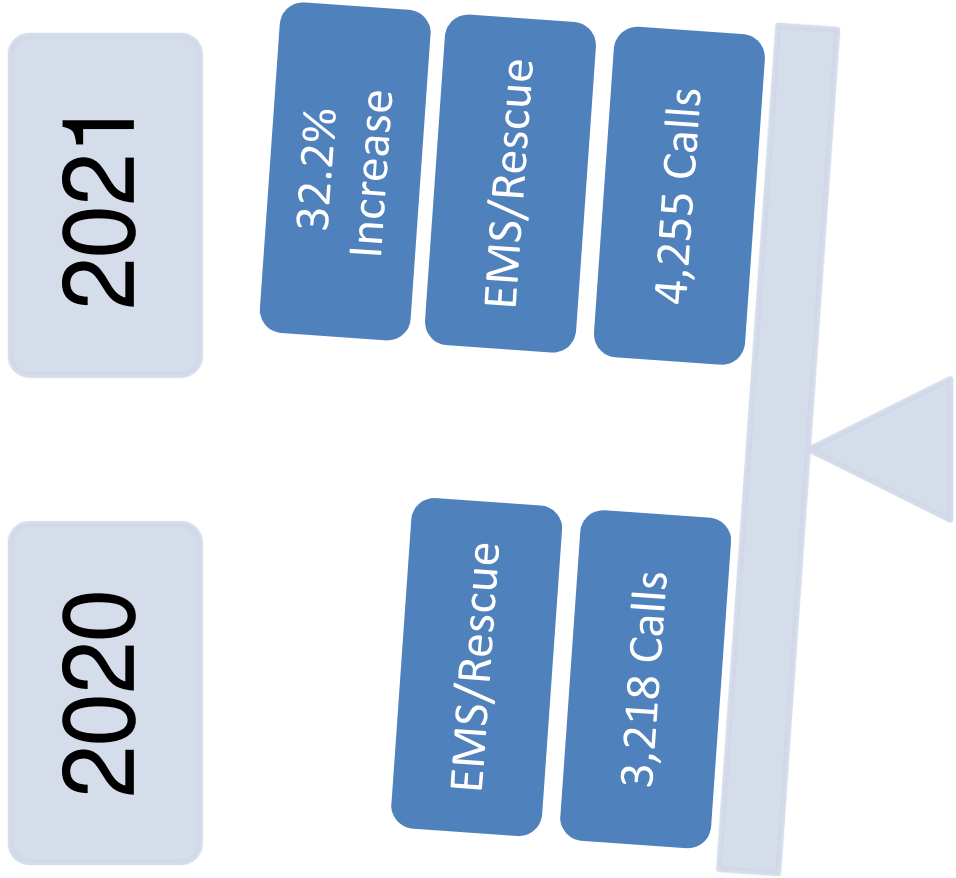


48.83% Increase from 2000 to 2021



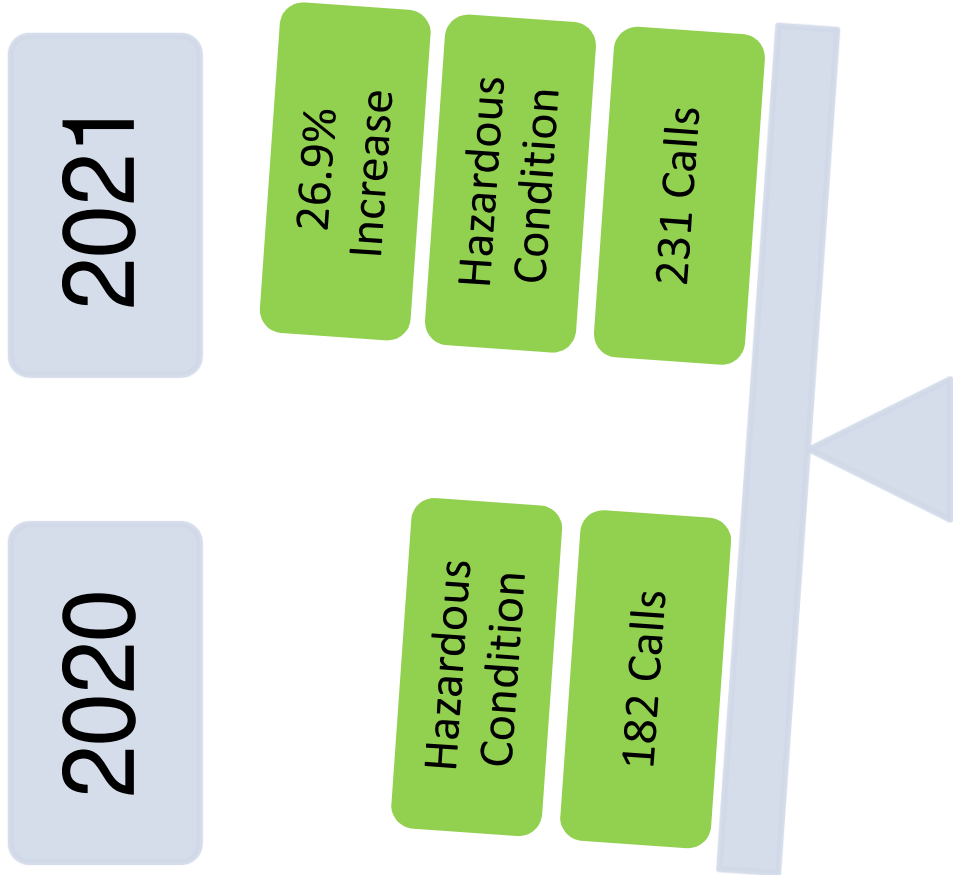


48.83% Increase from 2020 to 2021



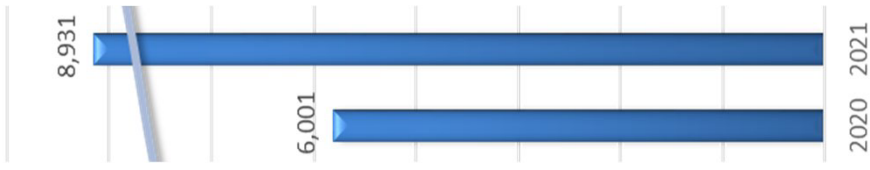
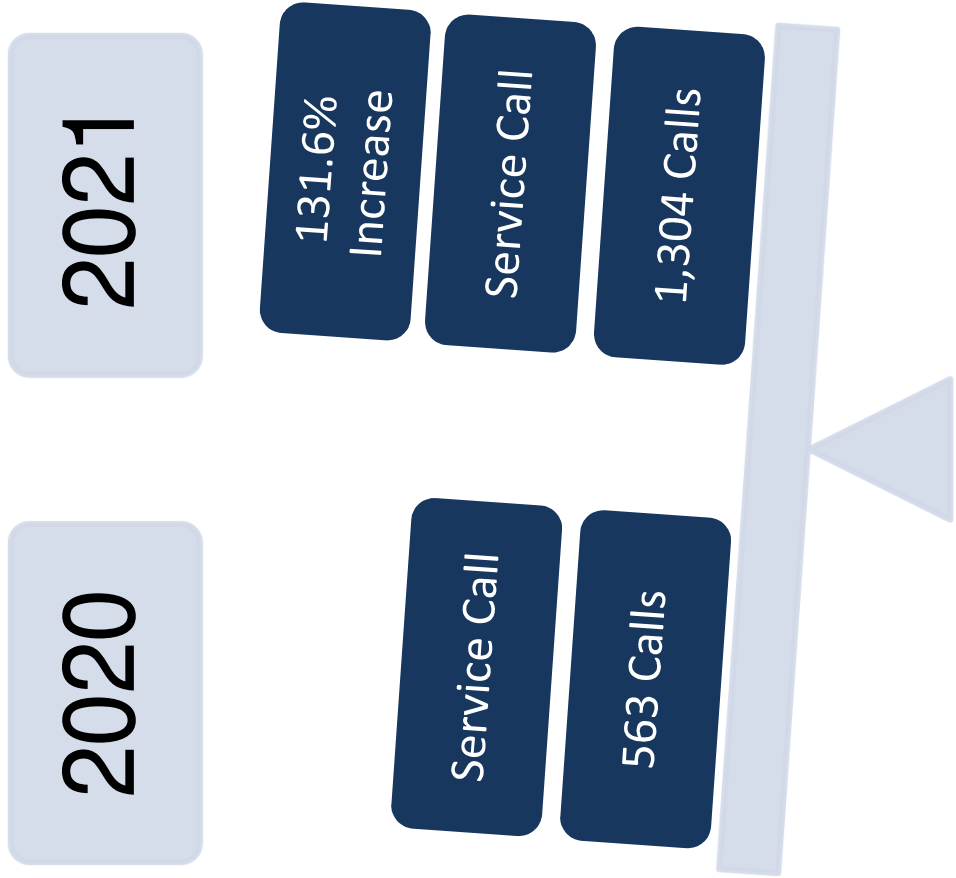


48.83% Increase from 2020 to 2021



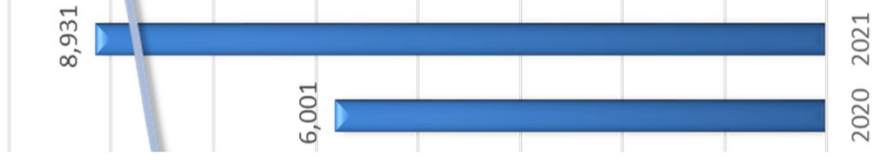
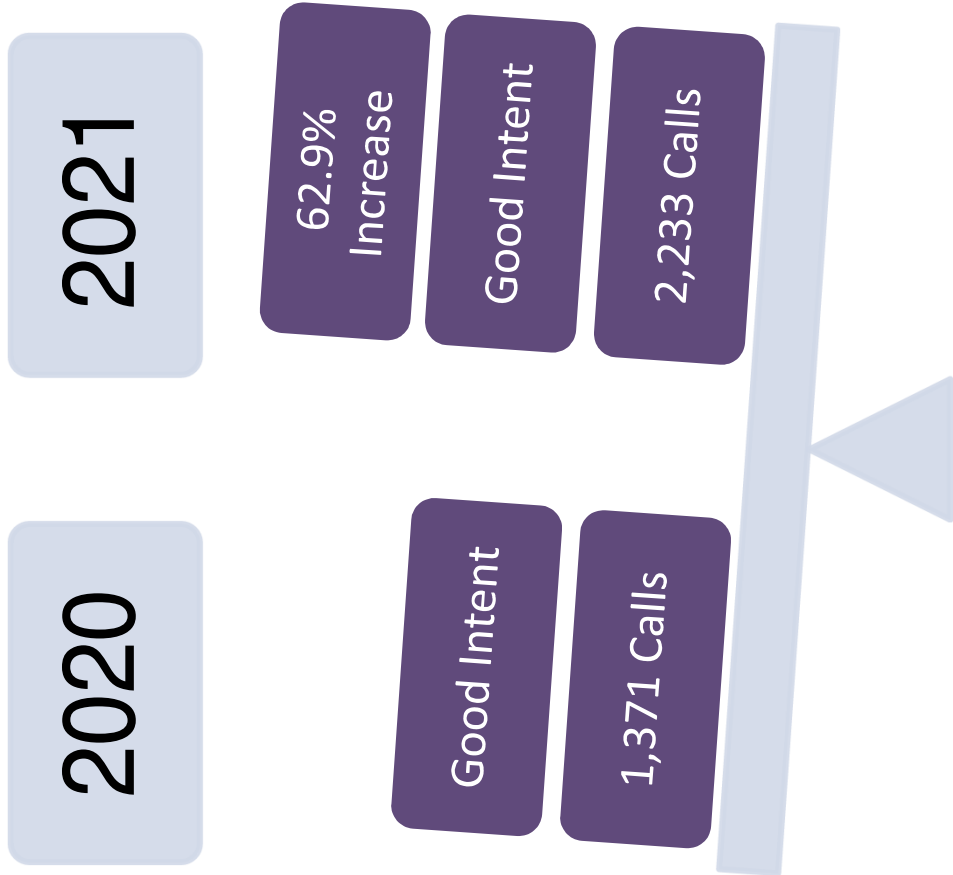


48.83% Increase from 2020 to 2021





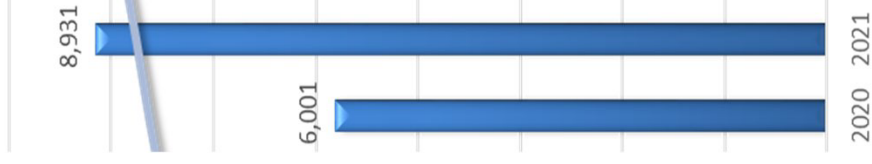
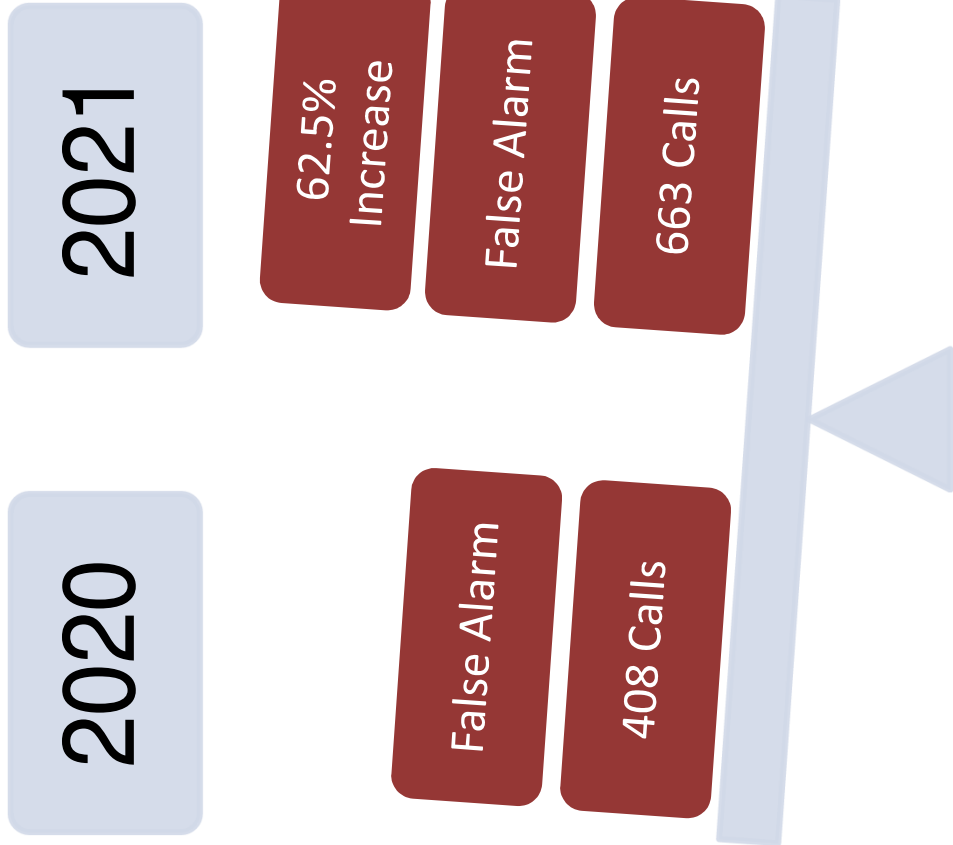
48.83% Increase from 2020 to 2021



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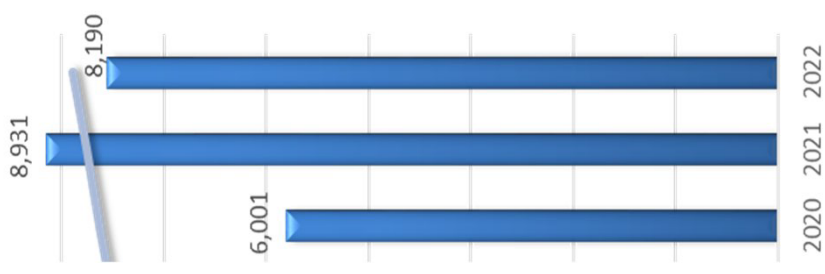
48.83% Increase from 2020 to 2021





48.83% Increase from 2020 to 2021

- Winter Storm Uri (2/13 – 2/18)
 - 622 calls in six days

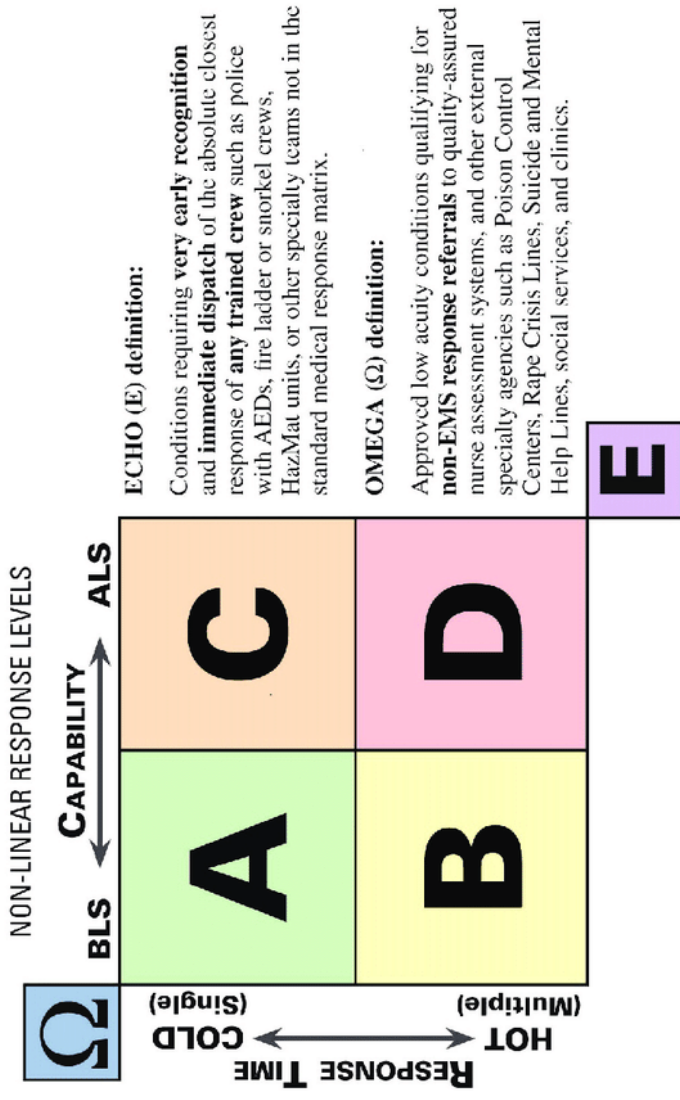


2020 2021 2022

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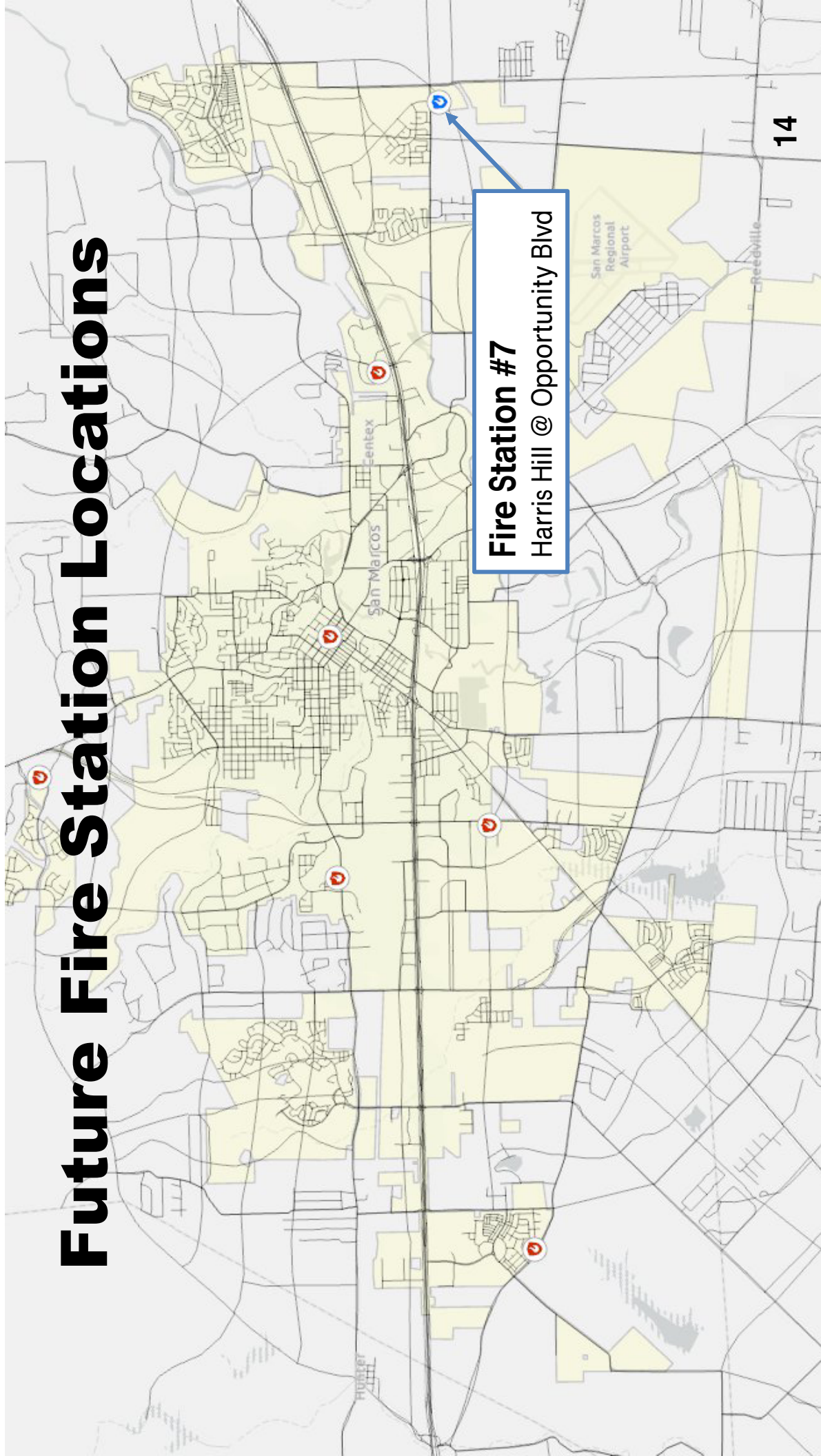
Priority Dispatch Response Levels



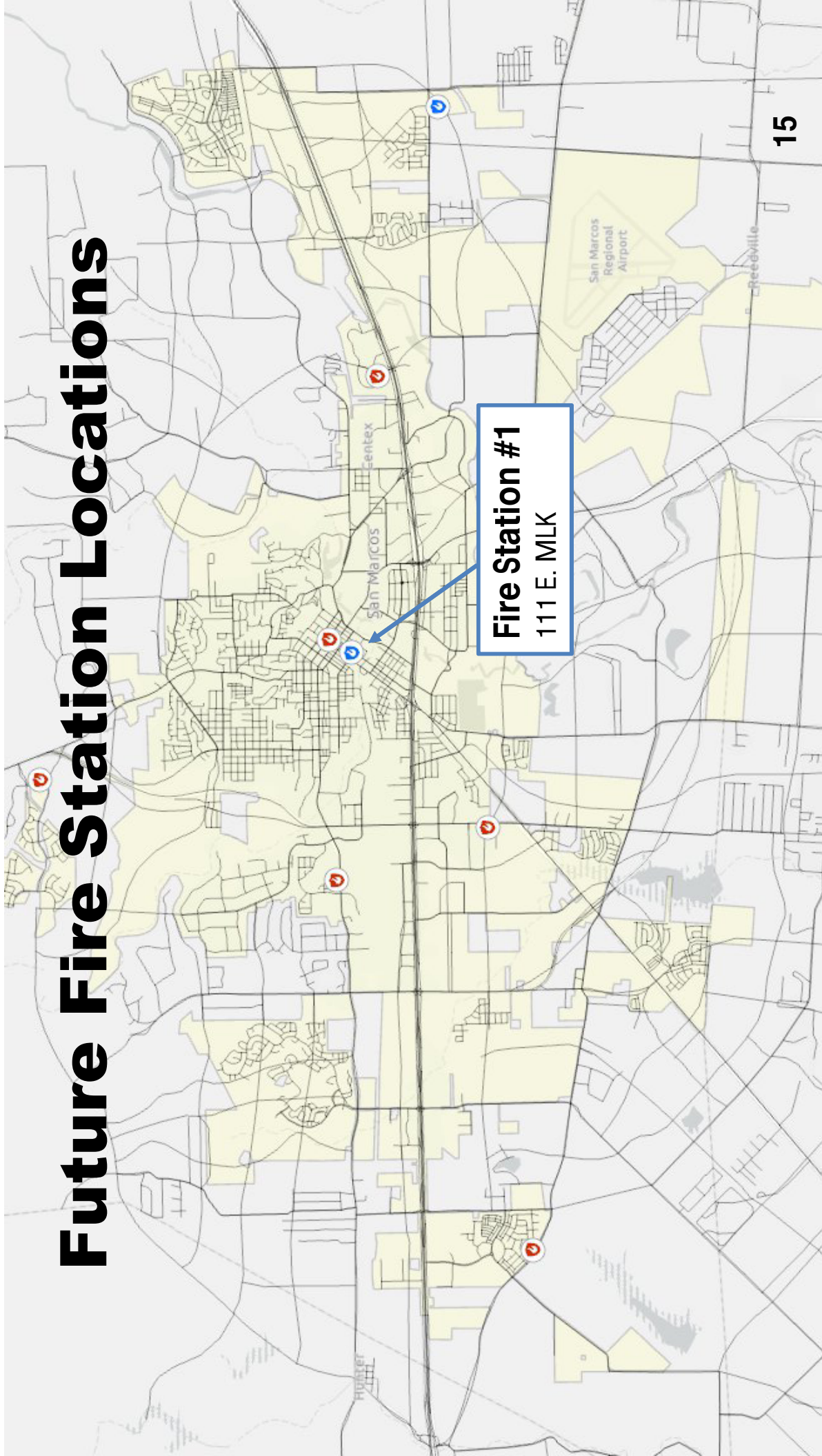
© 2012 International Academies of Emergency Dispatch – used by permission.

- BLS: Basic Life Support.
- Ω: MPDS OMEGA determinant level.
- A: MPDS ALPHA determinant level.
- B: MPDS BRAVO determinant level.
- ALS: Advance Life Support.
- C: MPDS CHARLIE determinant level.
- D: MPDS DELTA determinant level.
- E: MPDS ECHO determinant level.

Future Fire Station Locations

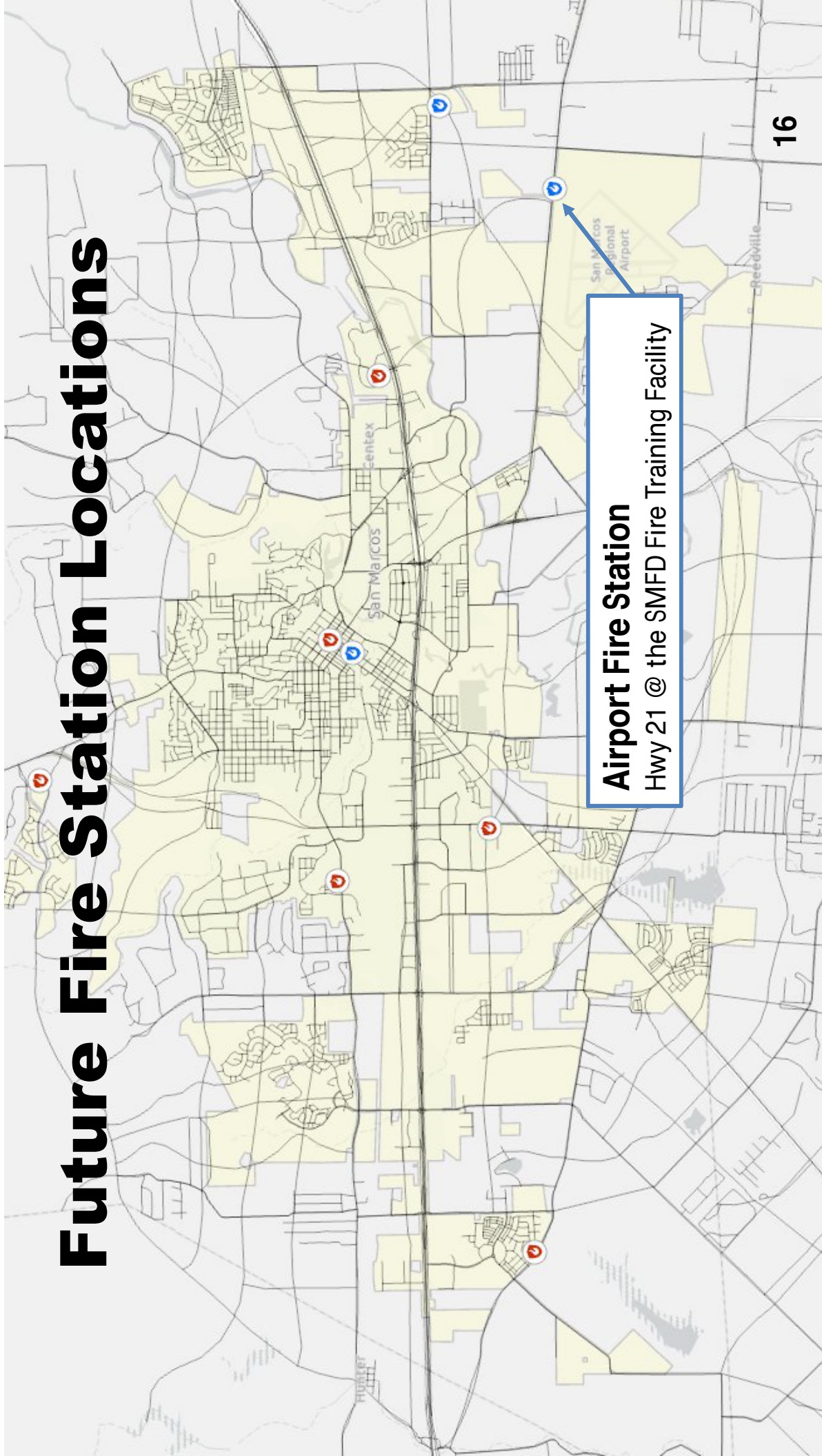


Future Fire Station Locations



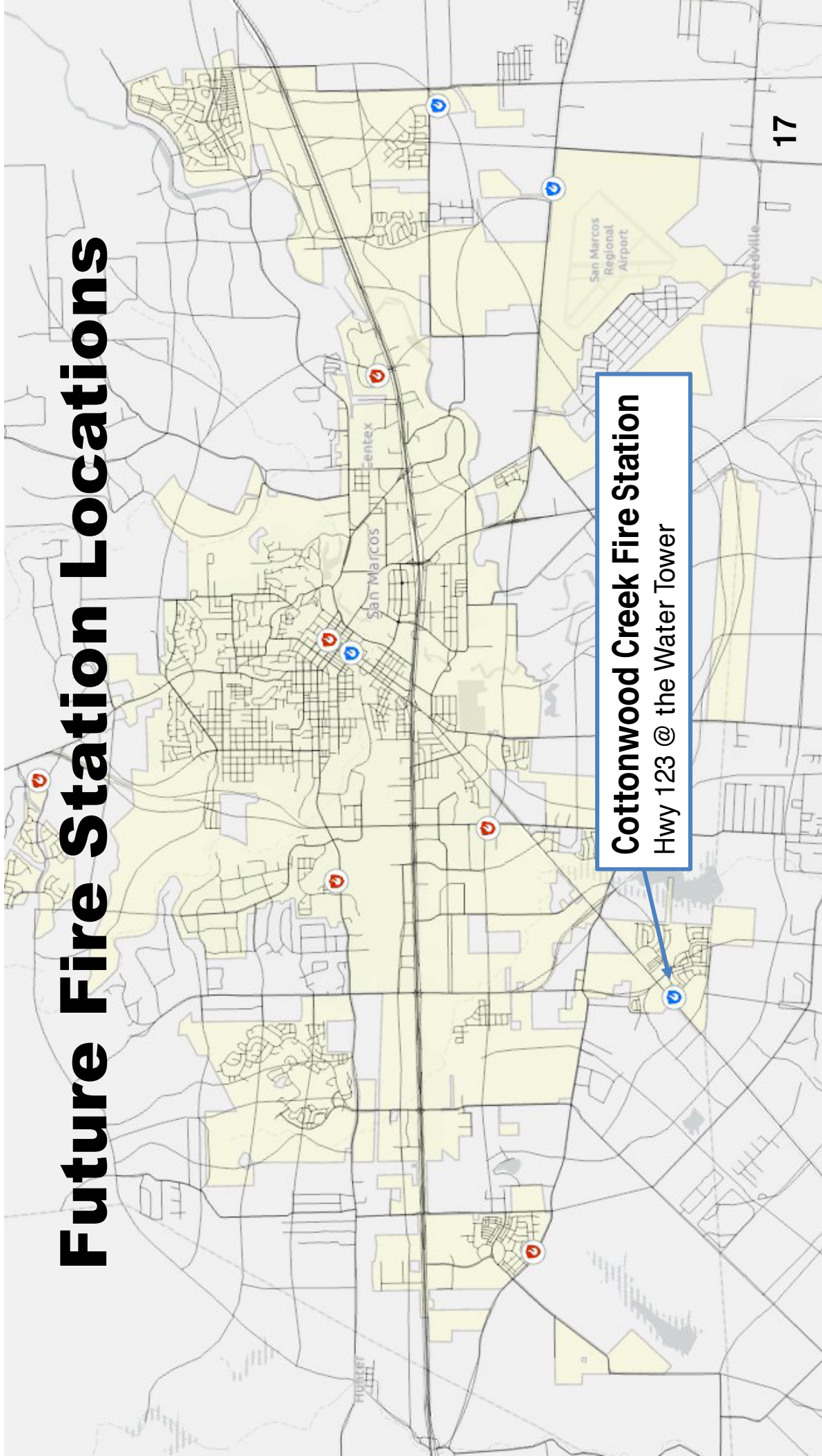
Fire Station #1
111 E. MLK

Future Fire Station Locations



Airport Fire Station
Hwy 21 @ the SMFD Fire Training Facility

Future Fire Station Locations



Cottonwood Creek Fire Station

Hwy 123 @ the Water Tower



Single Family Homes Coming Soon:

- **Total New Single-Family Homes Issued as of 12/31/2022:**

- Blanco Vista – 1,721
- Whisper – 348
- Trace – 648
- Kissing Tree – 977
- La Cima – 436

Total: 4,130

- **New Single-Family Homes Proposed for Build Out:**

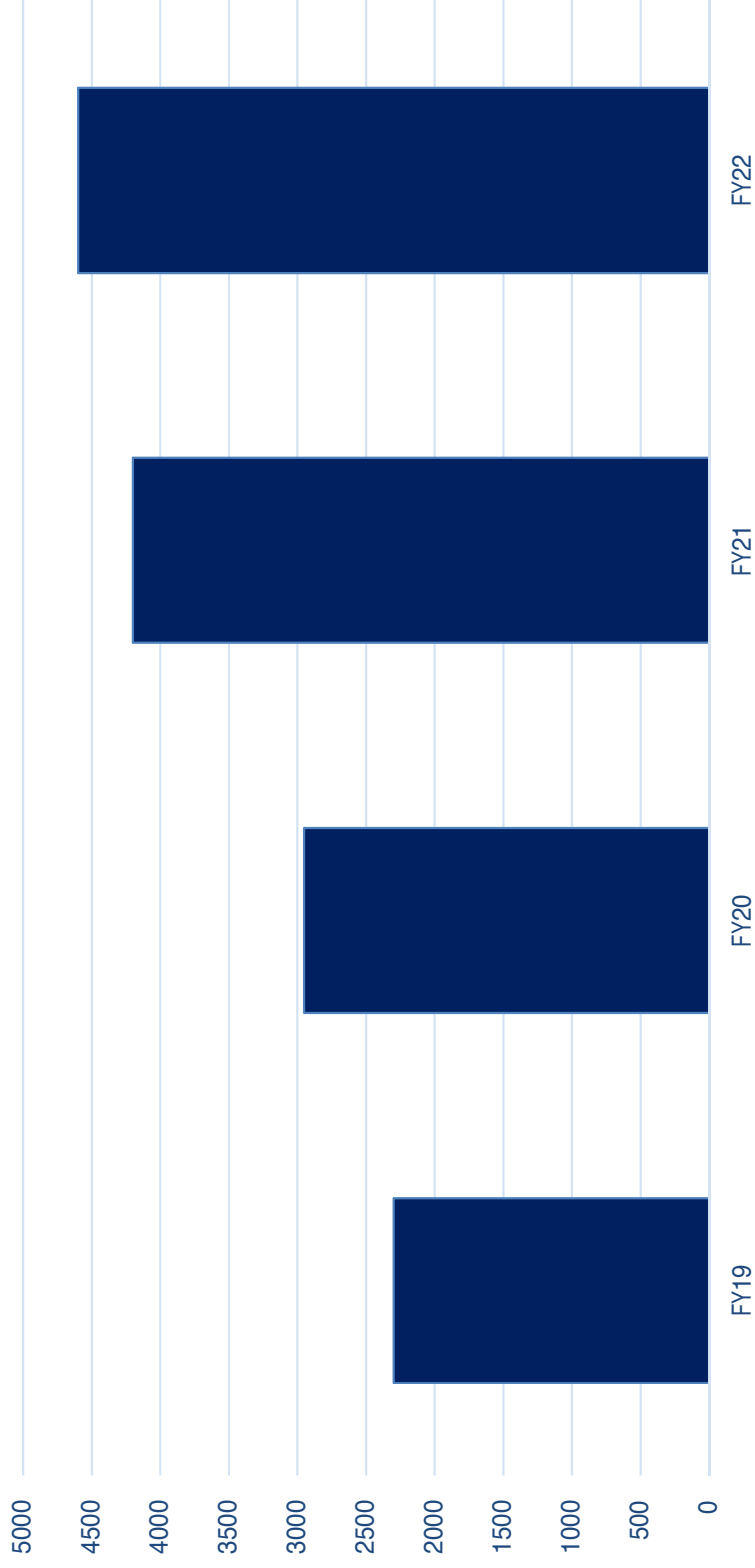
- Blanco Vista +/- 2,200
- Whisper +/- 500
- Trace +/- 1,000
- Kissing Tree +/- 3,450
- La Cima +/- 4,200

Total: 7,150



Prevention - Inspections

Total Inspections





Prevention – Public Education



Fire Academies

- Citizen
- Junior
- Resident Advisor
- 100s reached



Public Education

- Fired Up About Reading
- Clown Shows
- School Visits
- Over 200K reached



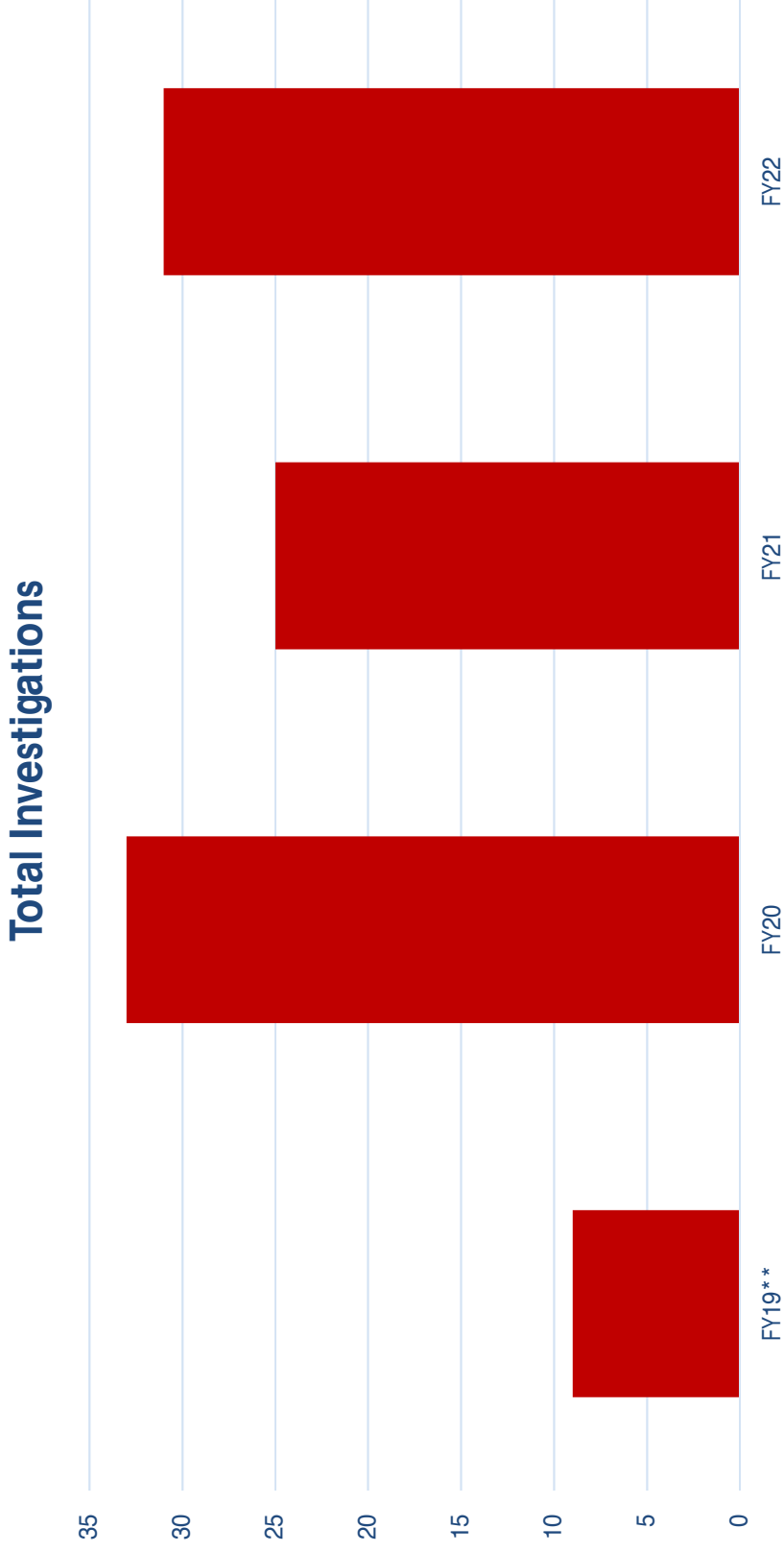
Smoke Detector Installations

- Over 286 detectors installed





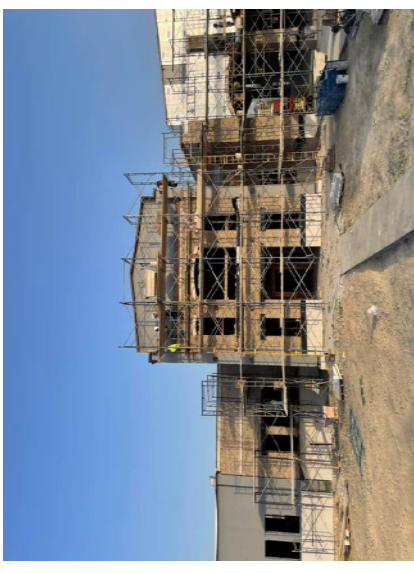
Prevention - Investigations





Support Services

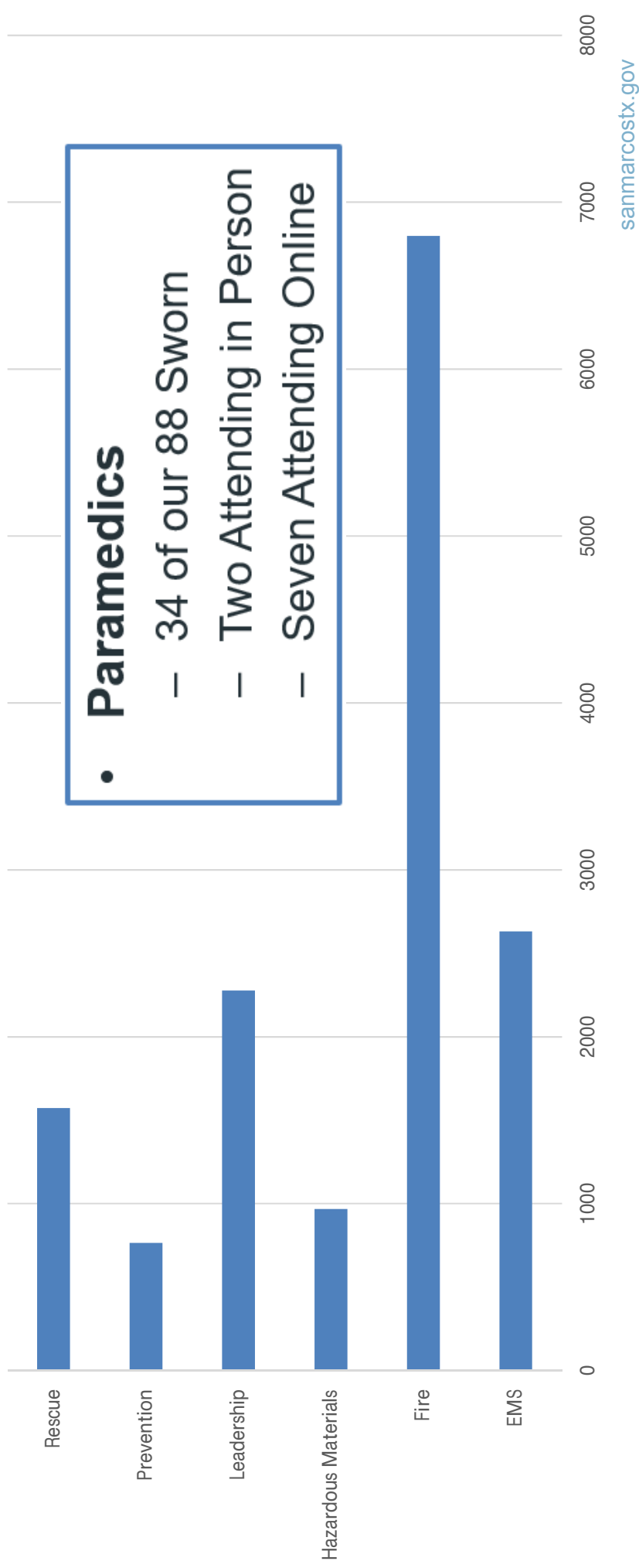
- **Maintain a fleet of over 50 apparatus**
- **Maintain all equipment within the department**
 - Including Information Technology assets
- **Maintain six fire stations and the training field**





Training

2022 Training Hours by Category





Staffing Update

- **Fully Staffed:**
 - 101 Sworn and Non-Sworn
- **Current Vacancies:**
 - Nine (9) Sworn
- **New Hires:**
 - Five (5) starting on April 17th
 - Current list is exhausted
 - Next entrance exam will be scheduled soon





Questions?





Legislation Text

File #: ID#23-188, **Version:** 1

AGENDA CAPTION:

Hold discussion regarding allocating to non-profit agencies Human Services Grant funding of \$500,000.00 from the City's General Fund.

Meeting date: March 7, 2023

Department: Planning and Development Services

Amount & Source of Funding

Funds Required: Click or tap here to enter text.

Account Number: Click or tap here to enter text.

Funds Available: Click or tap here to enter text.

Account Name: Click or tap here to enter text.

Fiscal Note:

Prior Council Action: At the December 14, 2022, meeting, City Council requested that time be set aside on the January 3, 2023, agenda for discussion to provide guidance to the Human Services Advisory Board (HSAB) on their 2023 allocation recommendation. On January 3 and 17, 2023, City Council discussed guidance for the HSAB and provided direction to the City Manager.

City Council Strategic Initiative: [Please select from the dropdown menu below]

N/A

Choose an item.

Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.

Core Services

Not Applicable

Master Plan: *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

Background Information:

Attached is a table showing the Human Services Advisory Board's recommendation for funding human services grants for FY2023, after taking into consideration guidance provided by City Council.

Council guidance included the following two items for which there was not enough information in the current applications to make a determination, so these items were not implemented this year:

- Do not fund more than 20% of a full time position
- Do not fund brand-new start up agencies

Staff had previously ranked all applications by averaging the scores provided by HSAB members. With HSAB concurrence, staff assigned 5 points to each of the 4 priority items in Council guidance:

- Funding creates an increase in services or number of people served
- Agency has an office in San Marcos
- Agency has completed all quarterly reports on time
- Agency has a proven track record of at least 2 years serving San Marcos residents

At HSAB's direction, with these points added to the previous scores, staff sorted to re-rank the applications. The HSAB strongly desired to fund all applicants, and began by assigning 55% of funding requested to the top 15 applications and 20% to the rest. Next after some discussion, the HSAB reduced the amounts of applicants who had requested very large amounts in comparison to other applications (and also reduced one new program). Next, upon further discussion, the HSAB moved those amounts to some long term San Marcos non-profits and two that serve populations that no other applicants serve (Bobcat Pride and PALS).

Program Applications are on the City's website:

<https://sanmarcostx.gov/3051/City-Human-Services-Grants>

Council Committee, Board/Commission Action:

The Human Services Advisory Board (HSAB) considered applications throughout 2022 for funding in 2023 and provided a recommendation to City Council. City Council provided additional guidance to the HSAB. Staff briefed the HSAB on Council guidance, and the HSAB reconsidered the allocations on February 9 and February 16. The HSAB has provided the recommendation as described in Background Information.

Alternatives:

Click or tap here to enter text.

Recommendation:



Receive a staff presentation and approve a resolution allocating FY 2023 Human Services Grant funding to agencies



Background

- December 14, 2022 – City Council considered HSAB’s recommendation and decided to provide policy guidance
- January 17, 2023 – City Council provided direction to Human Services Advisory Board (HSAB)
- February 9 and 16, 2023 – HSAB met to discuss new recommendation for funding allocation



Council Direction to HSAB

- The Board should not:
 - Feel compelled to fund all programs
 - Allocate funding by percentage
 - Vary from the budget of \$500,000 for this year
 - Fully fund programs just because they appealed
 - Fund more than 20% of a full-time position
 - Fully funding part-time positions is acceptable
 - Fund brand new organizations / start-ups



Council Direction to HSAB

1. Funding should not come from both HSAB & CDBG for the exact same work (no duplication of benefits).
2. Funding One-Time Expenses is an option
3. Prioritize programs which:
 - a) Increase Services and/or Increase the Number of Persons Served
 - b) Have an office in San Marcos
 - c) Complete all quarterly reports on time
 - d) Have a Proven Track Record of at least 2 years serving San Marcos residents
4. Organizations without a proven track record in San Marcos may be funded if they have been serving other locations a minimum of 2 years



Funding Allocation Update

- Applications received 5 points each for 4 priority items:
 - Funding creates an increase in services or number of people served
 - Agency has an office in San Marcos
 - Agency has completed all quarterly reports on time
 - Agency has a track record of 2 years serving San Marcos residents
- Applications were sorted to rank by new score



Funding Allocation Update

Applications did not include enough information to include these two items this year:

- Do not fund more than 20% of a full-time position
- Do not fund brand-new start up agencies



Funding Allocation Update

- The HSAB strongly desired to fund all 38 applicants.
- Top 15 received 55%, all others 20%.
- Funding was reduced for agencies who had requested very large amounts compared to other applications.
- Funding was increased for some long-term San Marcos programs and two that serve unique populations.



Revised HSAB Recommendation p 1

Agency	Program	Request	Original Board Rec.	Revised Board Rec.
San Marcos Housing Authority	Resident Services -Service Coordination	\$34,400	\$18,920	\$18,920
Hays County Food Bank	Food Distribution	\$55,000	\$30,250	\$30,250
Community Action, Inc.	San Marcos Senior Citizen Center	\$22,000	\$16,000	\$12,100
Child Protective Services	Child Protective Board	\$25,000	\$13,750	\$13,750
Southside Community Center	Transitional Shelter	\$52,000	\$28,000	\$28,600
CASA of Central Texas	Child Advocacy Service	\$20,275	\$11,151	\$15,000
School Fuel	Weekend Food	\$35,475	\$19,511	\$19,511
Hays-Caldwell Women's Center	Non-Residential Family Violence	\$50,000	\$23,000	\$27,500
San Marcos Youth Council	Family and Youth Success	\$75,000	\$32,500	\$35,000
ACCEYSS	ACCEYSS Programs	\$75,000	\$15,000	\$35,000



= revised



Revised HSAB Recommendation p 2

Agency	Program	Request	Original Board Rec.	Revised Board Rec.
Hays-Caldwell Women's Center	Roxanne's House (Child Abuse)	\$25,000	\$13,750	\$13,750
Salvation Army	Emergency Assistance	\$50,000	\$10,000	\$27,500
PALS	Helping Underserved People	\$25,000	\$15,000	\$15,000
Society of St. Vincent de Paul	Society of St. Vincent de Paul	\$30,000	\$16,500	\$16,500
San Marcos Youth Council	Children's Shelter	\$15,000	\$8,250	\$8,250
Hays-Caldwell Women's Center	Sexual Assault and Abuse	\$20,000	\$20,000	\$10,000
Treasured Protégé	Protégé Program	\$65,000	\$35,750	\$13,402
First Baptist Church NBC	Outreach Ministry	\$74,600	\$14,920	\$14,920
Southside Community Center	Specific Assistance	\$20,000	\$4,000	\$4,000
San Marcos Youth Service Bureau	Teen Network	\$22,000	\$4,400	\$4,400

= revised



Revised HSAB Recommendation p 3

Agency	Program	Request	Original Board Rec.	Revised Board Rec.
Combined Community Action	Meals on Wheels	\$15,000	\$8,250	\$3,000
Cenikor Foundation	Prevention of Substance Abuse	\$15,000	\$3,000	\$3,000
Nosotros La Gente	"Viva Zapatos" Shoe Drive	\$10,000	\$2,000	\$8,000
SMCISD	Post-Pandemic At-Risk Recovery	\$25,000	\$5,000	\$5,000
Nosotros La Gente	Coats Program	\$5,000	\$1,000	\$5,000
Cenikor Foundation	Youth Recovery Community	\$10,000	\$2,950	\$2,000
Communities in Schools	Counseling SMCISD	\$35,000	\$7,000	\$7,000
Austin Habitat for Humanity	Housing Counseling Program	\$16,635	\$3,327	\$3,327
Dispute Resolution Center	Reaching Out to Those In Need	\$15,000	\$3,000	\$3,000
Any Baby Can of Austin Inc	Early Childhood Intervention	\$30,000	\$6,000	\$6,000

= revised



Revised HSAB Recommendation p 4

Agency	Program	Request	Original Board Rec.	Revised Board Rec.
Hands of Hope	Computers	\$8,000	\$1,600	\$1,600
Hill Country MHDD	San Marcos Community Support	\$250,096	\$20,000	\$20,000
HOME Center	Emergency Motel Program	\$150,000	\$30,000	\$20,000
Bobcat Pride Scholarship Fund	Emergency Stabilization Fund	\$5,000	\$1,000	\$5,000
CORN	Health Resource Center	\$25,000	\$5,000	\$5,000
Girls Empowerment Network	Girl Connect	\$15,000	\$3,000	\$3,000
MELJ	Iron Sharpens Iron	\$200,000	\$40,000	\$33,320
Rough Draft	Superhero Art Program	\$32,000	\$6,400	\$3,400

= revised



DISCUSSION

City Council will consider a resolution allocating FY '23 Human Services Grant funding on this evening's regular meeting agenda.

Agency	Program	Request	Rank by HSAB Average Score	Original Board Rec.	Council Directed Priorities				Rank by New Score	Revised Board Rec.
					Service Increase	SM Office	Reports	SM 2 years		
San Marcos Housing Authority	Resident Services -Service Coordination	\$34,400	1	\$18,920	5	5	5	5	1	\$18,920
Hays County Food Bank	Food Distribution	\$55,000	2	\$30,250	5	5	5	5	2	\$30,250
Community Action, Inc. of Central Texas	San Marcos Senior Citizen Center	\$22,000	5	\$16,000	5	5	5	5	3	\$12,100
Hays County Child Protective Services	Child Protective Board	\$25,000	9	\$13,750	5	5	5	5	4	\$13,750
Southside Community Center	Emergency Shelter/Transitional Shelter	\$52,000	3	\$28,000	0	5	5	5	5	\$28,600
CASA of Central Texas	Child Advocacy Service	\$20,275	13	\$11,151	5	5	5	5	6	\$15,000
School Fuel	Weekend Food for Hungry Children	\$35,475	13	\$19,511	5	5	5	5	6	\$19,511
Hays-Caldwell Women's Center	Non-Residential Family Violence	\$50,000	7	\$23,000	0	5	5	5	8	\$27,500
Greater San Marcos Youth Council	Family and Youth Success	\$75,000	8	\$32,500	0	5	5	5	9	\$35,000
ACEYSS	ACEYSS Programs	\$75,000	16	\$15,000	5	5	5	5	10	\$35,000
Hays-Caldwell Women's Center	Roxanne's House (Child Abuse Program)	\$25,000	10	\$13,750	0	5	5	5	11	\$13,750
Salvation Army	Emergency Assistance	\$50,000	17	\$10,000	5	5	5	5	12	\$27,500
PALS	Helping Underserved People	\$25,000	19	\$15,000	5	5	5	5	13	\$15,000
Society of St. Vincent de Paul	Society of St. Vincent de Paul	\$30,000	12	\$16,500	5	5	5	5	14	\$16,500
Greater San Marcos Youth Council	Children's Shelter	\$15,000	4	\$8,250	0	5	0	5	15	\$8,250
Hays-Caldwell Women's Center	Sexual Assault and Abuse	\$20,000	6	\$20,000	0	5	0	5	16	\$10,000
Treasured Protégé	Protégé Program	\$65,000	15	\$35,750	5	5	5	5	16	\$13,402
First Baptist Church NBC	Outreach Ministry	\$74,600	23	\$14,920	5	5	5	5	18	\$14,920
Southside Community Center	Specific Assistance	\$20,000	17	\$4,000	5	5	0	5	19	\$4,000
San Marcos Youth Service Bureau	Teen Network	\$22,000	25	\$4,400	5	5	5	5	19	\$4,400
Combined Community Action	Meals on Wheels	\$15,000	11	\$8,250	5	0	0	5	21	\$3,000
Genikor Foundation	Prevention of Substance Abuse	\$15,000	20	\$3,000	5	5	0	5	22	\$3,000
Nosotros La Gente	"Viva Zapatos" Shoe Drive	\$10,000	21	\$2,000	5	5	0	5	23	\$8,000
SMCISD	Post-Pandemic At-Risk Recovery	\$25,000	21	\$5,000	5	5	0	5	23	\$5,000
Nosotros La Gente	Coats Program	\$5,000	24	\$1,000	5	5	0	5	25	\$5,000
Genikor Foundation	Youth Recovery Community	\$10,000	26	\$2,950	5	5	0	5	26	\$2,000
Communities in Schools	Mental Health Counseling SMCISD	\$35,000	28	\$7,000	5	0	5	5	27	\$7,000
Austin Habitat for Humanity	Housing Counseling Program	\$16,635	29	\$3,327	5	0	5	5	28	\$3,327
Dispute Resolution Center	Reaching Out to Those In Need	\$15,000	31	\$3,000	5	5	0	5	29	\$3,000
Any Baby Can of Austin Inc	Early Childhood Intervention	\$30,000	32	\$6,000	5	5	5	5	30	\$6,000
Hands of Hope	Computers	\$8,000	27	\$1,600	0	5	0	5	31	\$1,600
Hill Country MHDD	San Marcos Community Support	\$250,096	30	\$20,000	5	0	0	5	32	\$20,000
HOME Center	Emergency Motel Program	\$150,000	34	\$30,000	5	5	0	5	33	\$20,000
Bobcat Pride Scholarship Fund	Emergency Stabilization Fund	\$5,000	35	\$1,000	5	5	5	5	34	\$5,000
CORN	Health Resource Center	\$25,000	33	\$5,000	5	0	0	0	35	\$5,000
Girls Empowerment Network	Girl Connect	\$15,000	36	\$3,000	5	0	0	5	36	\$3,000
IMEJ	Iron Sharpens Iron	\$200,000	38	\$40,000	5	5	0	0	37	\$33,320
Rough Draft	Superhero Art Program	\$32,000	37	\$6,400	5	0	0	0	38	\$3,400
		\$1,652,481		\$499,180						\$500,000

= revised in final recommendation

RESOLUTION NO. 2023-25R

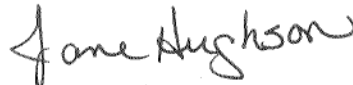
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS PROVIDING GUIDANCE ON POLICY AND PROCESS FOR THE HUMAN SERVICES ADVISORY BOARD; AND DECLARING AN EFFECTIVE DATE.

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

PART 1. The attached guidance on policy and process for the Human Services Advisory Board (HSAB) is hereby provided and approved for use by HSAB.

PART 2. This resolution shall be in full force and effect from and after its passage.

ADOPTED on January 17, 2023.



Jane Hughson
Mayor

Attest:



Elizabeth Trevino
City Clerk

GUIDANCE ON POLICY AND PROCESS FOR THE HUMAN SERVICES ADVISORY BOARD OF THE CITY OF SAN MARCOS

City Council approved the following guidance on policy and process on the 17th day of January, 2023 to be utilized by the Human Services Advisory Board (HSAB) of the City of San Marcos in considering matters before HSAB.

- HSAB should not:
 - Feel compelled to fund all programs
 - Allocate funding by percentage
 - Vary from the budget of \$500,000 for this year
 - Fully fund programs just because they appealed
 - Fund full-time positions; staff time / part time positions acceptable
 - Fund brand new organizations / start-ups

- HSAB should reconsider the 2023 recommendation with the following policy guidance:
 - Funding should not come from both HSAB & CDBG for the exact same work (no duplication of benefits).
 - Funding One-Time Expenses is an option
 - Prioritize programs which:
 - Increase Services and/or Increase in the Number of Persons Served
 - Have an office in San Marcos
 - Demonstrate the ability to complete quarterly reports on time
 - Have a Proven Track Record
 - At least 2 years serving San Marcos residents
 - OR At least 2 years of program history



INSTRUCTIONS

City of San Marcos, Texas

Human Services Funding Application

FY 2023

SUBMISSION:

One electronic copy of the Human Services Funding Application, Questionnaire, and all attachments must be emailed to cdbg@sanmarcostx.gov by 5:00 p.m. on Friday, July 29, 2022

All questions on the Application and Questionnaire must be answered.

A separate Application, Questionnaire, and program-specific attachments **MUST** be submitted for each program for which funding is requested.

Submitting a complete application does not guarantee that your request will be funded. Funding allocations are decided by the City Council, based on recommendations by the Human Services Advisory Board.

FUNDING REQUIREMENTS:

1. **Funding must be spent on the program that was approved. Proof of expenditures will be required as part of quarterly reporting.**
2. The program for which funding is requested must provide services to residents of San Marcos. (It may also provide services to residents of other communities.)
3. Funding requested cannot be more than 50% of the funding for the agency
4. Program must have measurable outcomes.
5. Agency or Organization:
 - a. must be a Human Services Agency as defined below.
 - b. must be overseen by a volunteer Board of Directors.
 - c. must execute an agency agreement with the City of San Marcos.
 - d. must agree to undergo periodic program evaluations by the Human Services Advisory Board or City of San Marcos staff.

PRESENTATIONS:

Beginning in August and continuing into September, six applicants will present to the Human Services Advisory Board at each weekly meeting, dates to be determined. All applicants will be contacted to schedule their presentation date.

Presentations will be no more than five minutes, followed by a five-minute question and answer session. Time limits will be strictly enforced.

Presentation content should not repeat information included in the application. Please provide examples of the program proposed for funding in action, either from the agency's past successes with the program or, if the program is new, specific examples of this program's success in other cities. Demonstrate what this funding will accomplish for San Marcos.

QUESTIONS:

Please contact Carol Griffith, Housing and Community Development Manager, 512-393-8147 or cgriffith@sanmarcostx.gov. **Email is preferred.**

TIMELINE:

Optional Applicant Workshop	2:00 pm – 3:00 pm Thursday, June 30, 2022 This will be a virtual meeting. To view the meeting and participate please go to http://sanmarcostx.gov/3051/Human-Service-Agency-Applications for a link on the day of the meeting. Se habla Español.
Applications Due	5:00 pm on Friday, July 29, 2022
Presentations to the Human Services Advisory Board	August, September Six applicants will present to the Board each week
Funding Recommendation	\$500,000 Board recommends funding allocations; City Council decides
Contracts Executed	December
First Payments for FY 2023	January
Reporting	Quarterly
Payments	Payments will be made quarterly

AMOUNT AVAILABLE:

As of June 9, 2022, approved funding for applications is \$500,000. This funding is from the City of San Marcos general fund.

DEFINITIONS:

Human Services Agency – A human services agency is an organization that seeks to improve the quality of their clients' lives by providing, facilitating, or recommending support for an array of basic social, physical health, housing, and mental health services to needy clients in the community. *(From HSAB Bylaws, Article VIII)*

Direct Client - individuals or families immediately affected or personally served by the helping agency. *(From FY 2021 Application)*

Indirect Client - those not immediately affected or served personally by the helping agency. Examples are referrals to other agencies or general information presentations to groups. *(From FY 2021 Application)*

CHECKLIST OF REQUIRED ATTACHMENTS

APPLICATION

- Completed and signed application
- Questionnaire

BUDGETS

- Agency budget for current fiscal year
- Agency budget proposed for next fiscal year
- Program budget for current fiscal year
- Program budget proposed for next fiscal year

BOARD OF DIRECTORS INFORMATION

- Board of Directors membership roster
- Board of Directors Meeting Attendance Record for the current fiscal year
- Board of Directors membership criteria

ORGANIZATION INFORMATION

- Organizational chart with names and titles of staff
- Current IRS Form 990, pages 1 and 2 (not required for churches)
- Latest audit or CPA signed review
- Non-discrimination policy statement
- Policies and Procedures for the proposed Program, if available
- Income Eligibility Documentation Procedure and Income Scales, if applicable

LETTERS OF SUPPORT

- Letters of support from members of the San Marcos Community (minimum of 3)



City of San Marcos
HUMAN SERVICES FUNDING APPLICATION
Fiscal Year 2023

Name of Agency/Organization: _____

Address: _____

City, State & Zip: _____

Contact Person: _____ Title: _____

E-Mail Address: _____ Website: _____

Phone: _____ Fax: _____

Program Title: _____

Amount of Funds Requested: _____

Status: (check one) Existing Program Program Expansion New Program

Briefly describe the program proposed for funding and the services it provides:

Describe who will benefit from this program and how:

If requested funds are to be used as matching funds, identify source and amount of primary grants:

Source: _____ Amount: _____

Source: _____ Amount: _____

Client Information Specific to This Program:

1) Describe the direct clients for this program.

2) How is the program marketed to direct clients? How do you find these clients?

3) Describe the indirect clients for this program, if any.

4a) Expected total annual unduplicated direct clients for this program:

4b) Expected annual unduplicated direct clients who are City of San Marcos residents:

5) Does program participation depend upon income or any other determination of eligibility?

No: _____

Yes: _____ If yes, please attach a copy of the eligibility guidelines.

Submitted and approved by:

Signature of Board President

Date

Printed Name of Board President

7. What additional funding is your agency requesting for this program?

Funding Source	Amount Requested	Amount Granted	Pending (Y/N)
N/A			

8. Describe any differences between the way you had proposed spending last year's allocation and the way you spent it.

9. How many volunteers does your agency or organization have and how many hours do they spend on the program requesting funding?

10. Board of Directors Questions:

a. How is the agency's or organization's Board of Directors selected?

b. How often does the Board meet?

c. What actions do Board members take to support the programs of the agency or organization?



City of San Marcos
Human Services Funding Application
Fiscal Year 2023
EVALUATION CRITERIA

Applications will be evaluated based on, but not necessarily limited to the following criteria:

1. Community Need and Justification: Maximum of 50 Points

The program will be evaluated on the documentation and justification of the need for the activity in the City of San Marcos. Proposed projects should address a City Council Strategic Initiative shown on page 10, and will receive more points for doing so.

2. Impact and Cost Effectiveness: Maximum of 25 Points

The program will be evaluated on:

- amount of overhead compared to program costs
- impact on the identified need
- implementation costs compared to impact
- use of available resources (financial, staff, volunteer)
- leveraged resources from other funding sources.

3. Implementation: Maximum of 15 Points

The program will be evaluated on the following factors:

- The application demonstrates that resources needed to manage the proposed activity are available and ready.
- Applicant has clearly defined objectives focusing on results and measurable outcomes vs. only program activities descriptions and numbers served.
- Past performance of programs funded by Human Services Grants.

4. Community Support: Maximum of 10 Points

The program will be evaluated on the following factors:

- A minimum of three and maximum of five letters of reference are provided that indicate strong local support for the program and the agency's ability to implement it as described in the application.
- Evidence that volunteers play a vital role in the program or agency's operation.
- Evidence that board members are actively involved in and supportive of the agency



City of San Marcos
Human Services Funding Application
Fiscal Year 2023
PROGRAM RISK ASSESSMENT

Risk Categories: 30 or higher = High, 15-29 = Moderate, 0 – 15 = Low

1. Program Complexity: Maximum of 10 Points

Description of program, size of dollar amount requested, requested funding as a percent of Total Program Budget

2. Project Experience: Maximum of 10 Points

Recipient's prior experience with this size and type project

0-2 years = 10 points

3-5 years = 5 points

> 5 years = 0 points

3. Program or Project Funding: Maximum of 10 Points

City funds = 50% of program funding = 10 points

Other sources of funds indicated, but not committed = 5 points (0 if CPA statement* provided)

Other funds committed = 0 points

*CPA statement that the entity has enough financial capacity to complete the project or program on a reimbursement basis

4. Recipient Organization: Maximum of 10 Points

Newly created entity = 10 points

Well established, but no prior City funding experience = 5 points

Well established, with prior City funding experience = 0 points

5. Recipient History: Maximum of 10 Points

Outcomes that did not meet expectations = 10 points

Poorly documented results = 5 points

Met expectations and provided well documented results = 0 points

City of San Marcos Strategic Initiatives 2022-2026



Workforce Housing

- Eliminate barriers to housing.
- Elevate housing rehabilitation program as a specific strategy.
- Update, consolidate and communicate housing policies and action plans.
- Develop dedicated housing and revenue sources that meet goals.
- Implement land use and zoning regulations that support diverse, mixed income communities in all areas of the City.



Sustainability

- Develop a baseline of sustainability performance measures.
- Promote sustainability practices throughout the community.
- Sustainability incorporated into City construction and operations.
- Develop economic development and procurement policies to encourage sustainability for businesses that work with the City.



Covid Response

- Accurate, up-to-date information is disseminated throughout the community.
- More frequent communication with the County, School District, Texas State, non-governmental organizations (NGOs), and Community Organizations Active in Disaster (COAD).
- Continue search for resources and collaboration with local partners to address community needs.



Community Safety

- Increase safety across the [City](#), especially Downtown
- Emergency preparedness.
- Address the factors that cause individuals to become homeless and assist those experiencing homelessness.



Economic Development

- Ensure that our [City](#) looks top notch.
- Leverage and continue partnerships with Texas State University, Austin Community College, Community Action, Chamber of Commerce and Greater San Marcos Partnership to provide additional resources in the community.
- Facilitate opportunities for training and programming for residents.
- Support diversified business activity, including local and emerging small businesses.
- Downtown is accessible and has a quality of place.



Assessment of Community Assistance (Area of Focus)

- Establish initial assessment and documentation process.
- Effective case management.
- Optimize social service agency application process.



Develop Equity Policy (Area of Focus)

- Develop a shared understanding of equity.
- Work towards an equity-based budget.



Legislation Text

File #: ID#23-182, **Version:** 1

AGENDA CAPTION:

Executive Session in accordance with the following:

A. Sec. §551.072 of the Texas Government Code: Real Property: to hold discussion regarding Community Development Block Grant-Disaster Recovery (CDBG-DR) Affordability Period; and Sec. §551.071 Consultation with attorney regarding CDBG-DR Affordability Period.

Meeting date: March 7, 2023

Department: Planning & Development Services and City Attorney's Office

Amount & Source of Funding

Funds Required: Click or tap here to enter text.

Account Number: Click or tap here to enter text.

Funds Available: Click or tap here to enter text.

Account Name: Click or tap here to enter text.

Fiscal Note:

Prior Council Action: Click or tap here to enter text.

City Council Strategic Initiative: [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]

Economic Development - Choose an item.

Environment & Resource Protection - Choose an item.

Land Use - Choose an item.

Neighborhoods & Housing - Choose an item.

Parks, Public Spaces & Facilities - Choose an item.

Transportation - Choose an item.

File #: ID#23-182, **Version:** 1

- Core Services
- Not Applicable

Master Plan: *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

Background Information:

Council Committee, Board/Commission Action:

Click or tap here to enter text.

Alternatives:

Click or tap here to enter text.

Recommendation:

Click or tap here to enter text.