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City of Austin

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Human Resources Dept



MEMORANDUM

Austin Police Department Office of the Chief of Police

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: January 10, 2019

SUBJECT: Temporary Suspension of Police Officer Bryan McCulloch #8124
Internal Affairs Control Numbers 2018-0747

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have temporarily suspended Police Officer Bryan McCulloch #8124 from duty as a City of Austin, Texas police officer for a period of 7 () days. The temporary suspension is effective beginning on January 10, 2019 and continuing through January 16, 2019.

I took this action because Officer McCulloch violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Officer McCulloch in violation of Rule 10:

On July 20, 2018, Officers working Frank Sector pursued a stolen vehicle. Officer McCulloch was working Henry Sector and became aware of the pursuit. Without supervisor approval, Officer McCulloch deployed a tire deflation device to stop the vehicle, which did not work. Officer McCulloch asked for permission to join the pursuit but received no response. Officer McCulloch, without supervisor approval, became the fourth unit involved in the pursuit as he tried to catch up to and trailed the pursuit. While doing so, Officer McCulloch committed numerous traffic violations and failed to operate his vehicle with due regard for the safety others (e.g. he ran red lights and stops signs without his lights or siren activated, he drove in excess of 100 miles per hour). Officer McCulloch also failed to turn off his vehicle's AM/FM radio despite previously being told to do so by his chain of command. Finally, during this incident, Officer McCulloch turned off his DMAV for 19 seconds without authorization.

By these actions, Officer McCulloch violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

➤ **Austin Police Department Policy 214: Vehicle Pursuits**

214.4 Pursuit Guidelines

Pursuit units shall be limited to four vehicles (three units and a control supervisor); however, a control supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely stop the pursuit and/or arrest the subject(s). All other officers will stay out of the pursuit but should remain alert to its progress and location.

214.4.3 Units Not Involved in a Pursuit

- (a) There shall be no paralleling of a pursuit route by officers not authorized to be in a pursuit
- (b) Officers not directly involved in the pursuit are authorized to proceed safely to controlled intersections ahead of the pursuit and use emergency equipment to warn vehicular and pedestrian traffic in an effort to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.
- (c) Non-pursuing personnel needed at the termination of a pursuit should respond in the appropriate manner based on the totality of the circumstances and type of assistance needed.

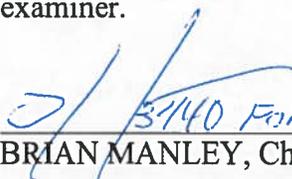
➤ **Austin Police Department Policy 304.2 (b) & (c): Digital Mobile Audio Recording: Digital Mobile Audio Recorder Operation**

- (b) Employees shall turn off the vehicle's AM/FM radio and/or personal music devices while the DMAV is recording and there is a subject sitting in the backseat of the unit.
- (c) Employees shall not:
 - 1. Bypass or override the automatic activation of the equipment.
 - 2. Erase, alter, or delete any recording produced by the DMAV.

In addition to this suspension, Officer McCulloch must complete any training dictated by his chain of command. His failure to do so will be considered an act of insubordination.

By copy of this memo, Officer McCulloch is hereby advised of this temporary suspension and that the suspension may be appealed to the Civil Service Commission by filing with the Director of Civil Service, within ten (10) days after receipt of a copy of this memo, a proper notice of appeal in accordance with Section 143.010 of the Texas Local Government Code.

By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Officer McCulloch is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance with the provisions of such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided by Subsection (j) of Section 143.057 of the Texas Local Government Code. That section states that the State District Court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction, or that the order was procured by fraud, collusion or other unlawful means. In order to appeal to a hearing examiner, the original notice of appeal submitted to the Director of Civil Service must state that appeal is made to a hearing examiner.


BRIAN MANLEY, Chief of Police

1/10/19
Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of temporary suspension and I have been advised that if I desire to appeal that I have ten (10) calendar days from the date of this receipt to file written notice of appeal with the Director of Civil Service in accordance with the provisions of Chapter 143 of the Texas Local Government Code.

 8124
Police Officer Bryan McCulloch #8124

01/10/2019
Date