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MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: November 10, 2020

SUBJECT: Agreed Temporary Suspension of Police Officer Thomas Tuminelli #8226
Internal Affairs Control Numbers 2020-0699

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 Thomas Tuminelli #8226 from duty as a City of Austin, Texas police officer for a period of sixty (60) days. The agreed temporary suspension is effective beginning on November 11, 2020 and continuing through January 9, 2021.

I took this action because Officer Tuminelli 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 Tuminelli in violation of Rule 10:

On May 23, 2020, at 1:57 p.m., a person called Austin 9-1-1 to report an incident. The caller reported to 9-1-1 that the driver of another vehicle, with whom he was involved in a collision, had pulled a gun on him at the intersection of Red River St. and E. Martin Luther King Jr. Blvd. Austin Police Department (APD) officers arrived on the scene and made contact with the 9-1-1 caller and Officer Thomas Tuminelli. Officer Tuminelli was off-duty, not in uniform, and driving his personally owned vehicle.

The responding officers conducted a collision investigation and learned that the 9-1-1 caller had rear-ended Officer Tuminelli. Immediately after the collision occurred, a plain-clothed Officer Tuminelli exited his vehicle with his personally owned pistol in his hand. Ultimately, Corporal Michael Whitener responded to the scene and provided the 9-1-1 caller with information on how to file a complaint with the Office of Police Oversight (OPO). Corporal Whitener also completed a Complainant Contact Form (CCF) to document the complaint.

Internal Affairs (IA) subsequently received a Notice of Formal Complaint (NFC) from the Office of Police Oversight (OPO), which alleged the following:

[C]omplainant, alleges that officer employee #8226 [Officer Tuminelli] drove erratically and break [sic] checked the complainant. The complainant rear ended the officer. The complainant further alleges that the officer got out of his personal vehicle and pulled his gun out.

Dash Camera Footage

Both Officer Tuminelli's and the complainant's personally owned vehicles were equipped with dash cameras. IA received copies of the footage from the May 23, 2020 incident from both parties. The footage reveal that Officer Tuminelli was driving recklessly in the vicinity of numerous motorists, and that he violated numerous traffic laws as he was trying to arrive at APD for his 2:00 p.m. shift. Officer Tuminelli violated the following Texas Transportation Code (TTC) laws:

- Reckless driving – driving at a high rate of speed while violating several traffic laws. TTC § 545.401 (Reckless Driving)
- Tailgating – following the complainant too closely while driving. TTC § 545.062 (Following Distance)
- Speeding – while on N. IH-35 southbound, speeding at multiple junctures in a posted 60 mile per hour (mph) zone, including approaching the upper/lower deck traveling at times at an average speed of 96 mph. TTC § 545.351 (Maximum Speed Requirement)
- Brake checking – passing the complainant on the right and cutting in front of him and braking. TTC § 545.053 (Passing to the Left; Return; Being Passed).
- Unsafe movement left/right – observed moving in/out of traffic at a high rate of speed. TTC § 545.057(b) (Passing to the Right).

- Crossing solid white line – crossing several solid white lines while driving at a high rate of speed. TTC § 545.058 (Driving on Improved Shoulder); TTC § 545.060(a)(2) (Driving on Roadway Laned for Traffic)
- Failure to stop at a designated point-white line- At a red light, failed to stop at the designated point and then made a right turn. TTC § 554.007(d) (Traffic-Control Signals in General).
- TTC §504.945(a)(7) (Wrong, Fictitious, Altered, or Obscured License Plate).

The complainant’s and Officer Tuminelli’s respective dash camera footage show the culmination of this incident. As Officer Tuminelli sped towards a stop sign and abruptly stopped, immediately followed by the complainant rear-ending his vehicle. The dashcam footage then shows Officer Tuminelli jumping out of his vehicle, in an already intense situation, and brandishing his firearm. The complainant and Officer Tuminelli can be seen and heard engaging in a profanity-laced argument, during which Officer Tuminelli identified himself as a police officer. The complainant then contacted 9-1-1, and officers were dispatched to the scene.

Officer Tuminelli explained that his reasoning for brandishing his firearm was because he had concerns for his safety after the collision:

“I had immediately got outta my vehicle, um, with my firearm.”

“[T]his individual had possibly rear-ended me on purpose and I’m - I was unsure of his intentions or actions at that point.”

While Officer Tuminelli stated to IA that most of his traffic violations were in an effort to get away from the complainant, he later acknowledged during his Disciplinary Review Hearing (DRH) that some of his violations were not a byproduct of trying to elude the complainant, particularly brake checking the complainant. Moreover, Officer Tuminelli acknowledged during his DRH that he was driving recklessly prior to the complainant following him, and in doing so he not only placed himself and the complainant at risk of injury, but he also endangered other motorists on the highway. Officer Tuminelli further conceded to his chain of command during his DRH that his emotions got the better of him, and he did not meet the expectations of an APD officer.

By these actions, Officer Tuminelli 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 900.1.1: General Conduct and Responsibilities: Responsibility to Know and Comply**

900.1.1 Responsibility to Know and Comply

The rules of conduct set forth in this order do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities;

employees are required to know and comply with all Department policies, procedures, and written directives.

- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD written directives which pertain to their assigned duties.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and will consult their immediate supervisor for clarification and explanation.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

➤ **Austin Police Department Policy 900.3.2(a): General Conduct and Responsibilities: Acts Bringing Discredit Upon the Department**

900.3.2(a) Acts Bringing Discredit Upon the Department

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.

In addition to this agreed temporary suspension, Officer Tuminelli agrees to the following terms and conditions:

1. Officer Tuminelli shall be evaluated by the Austin Police Department Psychologist or a qualified professional designated by the Chief.
2. If the Psychologist or qualified professional recommends a program of counseling, Officer Tuminelli must successfully complete that program of counseling.
3. If a program of counseling is recommended, said program will be completed on Officer Tuminelli's off duty time, unless the Chief approves the use of accrued vacation leave.
4. Officer Tuminelli shall be responsible for paying all costs of the program of counseling that are not covered by his health insurance plan.
5. If Officer Tuminelli fails to successfully complete the program of counseling, the Chief may, at his sole discretion, indefinitely suspend him without right of appeal to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and Officer Tuminelli may not file a grievance under Article 20 of the Meet and Confer Agreement.

6. If this evaluation and/or the program of counseling raises a question whether Officer Tuminelli is sufficiently mentally or physically fit to continue his duties as a police officer, it could trigger the fitness for duty process set forth in Texas Local Government Code Chapter 143.081.
7. Officer Tuminelli shall attend any training specified by his chain of command.
8. Officer Tuminelli agrees to a probationary period of one (1) year, with the additional requirement that if, during the probationary period, he commits the same or a similar act of misconduct for which he is being suspended (the determination whether an act is the same or similar is solely within the purview of the Chief of Police and is not subject to review by the Civil Service Commission, an Independent Third Party Hearing Examiner, or District Court), he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, and to District Court. The one year period begins on the day Officer Tuminelli returns to duty after completing his agreed suspension. Should Officer Tuminelli commit the same or similar violation outside the one year period, he will be indefinitely suspended but retains the right to appeal that suspension.
9. Officer Tuminelli understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass him for a future promotion in accordance with APD General Order 919.11.
10. Officer Tuminelli agrees that he, and all others claiming under him named herein or not, fully discharge, release, and waive any and all known or unknown claims or demands of any kind or nature whatsoever that he now has, or may have in the future, including without limitations, claims arising under any federal, state, or other governmental statute, regulation, or ordinance relating to employment discrimination, termination of employment, payment of wages or provision of benefits, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act, the Fair Labor Standards Act, and the Texas Commission on Human Rights Act, against the City of Austin, the Austin Police Department, or their respective agents, servants, and employees, arising from the above-referenced incident, and any actions taken as a result of that incident, including but not limited to, the negotiation and execution of this agreed temporary suspension.
11. Officer Tuminelli acknowledges that he had the opportunity to discuss this agreed suspension and additional terms and conditions set forth herein with a representative of his choosing prior to signing his acceptance where indicated below.

By signing this Agreed Discipline, Officer Tuminelli understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Officer Tuminelli waives all right to appeal this agreed

suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third Party Hearing Examiner, and to District Court.



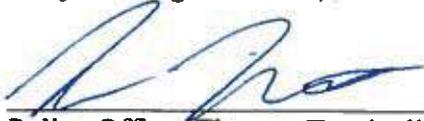
BRIAN MANLEY, Chief of Police

11-10-2020

Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing memorandum of agreed temporary suspension and I understand that by entering into this disciplinary agreement the Chief forgoes his right to indefinitely suspend me for the conduct described above and that by agreeing to the suspension, I have no right to appeal this disciplinary action, as well as the additional terms and conditions, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, and to District Court.



Police Officer Thomas Tuminelli #8226

11-10-20

Date