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December 10, 2021  
12:15 pm



## **MEMORANDUM**

### **Austin Police Department *Office of the Chief of Police***

**TO:** Joya Hayes, Director of Civil Service

**FROM:** Joseph Chacon, Chief of Police

**DATE:** December 9, 2021

**SUBJECT:** Temporary Suspension of Police Officer Edward Hermanek #7852  
Internal Affairs Control Number 2021-0825

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 Edward Hermanek #7852 from duty as a City of Austin, Texas police officer for a period of one (1) day. The temporary suspension is effective beginning on December 14, 2021 and ending on December 14, 2021.

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

On June 16, 2021, Austin Police Department (APD) Officer Edward Hermanek was on-duty operating an unmarked vehicle when he was involved in a crash. The crash occurred at the intersection of East 18<sup>th</sup> Street and Airport Boulevard, when Officer Hermanek was attempting to turn left from East 18<sup>th</sup> Street onto Airport Blvd. His vehicle struck another unmarked police vehicle traveling northbound on Airport Blvd. The Texas Peace Officer's Crash Report (CR-3) documenting this incident listed Officer Hermanek's vehicle as vehicle #1 and attributed the "Contributing Factor" as "Failed to Yield ROW – Stop Sign." No injuries were reported from the crash and both vehicles were operable.

Officer Hermanek accepted full responsibility for violating APD General Order 804.2 as he admitted to his fault in the collision by stating "*I clearly failed to yield right of way when entering the intersection, resulting in the collision.*" Additionally, this is Officer Hermanek's second violation of General Order 804.2 within a two-year period of time.

By these actions, Officer Hermanek 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 804.2: Department Vehicles: General Operation of Department Vehicles**

**804.2 General Operation of Department Vehicles**

- (a) Employees will operate Department vehicles in a careful and prudent manner within the guidelines of the law and Department General Orders. Unsafe or negligent driving is prohibited.
  - 1. Vehicles will be operated in such a manner and at a rate of speed that the driver, by use of ordinary care, can avoid colliding with another vehicle, object, or person.

By copy of this memo, Officer Hermanek 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 Hermanek is hereby advised that such provides for an appeal to an independent third-party hearing examiner. 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.

In addition, if this disciplinary suspension is for three (3) days or less, Officer Hermanek is advised of the following provisions of Article 18, Section 1, of the Meet and Confer Agreement:

*The parties agree that when an officer is suspended for 1, 2, or 3 days the officer may choose one of two methods of dealing with the suspensions as listed below.*

- a) **Suspensions that may not be appealed.** *The officer may choose to use vacation or holiday time to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, promotion, or any other purpose. The officer must agree that there is no right to appeal if this method of suspension is chosen.*
  
- b) **Suspensions that may be appealed.** *The officer may appeal the suspension to arbitration or the Civil Service Commission. If the officer chooses to appeal the suspension, the arbitrator or Civil Service Commission's authority is limited to ruling on whether or not the charges against the officer are true or not true. If the arbitrator or Civil Service Commission finds the charges to be true, there is no authority to mitigate the punishment. If the arbitrator or Civil Service Commission finds the charges to be not true, the officer shall be fully reinstated with no loss of pay or benefit.*

**Arbitration Costs on Appealable Suspensions**

*In the event that an officer appeals a 1, 2, or 3 day suspension to arbitration, it is agreed that the party that loses the arbitration shall be responsible for all costs of the arbitrator, including travel and lodging if necessary.*

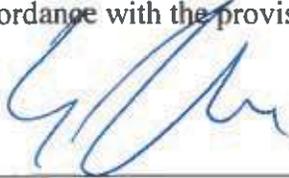
*To facilitate such payment on the part of the officer he shall submit, at the time of appeal, a signed payroll deduction agreement that if the arbitrator rules in favor of the City he authorizes up to one hundred dollars (\$100.00) per month to be deducted from his regular pay until such time as what would usually be the City's portion of the arbitrator's costs have been satisfied.*

  
JOSEPH CHACON, Chief of Police

12/9/21  
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) 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.

 7852

\_\_\_\_\_  
Police Officer Edward Hermanek #7852

12/09/2021

\_\_\_\_\_  
Date