



## **MEMORANDUM**

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

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

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

**DATE:** November 9, 2022

**SUBJECT:** Agreed Temporary Suspension of Police Officer Kristy Astran #4729  
Internal Affairs Control Number 2022-0457

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 Kristy Astran #4729 from duty as a City of Austin, Texas police officer for a period of seventy-five (75) days. The agreed temporary suspension is effective beginning on November 10, 2022 and continuing through January 23, 2023.

I took this action because Ofc. Astran 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 Ofc. Astran in violation of Rule 10:

On February 12, 2021, Ofc. Astran was involved in an on-duty collision resulting in [REDACTED] Ofc. Astran was predominantly on no-duty status and to a lesser extent limited-duty status for approximately 15 months before being medically released to return to work. Ofc. Astran returned to full-duty status on May 13, 2022.

On the day leading up to the February 12, 2021, collision, Ofc. Astran had a total of less than 29 hours of available accrued leave (14.74 vacation hours and 12.25 sick hours). For context, an APD officer earns 6.25 hours of vacation a pay period and 6.08 hours of sick time per pay period. There are 24 pay periods in which this is earned for any City of Austin Employee, including APD officers. Therefore, Ofc. Astran has been earning 150 vacation hours a year and 145.92 sick hours a year for the last 16 years. Moreover, in 2020, as a result of her deficiency in her leave balances, Ofc. Astran applied for and was approved for the APD Sworn Donated Leave program, where she received a total of 440 donated leave hours, which she exhausted during that calendar year.

It is also important to note that Ofc. Astran's deficiency in her leave balances (sick time, vacation time, compensatory time, and exception vacation time) had virtually nothing to do with her 2021 on-duty collision and her inability to work in a full-duty capacity during the time that she spent recovering. She did not have to use her own leave balances, whenever she was out due to the work-related injury as she was able to use a special leave balance for injured officers in the line of duty, established by state law (Local Government Code 143.073) for members of law enforcement designated as Police Injury Pay (PIN).

#### **Ofc. Astran Failed to Report to Work and Follow Leave Policies**

On May 11, 2022, A new Sergeant took over as the supervisor for the Edward 700s. Within a few days, the Sergeant noticed that Ofc. Astran was having attendance issues. On May 17, 2022, Ofc. Astran did not call in sick nor did she show up for duty. Ofc. Astran then called in sick the following day on May 18, 2022, but she did not have any sick time available to use.

On May 20, 2022, the Sergeant met with Ofc. Astran and spoke to her about his expectations. He also sent her a follow-up email summarizing those expectations. On May 23, 2022, Ofc. Astran confirmed, via email, that she understood the Sergeant's expectations, which included abiding by department general orders and policies for use of leave.

Nonetheless, on May 24, 2022, Ofc. Astran not only called in sick, but she failed to contact her Sergeant at least one hour before her shift started, per APD policy and her Sergeant's expressed expectations.

As a result, on May 27, 2022, Ofc. Astran's Sergeant and Lieutenant held a meeting with her regarding her leave balance and to advise her of the Internal Affairs (IA) complaint

they planned to submit concerning her time and attendance issues. A complaint was filed on June 3, 2022, under IA case number 2022-0457.

### **Additional Complaints**

While reviewing Ofc. Astran's first complaint (2022-0457), IA began receiving new complaints from her Chain-of-Command (COC). The new IA complaints, 2022-0555 and 2022-0556, were also in reference to Ofc. Astran not following directives from various APD supervisors, not showing up for work at all or on time, not calling in for work at least an hour prior to the start of her shift and taking time off without having available leave. Moreover, Ofc. Astran continued her conduct even after IA received the aforementioned complaints.

IA received complaints for a total of thirteen (13) incidents that occurred between May 24, 2022, and September 29, 2022. Due to their similarity, IA agreed to combine all of Ofc. Astran's IA complaints under 2022-0457. In sum, IA investigated complaints on the following dates:

- May 24, 2022
- June 26, 2022
- June 30, 2022
- August 31, 2022
- September 9, 2022
- September 12, 2022
- September 15, 2022
- September 19, 2022
- September 23, 2022
- September 26, 2022
- September 27, 2022
- September 28, 2022
- September 29, 2022

Similar to Ofc. Astran's Chain-of-Command, IA also ran into issues during their investigation when it came to getting Ofc. Astran to appear at the times when she was directed to appear. It is important to note that APD policy states that an IA sergeant's directives/orders are by proxy a directive from myself, APD Chief Joseph Chacon.

### **Notice of Sustained Allegations**

Following the IA investigation, Ofc. Astran's Chain-of-Command advised her that they would be recommending to me, Chief Chacon, that she should be sustained for the following GO violations:

- *900.4.3 Neglect of Duty*
- *110.4.4 Insubordination*

- *900.1.1 Responsibility To Know and Comply*
- *955.2 General Attendance Guidelines*
- *955.7.1 Employee Responsibilities When Using Sick Leave*

In sum I agreed with the Chain-of-Command's recommendation to me that Ofc. Astran violated the above-mentioned multiple GOs. I also agreed with the specific reasoning explained in her Notice of Sustained Allegations. I would have indefinitely suspended Ofc. Astran but for consideration of the fact that Ofc. Astran accepted responsibility during her Disciplinary Review Hearing, the fact that she has not been disciplined for this type of behavior in the past, and most notably because of the impact the collision had on her and the nature of her injuries from her on-duty collision. I, however, am imposing nearly the maximum discipline, short of indefinite suspension, and fully expect Ofc. Astran to keep her promise to adhere to every condition contained in this memorandum, otherwise she will face an indefinite suspension, with no right to appeal.

By these actions, Ofc. Astran 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 110.4.4: Organizational Structure and Responsibility: Insubordination**

**110.4.4 Insubordination**

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence.

➤ **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 900.4.3: General Conduct and Responsibilities: Neglect of Duty**

**900.4.3 Neglect of Duty**

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (a) Lack of knowledge of the application of laws required to be enforced.
- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.
- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.
- (e) Absence without approved leave.
- (f) Repeated poor evaluations.
- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.
- (i) Employees are expected to be truthful at all times in the performance of their duties. However, there may be instances where, initially, the employee has not been truthful; but, before the investigation is complete, the employee provides an accurate and detailed accounting of their true culpability in a situation, and accepts full responsibility for their actions. In those cases, the Chief may consider each case on a fact-specific basis.

➤ **Austin Police Department Policy 955.2(a)(1): Attendance and Leave: General Attendance Guidelines**

**955.2(a)(1) General Attendance Guidelines**

- (a) Employees will not be absent from work without prior approval from an immediate supervisor.

- 1. Unless a different notification is required by a Unit SOP, employees have the responsibility of notifying an immediate supervisor at least one (1) hour prior to

the scheduled work start time if they are going to be absent.

➤ **Austin Police Department Policy 955.7.1(a)(1): Attendance and Leave: Employees Responsibilities When Using Sick Leave**

**9557.1(a)(1) Employees Responsibilities When Using Sick Leave**

- (a) Employees shall notify their immediate supervisor:
  - 1. Unless otherwise specified in the employee's Unit SOP, at least one (1) hour prior to the employee's work start time if the employee is going to be out sick;

In addition to this agreed temporary suspension, Ofc. Astran agrees to the following terms and conditions:

- 1. Ofc. Astran shall attend any training specified by her Chain-of-Command.
- 2. Ofc. Astran agrees that she will be required to participate in a fitness for duty evaluation under the following terms and conditions:
  - a. Within seven (7) calendar days of the start of this suspension, Ofc. Astran must provide her personal physician with a copy of this memorandum and the attached document entitled essential functions of a police officer.
  - b. Ofc. Astran must be evaluated by her physician, who in turn must complete the essential functions document (referred to hereafter as the "report"), including completing the question on the first page asking whether she is or is not fit to continue her duties as of the date the physician completes this report. The cost of this evaluation shall be borne by Ofc. Astran.
  - c. The report must be received by Commander Jeremy Compton no later than 5:00 pm on Monday December 9, 2022. Ofc. Astran may provide a copy of the report to Commander Compton, or her doctor may send it by hand delivery directly to Commander Compton, or via Facsimile @ (512)-475-2994, or via email @ Jeremy.Compton@austintexas.gov.
  - d. Ofc. Astran agrees that if the report is not received by me by the December 9, 2022, deadline, it will be considered an act of insubordination for which she will be indefinitely suspended without the right of appeal to the Commission, to an Independent Third-Party Hearing Examiner, or to District Court, and she may not utilize the Grievance Process in the Meet and Confer Agreement to challenge this suspension. It is Ofc. Astran's responsibility to ensure that the report is completed and received by me on time.
  - e. Ofc. Astran agrees that if her personal physician's report states that she is not medically fit for duty, she will resign her employment with the Austin Police Department effective forty-eight (48) hours after the date the report is received by me.

- f. Ofc. Astran agrees that if her personal physician's report states she is medically fit for duty, I have the right to question that report and request that the Civil Service Commission name a Commission approved physician to conduct an independent evaluation of her fitness for duty. Ofc. Astran agrees that she is required to cooperate with the appointed physician, including agreeing to an in-person evaluation and providing medical documents requested or a medical release allowing the appointed physician to obtain her medical records. The cost of this independent evaluation will be borne by the City of Austin.
  - g. Ofc. Astran agrees that if the appointed physician concludes she is not medically fit for duty, she will resign her employment with the Austin Police Department effective forty-eight (48) hours after the report is received by me.
  - h. Ofc. Astran agrees that if the report from her personal physician and the appointed physician conflict, she agrees that the report from the appointed physician shall be determinative on the issue of her fitness for duty.
  - i. Ofc. Astran agrees that if she refuses to resign her employment as provided for in sections (e) or (g), she will be indefinitely suspended without the right to appeal that suspension to the Commission, to an Independent Third-Party Hearing Examiner, to District Court, and she may not utilize the Grievance process in the Meet and Confer Agreement to challenge her suspension.
  - j. If Ofc. Astran is found not fit for duty, she agrees that the City may but is not required to determine if a reasonable accommodation exists.
  - k. Ofc. Astran agrees that her failure or her medical provider's failure to comply with any of these conditions or within the agreed to time frame(s) will result in her indefinite suspension, without the right to appeal that suspension to the Commission, to an Independent Third-Party Hearing Examiner, to District Court, and she may not utilize the Grievance process in the Meet and Confer Agreement to challenge her suspension.
3. Ofc. Astran shall be evaluated by a qualified mental health professional designated by the Chief of Police.
  4. If the qualified mental professional recommends a program of counseling, Ofc. Astran must successfully complete that program of counseling.
  5. If a program of counseling is recommended, said program will be completed on Ofc. Astran's off-duty time, unless the Chief approves the use of accrued vacation leave.
  6. Ofc. Astran shall be responsible for paying all costs of the program of counseling that are not covered by her health insurance plan.
  7. If Ofc. Astran fails to successfully complete the program of counseling, the Chief may, at his sole discretion, indefinitely suspend her without right of appeal to the Civil Service Commission, to an Independent Third-Party Hearing Examiner, or to District Court, and Ofc. Astran may not file a grievance under Article 20 of the Meet and Confer Agreement.

8. Ofc. Astran agrees to a probationary period of one (1) year, with the additional requirement that if, during the probationary period, she commits the same or a similar act of misconduct for which she 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), she 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 Ofc. Astran returns to duty after completing her agreed suspension. Should Ofc. Astran commit the same or a similar violation outside the one-year period, she will be indefinitely suspended but retains the right to appeal that suspension.
9. Ofc. Astran understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass her for a future promotion in accordance with APD Policy 919.11.
10. Ofc. Astran agrees that she, and all others claiming under her 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 she 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 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. Ofc. Astran acknowledges that she had the opportunity to discuss this agreed suspension and additional terms and conditions set forth herein with a representative of her choosing prior to signing her acceptance where indicated below.

By signing this Agreed Discipline, Ofc. Astran understands and agrees that I am forgoing my right to indefinitely suspend her for the conduct described above and that by agreeing to the suspension, Ofc. Astran 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.

  
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JOSEPH CHACON, Chief of Police

11/9/2022  
\_\_\_\_\_  
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.

Astran #4729  
Police Officer Kristy Astran #4729

11-9-22  
Date