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## MEMORANDUM

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

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

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

**DATE:** July 27, 2022<sup>1</sup>

**SUBJECT:** Temporary Suspension of Police Officer James Ayers #6755  
Internal Affairs Control Number 20221-0499

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 James Ayers #6755 from duty as a City of Austin, Texas police officer for a period of ten (10) days. The temporary suspension is effective beginning on July 28, 2022 and continuing through August 6, 2022.

I took this action because Ofc. Ayers 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:

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<sup>1</sup> Although this suspension is effective more than 180 days after the date of the underlying incident(s), its imposition complies with the mandates of LGC 143.052 and 9 agreed to extensions (requested/agreed to by Ofc. Ayers/and his representatives, due to his ongoing "No Duty" status) of the 180-day deadline pursuant to Article 18, Section 8 of the 2018-2022 Meet and Confer Agreement. APD has/had until July 28, 2022, to impose discipline. APD sought additional extensions from Ofc. Ayers, however, he declined to agree to additional extensions. This also hindered Internal Affairs from interviewing him in this investigation.

- 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. Ayers in violation of Rule 10:

On March 2, 2021, Ofc. James Ayers was placed on Light Duty/No Duty Status through the Austin Police Department (APD) Worker's Compensation Unit. On May 4, 2021, Ofc. Ayers had telephone conversations with a Sedgwick Nurse, the insurance carrier for APD's Worker's Compensation, as well as a subsequent conversation with an APD Worker's Compensation Specialist. It was alleged Ofc. Ayers used unprofessional, profane, and/or abusive language during these two conversations.

On May 7, 2021, APD Internal Affairs (IA) received an internal complainant memorandum from Ofc. Ayers' Lieutenant requesting an administrative investigation in order to determine if Ofc. Ayers' conduct complied with department policy, Civil Service rules, Municipal Civil Service rules, and state law.

#### **Sedgwick Nurse's (June 28, 2021) IA interview**

During her interview the Sedgwick Nurse indicated on May 4, 2021:

*"...I had contacted [Ofc. Ayers], left a message. He called me back and he had some questions regarding an [REDACTED] and I was trying to get through my file and-I guess it wasn't fast enough. I'm not sure. I just imagined something triggered him because he said, "You know what? I'm kinda getting angry." I said, -Let me look here," and it wasn't any time after that he goes, "You know, I'm very angry. I think I'm gonna get my boxing gloves out." And he goes, "I need this [REDACTED] done to my face," and then I said, "You know what?" I said, "Why don't I just call you back?" He goes, "I'm not happy and I'm angry." In other words, sort of like I'm responsible for the behavior. I'm responsible for the feelings and it just made me a little uneasy and I said, "-I'll just try to call ya back," so-I just disconnected the phone call."*

The Sedgwick Nurse indicated she had numerous lengthy calls with Ofc. Ayers, dating back to March 18, 2021. She described his behavior as escalating from her first call to this last call:

*I don't know if he didn't have confidence in me 'cause I was...the new nurse on the file. I don't know what was happening. I can only just imagine what's going on but it just seemed like it might have been a possibility of this escalating because he didn't like to-he doesn't like to wait...He wants everything done like now, now, now, now, now and-if you don't give him what he wants he gets mad and-angry*

*and-it kind of came to a head on that last day I had him and it made me uncomfortable enough I asked to be taken off the file.*

IA further asked about some of Ofc. Ayers' specific statements:

IA: *When he made that statement to you, that he was going to take his boxing gloves out, how did you take that?*

Sedgwick Nurse: *Very threatening. Very threatening even though I'm in Albuquerque, New Mexico-I was just like, wow. Ya know-I was extremely concerned. -I just thought as a police officer they're supposed to be not threatening but reassuring and, ya know, if nothing else maybe say, "I guess you're -" even if he is frustrated. -I have to work with people like that. I've been doing this since 1979. I understand people have unmet needs that they just cannot get answers so I understand that but I don't understand threatening after I have been on the phone for hours with him trying to accommodate all of his complaints-It did not feel good 'cause it made me feel like I was responsible for his behavior and I didn't know where his behavior was gonna go after this phone call.*

#### **APD Worker's Compensation Specialist's (June 10, 2021) IA interview**

The APD Worker's Compensation Specialist indicated on May 4, 2021:

*"I received a phone call from the [Sedgwick Nurse]. [Ofc. Ayers] called her requesting information about an [REDACTED] and why was it not approved. She said that she didn't find anything in the record that an [REDACTED] had been requested. She explained that to him and that he was upset about it. So I said, "I will call him." I then called Mr. (Ayers) and I [introduced myself as the one following up on his conversation with the [Sedgwick Nurse] And he immediately he started yelling and cursing at me. It was immediate. And I tried to calm him down just telling him, "Calm down. It's okay. We can talk through this." And he continued to scream at the top of his lungs cursing and yelling. And I knew that he wasn't angry with me personally because I had not done anything. He was just already obviously upset about something else. He continued to yell and scream and I just listened and a few times chimed in. Then he mentioned something about physical therapy. At that point I was able to speak for just a few moments. And-I explained to him that physical therapy has to go through pre-authorization- the treatment guidelines that can be requested. It would just have to be reviewed. He immediately started screaming and yelling at me again. At one point I wrote down a few things that he was saying because it was so - obnoxious- I don't know why I stayed on the line so long. I really just wanted to calm him down. I didn't have any intentions of getting him into any trouble. But he was yelling at screaming. At one point he must have put the phone down and walked away because he sounded like he was in the distance to still screaming and yelling. I then finally hung up the call."*

IA asked the Worker's Compensation Specialist's recollection of the specific statements:

IA: *Do you recall any of the things he actually said?*

WC Specialist: *He said, "This is fucking bullshit." You know, why isn't anybody fucking helping him. He at one point said, "I hope you all fucking suffer" "Fuck you all." That was- the gist of basically everything. That was his-word choices throughout the eight-minute ordeal.*

IA: *Okay and when he-made those comments-did you feel that there was any kind of threat or anything like that?*

WC Specialist: *I didn't feel threatened. I knew he wasn't angry specifically at me. But I was taken aback that he would - he's always been super nice to me and it was completely opposite of any other conversations. And I've had multiple conversations with him.*

IA: *Okay.*

WC Specialist: *So, I didn't necessarily feel threatened, but I felt some kinda way. It made me feel uneasy.*

IA asked the Worker's Compensation Specialist if she was offended by Ofc. Ayers yelling and cursing, garnering the following response:

*"Not initially, I really wasn't quite frankly. But as it went on, I did feel offended because I've just never been spoken to like that in my life. It was, just uncalled for and just out of line."*

The Worker's Compensation Specialist wrapped up her IA interview by stating:

*"I would just like to say that I don't feel necessarily traumatized like something major like a major mood change or anything like that. But it does actually just come into my head that this happened every so often and I even worried at one point what if he came knocking on my door. Because I told my daughter about this what happened to me. And she was like, "You have a police officer who has a gun." And I was like, "Oh that's true." I don't know that I'm necessarily specifically worried but I think it's notable for me to say that it is something that worried me a little bit. Because it was such an unstable conversation out of nowhere. So-I don't need any, like, medical treatment or anything like that and I'm able to function. But it does just come to me sometimes that that happened. I don't know why that is. But sometimes it'll just occur to me and-I just wanna make that point. That it-did affect me in some kinda way just minimally."*

## Conclusion

I agree with the Chain-of-Command's recommendation to me that Ofc. Ayers violated APD General Order 900.3.2(a) Acts Bringing Discredit Upon the Department for his conduct in this case, particularly in his conversation with the Sedgwick Nurse. Specifically, that "[his] *statements within the context and tone of the conversation with the [Sedgwick Nurse] were perceived as threatening to [her]. As an APD employee, making statements that cause another to feel threatened towards or about members of the public is not acceptable and destroys the public's confidence in the Department.*"

Additionally, I agree with the Chain-of-Command's recommendation to me that Ofc. Ayers violated APD General Order 900.5(a)1 Responsibility to Coworkers in his conversation with the APD Worker's Compensation Specialist. Specifically, that "*during the conversation [Ofc. Ayers] used loud and profane language directed towards her. As she attempted to de-escalate the situation, [Ofc. Ayers] continued to curse at her...The use of these abusive comments caused her to feel threatened or offended. Directing this type of language towards or about anyone, particularly a fellow employee is counter to our responsibility to treat each other with respect.*"

In determining the level of discipline, I considered the aforementioned facts listed in this suspension memorandum, along with additional guidance from APD General Order 902.9.3, "Factors to Consider in Determining Discipline" to include, but not limited to, his prior disciplinary history<sup>2</sup> and the fact that his conduct brought discredit upon APD. Lastly, while the Chain-of-Command and I considered and empathize the fact that Ofc. Ayers was/is going through a difficult time in his life, particularly due to his medical condition, this in no way excuses the way that he conducted himself in these conversations.

By these actions, Ofc. Ayers 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 900.3.2(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

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<sup>2</sup> Ofc. Ayers was disciplined in 2015, in IAD case number 2015-0738, where he directed profanity at two APD supervisors, who attempted to re-counsel him about his repeated tardiness.

prejudicial to the good order, efficiency, or discipline of the Department.

➤ **Austin Police Department Policy 900.5(a)1: General Conduct and Responsibilities: Responsibility to Coworkers**

**900.5(a)1 Responsibility to Coworkers**

Cooperation among employees of the Department is essential to effective law enforcement.

- (a) Employees are expected to treat each other with respect.
  - 1. Employees will be courteous and civil at all times in their relationships, perform their duties in a cooperative and supportive manner, and not threaten, display physical aggression toward, or use insolent or abusive language with one another.

Ofc. Ayers is advised that this suspension may be considered by the Chief of Police in a future promotional decision pursuant to General Order 919.

By copy of this memo, Ofc. Ayers 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, Ofc. Ayers 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.

  
JOSEPH CHACON, Chief of Police

7-27-22  
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.

James Ayers by Joe Swann<sup>4863</sup>      7-27-22  
Police Officer James Ayers #6755      Date

**Leave Request Form  
For Article 18:  
Hardship Exception**



On 7/27/2022, a DM was held. At that time a suspension of 10 days was issued.

**I.A.D. Case # 2021-0499**

**Pursuant to the Agreement between the City of Austin and the Austin Police Association dated December 15, 2018.....as stated: Disciplinary Actions, Demotions & Appeals Article 18**

I hereby request the above described hardship exception, and understand the following:

1. If the hardship exception is agreed upon, I may not appeal the suspension.
2. Hardship exceptions apply to suspensions of four (4) to ninety (90) days (see page 2).
3. Approval of the hardship exception is at the Chief's sole discretion.
4. Hardship approval or denial may not be admissible in future appeal hearings.
5. Acceptance of the hardship exception does not set a precedent for any officer in any appeal.
6. The use of vacation days for suspension will be considered equal punishment and will be listed as a suspension in the employee's records.
7. Sick time may not be substituted for vacation leave.

I request the hardship exception as described in Article 18 for the following reasons:

Type of leave requested:

J. Ayers #6755  
Officer & Employee No.

J.R. Ayers by Det Joe Swann 4863  
Officer Signature

7-27-22  
Date Signed

The Hardship Exception is hereby: Denied  
Granted for 3 days and / or \_\_\_\_\_ hours

S. B. 255  
Chief of Police or Designee Approving Exception

7-27-22  
Date

Comments:

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## **ARTICLE 18**

### **DISCIPLINARY ACTIONS AND APPEALS**

#### **Section 2. Suspensions of Fifteen (15) Days or Less.**

If the Chief determines to suspend an officer for fifteen (15) days or less, the Chief may, at his sole discretion in hardship cases, authorize use of the officer's accumulated vacation leave to cover all or part of the suspension. It is also understood and agreed that if the Chief permits the use of vacation days for suspension, such days off shall be considered as equal punishment to traditional unpaid days of suspension. In no case will sick leave be substituted for unpaid days of suspension.

#### **Section 3. Mutually Agreed Suspensions of Sixteen (16) to Ninety (90) Days.**

Either the Police Chief or the officer facing discipline may offer to impose or accept a suspension without pay for a period from sixteen (16) to ninety (90) days. If the officer accepts the mutually agreed suspension, there shall be no appeal either to the Police Civil Service Commission, to the District Court or to a Hearing Examiner. It is also understood and agreed that if the Chief permits the use of vacation days for suspension, such days off shall be considered as equal punishment to traditional unpaid days of suspension. In no case will sick leave be substituted for unpaid days of suspension.