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January 19, 2021 2:12pm

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 19, 2021

SUBJECT: Agreed Temporary Suspension of Sergeant Philip Linsalata # 3004
Internal Affairs Control Numbers 2020-0662 and 2020-1698

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 Sergeant Philip Linsalata # 3004 from duty as a City of Austin, Texas police officer for a period of sixty (60) days. The agreed temporary suspension is effective beginning January 20, 2021, and continuing through March 20, 2021.

I took this action because Sgt. Linsalata 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 Sgt. Linsalata in violation of Rule 10:

Sgt. Linsalata's Inappropriate Comment:

On May 25, 2020, Austin Police Department (APD) officers responded to a call involving a suicidal person with access to firearms who was barricaded in a bathroom. The call was difficult and stressful—with one officer hearing the barricaded person move the slide mechanism on a firearm. The officers were able to take the person into custody and seized firearms from the residence.

Sgt. Linsalata was among the officers who responded and was in command on the scene. At the time of the call, Sgt. Linsalata was a tenured APD officer. He had been a sergeant, and a supervisor over a patrol shift, for approximately 14 years.

After the officers completed their work, Sgt. Linsalata met with several of his subordinates in the apartment complex's parking lot. According to Sgt. Linsalata, the purpose of the meeting was to discuss the tactics and strategy that had been used during the call. Sgt. Linsalata also wanted to use the meeting to give his subordinates time to decompress after a difficult and stressful call. No one other than several officers from Sgt. Linsalata's shift were present during the meeting. Sgt. Linsalata recorded the meeting on his body-worn camera.

During the meeting, Sgt. Linsalata noticed that one of his subordinates, Officer X, had a shamrock tattoo on his arm. (Officer X is an officer on Sgt. Linsalata's shift with a Hispanic surname and whose identity is known to Sgt. Linsalata). Sgt. Linsalata had not seen the tattoo before because Officer X was new on the shift and was wearing a short-sleeved shirt for the first time. While talking about the tattoo with Officer X, Sgt. Linsalata said, in pertinent part: "*[A]re you trying to pass yourself off as a coconut?*" Officer X responded by laughing at the comment.

On August 3, 2020, APD Internal Affairs Division (IAD) received a Notice of Formal Complaint (NFC) from the Office of Police Oversight. This NFC was assigned case number 2020-0662. IAD conducted an investigation into Sgt. Linsalata's conduct, including the "coconut" statement he made to Officer X.

IAD interviewed Officer X about the comment. Officer X told IAD that he was not offended by the comment and, in fact, was unsure what Sgt. Linsalata was referring to with the comment. Officer X explained that he laughed merely because he could tell Sgt. Linsalata was joking and so he laughed "*[t]o just kinda play it off, keep going.*" When asked about Sgt. Linsalata more generally, Officer X described Sgt. Linsalata as a "*phenomenal supervisor...he just has your back...he kinda knows how to connect to people.*"

First IAD Interview of Sgt. Linsalata:

On November 4, 2020, IAD conducted an interview with Sgt. Linsalata. When questioned about the comment that he made to Officer X, Sgt. Linsalata gave incomplete and misleading answers and failed to fully cooperate with IAD investigators.

Sgt. Linsalata denied that he had any derogatory racial or other negative intent when he made the comment to Officer X.

Second IAD Interview of Sgt. Linsalata:

Following this first interview, on November 13, 2020, IAD received an Internal Complaint Memorandum. The complaint stated in part:

On 11/04/2020, during his Internal Affairs interview, Sgt. Linsalata may have failed to cooperate fully with IAD investigators. He also may have been misleading or less than forthcoming while answering questions. During questioning, Sgt. Linsalata may have been inconsistent in his answers and omitted pertinent information.

This complaint was assigned case number 2020-1698.

On December 4, 2020, IAD conducted a second interview with Sgt. Linsalata. During the interview, IAD asked Sgt. Linsalata to clarify what he intended when he made the “coconut” comment to Officer X and to clarify his responses given to IAD during the first interview. Sgt. Linsalata acknowledged that some of his responses during the first interview were made out of frustration and that they were inappropriate “wise guy” answers.

Sgt. Linsalata acknowledged that he understood the term he used had pejorative race, color, or ethnicity based connotations. Sgt. Linsalata explained to IAD that in an effort to get to know Officer X better, he was trying to ask Officer X if he had Irish as well as Latino or Cuban heritage. He denied that he intended anything derogatory, negative, or racist. He admitted that, in hindsight, the use of the term was inappropriate, that he was trying to make a joke or be funny, and that he would not use the term again.

Sgt. Linsalata was apologetic for not giving clear answers in his first interview and took responsibility for having a bad attitude and being uncooperative. He also took full responsibility for his actions.

By these actions, Officer Linsalata 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 900.4.3: Personnel Policies: 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 914.3.2: Equal Employment Opportunity and Non-Discrimination: Prohibited Conduct: Harassment**

914.3.2 Harassment

- (a) Harassment is unwelcome verbal or physical conduct toward an individual or a group because of a protected class. Harassment can create a hostile work environment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or otherwise adversely affects an individual's employment

opportunities. Examples of prohibited conduct that constitute harassment include, but are not limited to:

1. Use of epithets, innuendos, names, comments, foul language or slurs because of an individual's protected class;
2. Jokes, pranks or other banter, including stereotyping based on a protected class; or,
3. Distribution, display, viewing, downloading or discussion of any written or graphic material, including online content, voicemail, e-mail, text-messages, calendars, posters and cartoons, that are sexually suggestive or show hostility toward an individual or group based on a protected class.

(b) Employees shall not engage in conduct which could reasonably create a hostile work environment at any time while on duty or on City premises, or even if not on duty, but participating in any work-related setting outside the workplace, such as traveling on City business or attending professional conferences.

➤ **Austin Police Department Policy 914.6: Equal Employment Opportunity and Non-Discrimination: Supervisor's Role**

914.6 Supervisor's Role

Discrimination, harassment, sexual harassment, or retaliation is viewed from the perspective of the victim, not the offender. Because of differences in individual values, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory, harassing, or retaliatory. Supervisors should consider whether a reasonable person in the victims place would consider the conduct to be inappropriate. Supervisors and managers shall be aware of the following considerations:

- (a) Behavior of supervisors and managers should represent the values of the Department and professional law enforcement standards.
- (b) Supervisors and managers must act responsibly in the handling of such situations.

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

1. Sgt. Linsalata shall attend any training specified by his chain of command.
2. Sgt. Linsalata's chain of command shall conduct regular and ongoing reviews of his work and performance, including, but not limited to, review

- of his body worn camera videos, for a period of at least six (6) months. Sgt. Linsalata agrees that he will be subjected to greater scrutiny than his peers.
3. Sgt. Linsalata 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 that Sgt. Linsalata returns to duty after completing his agreed suspension. Should Sgt. Linsalata commit the same or similar violation outside the one-year period, he will be indefinitely suspended but retains the right to appeal that suspension.
 4. Sgt. Linsalata 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 Policy 919.11.
 5. Sgt. Linsalata 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.
 6. Sgt. Linsalata 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.

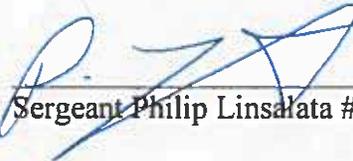
By signing this Agreed Discipline, Sgt. Linsalata understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Sgt. Linsalata waives all right to appeal this agreed suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third Party Hearing Examiner, and to District Court.


BRIAN MANLEY, Chief of Police

1-19-21
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.

 3004
Sergeant Philip Linsalata #3004

1-19-21
Date