

MAY 19 2022



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Joseph Chacon, Chief of Police

DATE: May 19, 2022

SUBJECT: Temporary Suspension of Police Officer Shalom Alvarez #9207
Internal Affairs Control Number 2021-1285

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 Ofc. Shalom Alvarez #9207 from duty as a City of Austin, Texas police officer for a period of one (1) days. The temporary suspension is effective beginning on May 26, 2022 and continuing through May 26, 2022.

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

On November 24, 2021, Ofc. Shalom Alvarez responded to a Code 3 Hot Shot call¹, and he bypassed or overrode the automatic activation of the Digital Mobile Audio Video (DMAV) system. At the time of his response, the roads were wet from rain. Ofc. Alvarez lost control of his patrol car and was involved in a single-vehicle crash in the 500 block of E. Riverside Drive shortly after bypassing the automatic activation of the DMAV system. Ofc. Alvarez's patrol unit sustained significant damage to the front right quarter panel.

Ofc. Alvarez advised Internal Affairs (IA) that he violated the following General Orders:

- **304.3 Digital Mobile Audio Video Recorder Operation**
- **304.3.3 When DMAV Deactivation is Authorized**
- **804.2 General Operation of Department Vehicles**

Specifically, Ofc. Alvarez advised IA that on the date of the incident, *"I believed DMAV didn't need to be on until I arrived to the scene, so I didn't see a reason for it to be on and that is why when- I hit Code 3, camera activated, I just proceeded to turn it off manually... 'cause I didn't think that was at the time taking police action."* Ofc. Alvarez also admitted that he failed to operate a department vehicle in a careful and prudent manner under the circumstances, including wet conditions. He stated that he lost control of the vehicle and collided with a concrete wall as a result of his actions. Ofc. Alvarez went on to express remorse and accepted responsibility by stating the following at the end of his IA interview:

"I just wanted to apologize, or recognize that I did mess up, it's an error that I made, and I just wanted to say I'm sorry to everyone here and my chain of command and my shift mates, my fellow partners 'cause it kinda took away from the call that we were going to, which is a gun hotshot, so it took resources away from individuals or citizens that needed our help to come and help me, which obviously - I was upset about that and I just wanted to say I was sorry about that. At the time of this incident, I wasn't aware that DMAV should be on Code 3. But now I've learned from that mistake and ever since then I always leave my DMAV on."

By these actions, Ofc. Alvarez 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 304.3(c): Digital Mobile Audio Video Recording: Digital Mobile Audio Video Recorder Operation**

304.3(c) Digital Mobile Audio Video Recorder Operation

(c) Employees shall not:

¹ A Hot Shot call is an incident which is in progress and is an immediate threat to life and/or public safety.

1. Bypass or override the automatic activation of the equipment.
2. Erase, alter, or delete any recording produced by the DMAV.

➤ **Austin Police Department Policy 304.3.3: Digital Mobile Audio Video Recording: When DMAV Deactivation is Authorized**

304.3.3 When DMAV Deactivation is Authorized

- (a) Once the DMAV system is activated it shall remain on until the incident has concluded.
 1. For purposes of this section, conclusion of an incident has occurred when:
 - (a) All arrests have been made and arrestees have been transported; and
 - (b) All witnesses and victims have been interviewed.
 2. Recording may cease if an employee is simply waiting for a tow truck or a family member to arrive, or in other similar situations where no further law enforcement action is likely to occur.
- (b) Employees may deactivate the audio portion by engaging the mute button on the wireless microphone, for administrative reasons only, as follows:
 1. The reason for the audio deactivation must be recorded verbally prior to audio deactivation; and
 2. After the purpose for audio deactivation has concluded, employees will reactivate the audio track.
- (c) For purposes of this section, an "administrative reason" refers to:
 1. Personal conversations unrelated to the incident being recorded.
 2. Officer to Officer training (e.g., when a Field Training Officer or Field Training Supervisor wishes to speak to an officer enrolled in the Field Training Program about a training issue).
 3. The conclusion of an incident.
 4. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall also be stated prior to the audio deactivation.

➤ **Austin Police Department Policy 804.2(a): Department Vehicles: General Operation of Department Vehicles**

804.2(a) 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.
 2. Employees will wear a seatbelt in the front or back seat while operating or riding inside of a Department vehicle unless there is an operational, tactical, or medical need to be unsecured.

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

In addition, if this disciplinary suspension is for three (3) days or less, Ofc. Alvarez 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

5/19/2022

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) calendar 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.



Police Officer Shalom Alvarez #9207

05/19/2022

Date