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MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: August 28, 2020

SUBJECT: Agreed Temporary Suspension of Police Officer Thomas Childress #7765
Internal Affairs Control Numbers 2020-0327

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 Thomas Childress #7765 from duty as a City of Austin, Texas police officer for a period of sixty (60) days. The agreed temporary suspension is effective beginning on August 29, 2020 and continuing through October 27, 2020.

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

On March 13, 2020, Officer Thomas Childress responded to a disturbance call involving a subject walking in the street with a skateboard threatening to hit cars near HEB on Wood Hollow Drive. The 911 caller also indicated the subject was carrying a sign with anti-Jewish sentiments while trying to attack vehicles. Officer Childress arrived in the area and located the subject, whom he saw holding a sign and skateboard at 3604 North Hills Drive, Austin, Texas. Two other officers arrived immediately after Officer Childress.

Upon arrival, Officer Childress exited his patrol vehicle and pointed his Taser at the subject while giving him verbal commands to drop his sign and to get on the ground. After initially not complying to verbal commands to place his sign on the ground, the subject eventually complied but continuously questioned the legality of the officers' actions. Officer Childress then gave the subject commands to get on the ground and to lay on his stomach. The subject eventually sat on the ground with his hands on his head, but he refused to get on his stomach as he repeatedly asked for a supervisor. Officer Childress then informed the subject that he was going to deploy his Taser if he did not fully comply with all of his orders. Officer Childress then issued Taser warnings and deployed the Taser on the passively resisting subject. The subject was subsequently taken into custody and transported to the Travis County jail.

Corporal David Gannon responded to the scene and conducted the on-scene Response to Resistance (RTR) review. Thereafter, on March 17, 2020, Commander Jason Bryant generated an Internal Complaint Memorandum requesting that Internal Affairs (IA) initiate an administrative investigation to determine if any violation of Department Policy, Civil Service rules, or State Law had been committed by Officer Childress.

During their investigation, IA interviewed several witnesses, including Officer Childress, and reviewed video footage of the incident. Officer Childress' Body Worn Camera (BWC) captured all of his interactions with the subject. The BWC footage showed the following:

Officer Childress arrived in the area and located the subject, who matched the description provided by the caller(s). Officer Childress exited his patrol vehicle and identified himself as, "Austin Police," and instructed the subject to, "Stop! Come here." Officer Childress pointed his Taser at the subject and gave him multiple verbal commands to put his sign down. The subject repeatedly asked Officer Childress why he was being stopped and detained. Officer Childress stated, "I am investigating a crime." The subject then repeatedly asked Officer Childress what crime he was alleged to have committed. He also stated many times: "This is an illegal arrest."

The second on-scene officer advised the subject that he also needed to comply for "officer safety." The subject subsequently dropped his sign and was then instructed to put his skateboard down, which he did immediately. Officer Childress then instructed the subject to get on the ground and put his hands behind his back, but the subject did not initially comply with these commands. The subject continued to state that the actions taken by Officer Childress were "illegal" and he repeatedly asked, "What did I do?" and "What am I being detained for?", and "This is an illegal arrest." The second on-scene officer

also instructed the subject to turn around and put his hands behind his back. He still did not comply. Officer Childress then stated: *"This is your last chance, get down on the ground. Get down on the ground right now."* The subject then indicated that he would sit down, but was only doing so *"under duress,"* as he still felt his arrest and/or detention was *"illegal."* The subject then sat down on the ground.

Officer Childress then stated, *"Lay on your stomach,"* and the subject repeatedly stated, *"Call your supervisor, I am not complying with you, this is an illegal arrest,"* and subsequently placed his hands on his head while he was seated. Officer Childress instructed the subject, *"Lay on your stomach now."* The subject again asked for a supervisor, while remaining seated with his hands on his head. After confirming with the subject that he would not comply with further orders, Officer Childress stated, *"Taser, Taser, Taser,"* and deployed his Taser on the subject, which resulted in neuromuscular incapacitation. The subject was placed in handcuffs. EMS arrived to evaluate him, but he refused treatment.

Officer Childress was interviewed by IA on July 6, 2020. Officer Childress was asked to describe the level of resistance exhibited by the subject. He stated, *"At that particular moment, um passive. At the -moment that I tased him passive, before then it's kind of hard to say, almost offensive, but I don't believe that, I don't believe it was any more than that."* IA asked Officer Childress to describe what he was thinking when the subject was not complying to commands and he stated, *"I'm thinkin' - with how he was acting and how he is ramped up and agitated that if I were to get any closer it was going to become physical."*

IA also asked Officer Childress about the last command given to the subject.

CHILDRESS: The last command, uh, command I gave him was to lay on his stomach and put his hands behind his back.

MOLLEUR: And do you recall what he did with that command?

CHILDRESS: Yes. He continued to sit down, legs crossed, put his arms above his head and said, "I will not comply."

MOLLEUR: And what does that mean to you?

CHILDRESS: That means he's not gonna comply with anything else that I - that I ask him to do or order him to do.

Officer Childress was asked what made him decide to utilize the Taser and he said: *"At that point I decided to use the taser to avoid any other physical confrontation and being so close to the skateboard and the other sign closer to cars, that that would be the best way to - go about detaining the subject in handcuffs."* IA asked Officer Childress if he was concerned for his safety and he said: *"I was only because I did not want to get close to a skateboard, close to any sign. I did not want to have a physical struggle with this - person."*

Officer Childress concluded his IA interview by admitting that he violated the Taser policy. He stated, *“The taser policy clearly states [that an officer] should not use a taser - will not use a taser with somebody, uh, only, uh, using passive, uh, resistance, okay, and it was clear to me, seeing it now, that he was passively resisting and I still used my taser.”*

In sum, Officer Childress expressed sincere regret and contrition, while acknowledging to his Chain of Command and myself that he violated both the De-escalation and Taser policy and that he should not have used his Taser on a passively resisting subject. But for Officer Childress’ acceptance of responsibility and pledge to improve in the future through training, I would not have agreed to this temporary suspension, and would have indefinitely suspended Officer Childress.

By these actions, Officer Childress 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 200.2: Response to Resistance: De-Escalation of Potential Force Encounters**

200.2 De-Escalation of Potential Force Encounters

When safe and reasonable under the totality of circumstances, officers shall use de-escalation techniques to reduce the likelihood for force and increase the likelihood of voluntary compliance.

Nothing in this de-escalation policy requires an officer to place themselves in harm’s way to attempt to de-escalate a situation. Recognizing that circumstances may rapidly change, officers may need to abandon de-escalation efforts after they have commenced. Understanding that no policy can realistically predict every situation an officer might encounter, the Department recognizes that each officer must be entrusted with well-reasoned discretion in determining the reasonable de-escalation techniques to use in a situation. This de-escalation policy is intended to complement, not replace or supersede, other portions of the APD Policy Manual or specific officer training that addresses de-escalation.

➤ **Austin Police Department Policy 208.4.2: Taser Device Guidelines: Prohibited Uses**

208.4.2 Prohibited Uses

The following are prohibited uses of the TASER Device:

- (d) Against passively resisting subjects.

In addition to this agreed temporary suspension, Officer Childress agrees to the following terms and conditions:

1. Officer Childress shall attend any training specified by his chain of command.
2. Officer Childress 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 Officer Childress returns to duty after completing his agreed suspension. Should Officer Childress commit the same or similar violation outside the one year period, he will be indefinitely suspended but retains the right to appeal that suspension.
3. Officer Childress 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.
4. Officer Childress 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 limitation, 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.
5. Officer Childress 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, Officer Childress 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, Officer Childress 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

8-28-2020
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.

 #7765
Police Officer Thomas Childress #7765

8/28/20
Date