



## MEMORANDUM

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

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

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

**DATE:** July 23<sup>rd</sup>, 2021

**SUBJECT:** Temporary Suspension of Police Officer Gabriel Vasquez #5378  
Internal Affairs Control Numbers 2021-0083

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 Gabriel Vasquez #5376 from duty as a City of Austin, Texas police officer for a period of three (3) days. The temporary suspension is effective beginning on July 24<sup>th</sup>, 2021 and continuing through July 26<sup>th</sup>, 2021.

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

On January 26, 2021, at approximately 7:26 A.M., officers with the Austin Police Department (APD) were dispatched to a “Disturbance Other” at a restaurant located on South Congress Avenue. The call text stated that there was a verbal disturbance between a male subject and other customers. Officer Gabriel Vasquez arrived on scene and learned the subject had left the property. While Officer Vasquez was standing at the entrance to the restaurant, the subject voluntarily walked back on the property towards Officer Vasquez. The subject was placed into handcuffs and placed in the backseat of his patrol unit. After Officer Vasquez verified that the subject had no outstanding warrants or any previous criminal trespass notices at this restaurant, he was issued a criminal trespass notice by the restaurant manager, informing him not to return to the property. Officer Vasquez kept the subject in handcuffs in the back of his patrol unit transporting the subject away from the location. Officer Vasquez eventually stopped his unit, removed the subject from the backseat, removed the handcuffs from the subject and released him at another location.

On February 5, 2021, APD Internal Affairs (IA) unit received a Notice of Formal Complaint from the Office of Police Oversight (OPO). The complaint submitted by the subject stated:

- *That he was put in a police car, driven across town, and dropped off at a location unknown to him.*
- *Complainant also alleges the officer was rude, telling him, “You can find your own way home” and “You need to stay where you belong.”<sup>1</sup>*

Officer Vasquez acknowledged to IA that he failed to immediately release the subject after the criminal trespass notice was issued. Moreover, without offering the subject a choice, Officer Vasquez unilaterally chose to leave the subject handcuffed and to give him a “courtesy transport.” Officer Vasquez can be heard on his BWC stating, “*We are gonna take him downtown*” as he leaves to get back in his patrol car. The subject asked Officer Vasquez if he could “*get on with his miserable day.*” Officer Vasquez stated “*Gotta take you off property*” as he starts to drive away.

Officer Vasquez claimed to IA that he intended to transport the subject to the Austin Resource Center for the Homeless (ARCH). However, during the transport he discerned that the individual was not homeless. After this discovery, rather than continue the “courtesy transport” to the individual’s nearby home or have an open dialogue with the individual and transport him to a mutually agreed upon location, Officer Vasquez chose to leave the subject at a location (the intersection of South Congress Avenue and Oltorf Street) that was approximately 1.3 miles away from the location where Officer Vasquez originally encountered the subject. Moreover, it was approximately 2.7 miles away from the ARCH

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<sup>1</sup> IA reviewed the BWC video from this incident and did not observe the aforementioned statements captured on video. Additionally, when Officer Vasquez removed the handcuffs, the subject stated, “*I’m telling you it’s [the restaurant] close to my house that’s why I go up there,*” and Officer Vasquez responded, “*She [the restaurant manager] says you’re often causing problems, so don’t go back.*”

and approximately 1 mile away from the subject's residence. Upon being released the subject stated to Officer Vasquez:

*"Thanks for taking me all the way down here and make me walk the fuck back, man."*

Officer Vasquez replied:

*"Have a nice day."*

Moreover, during Officer Vasquez's interaction with the subject, the subject expressed that he was a potential victim of an assault by threat with a knife. However, Officer Vasquez admittedly failed to follow up with questions or concerns or document this outcry in accordance with APD policy. Moreover, this outcry was not sent to a Detective for further investigation, nor was the subject offered or availed of the resources that victims of crimes would be offered in similar situations.

In conclusion, while Officer Vasquez denied to IA that he violated any APD policy or general orders, he did express that if he were confronted with the same situation again in the future, he would handle it differently by taking the following actions:

*"I'd give him a ride home, take him to his house that he said he lived at. - tend to his - pay more attention to his - his statement that he made about, um, somebody, uh, pullin' a knife and ask him if he wanted to file a report on that."*

Officer Vasquez further explained:

*"I just, uh, wanted to, I guess make it clear that, um, I was, ah, wan- I wanted to help [the subject] and provide him assistance with, uh, takin' him to the resource center for the homeless. Um, I shouldn't have, uh, made an assumption that he was a person experiencing homelessness and, uh, should have asked him if he wanted to go or if he wanted those services, um, and to see if he would, ah, if - if he would wanna go on his own."*

By these actions, Officer Vasquez 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 301.2: Responsibility to the Community: Impartial Attitude & Courtesy**

**301.2(a)(1) Impartial Attitude & Courtesy**

Employees shall provide equal and fair protection of all rights under local, state, and federal law for all members of the community. Law enforcement will be conducted in an impartial and equitable manner.

In an effort to create an organizational culture that is inclusive and nondiscriminatory, employees shall act professionally, treat all persons fairly and equally, and strive to interact with the community in a positive manner. Employees will perform all duties objectively and without regard to personal feelings, animosities, friendships, financial status, occupation or employment status, sex, disability status, housing status, mental health or ability, citizenship, language, national origin, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity, gender expression, ethnicity, or social or ethnic background.

- (a) Employees will not express or otherwise manifest any prejudice concerning any of the categories or characteristics listed in this section in a context or manner that would cause a reasonable person to question the employee's fairness or impartiality related to the performance of their duties.
  - 1. Employees will respect the rights of individuals and will not engage in discrimination, oppression, or favoritism whether by language, act, or omission.
  - 2. The use of remarks, slurs, epithets, words or gestures, which are derogatory or inflammatory in nature to or about any person or group of persons is strictly prohibited.
- (b) Employees will be tactful in the performance of their duties, control their tempers, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.
- (c) Employees will treat all persons with dignity, will be courteous and respectful toward all persons, showing consideration for the welfare of all persons with whom they interact.
- (d) Employees will not ridicule, mock, taunt, embarrass, humiliate, belittle, or shame any person, nor do anything that might incite that person to violence.
- (e) Employees will not use indecent or profane language or gestures while interacting with, or in the vicinity of, members of the community.
- (f) Officers shall not encourage, condone, or ignore any of the behaviors described in subsections (a)-(e).

➤ **Austin Police Department Policy 318.3: Detentions, Field Interviews and Field Photographs: Detentions**

**318.3 Detentions**

Detentions are "seizures" under the Fourth Amendment. Officers may stop and question individuals when reasonable suspicion that the person may be involved in past, present or future criminal activity exists.

- (a) In justifying the stop, officers should be able to point to specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to, the following:
  - 1. The actions, appearance or demeanor of an individual suggests that he is part of a criminal enterprise or is engaged in a criminal act. Some factors include:
    - (a) The subject is carrying a suspicious object.
    - (b) The subject's clothing bulges in a manner that suggests he is carrying a weapon.
    - (c) The hour of day or night is inappropriate for the subject's presence in the area.
    - (d) The subject's presence in the particular area is suspicious.
  - 2. The subject is located in proximity to the time and place of an alleged crime.
  - 3. The officer has knowledge of the subject's prior criminal record or involvement in criminal activity.
- (b) Officers may detain persons they lawfully stop for a reasonable length of time in an attempt to:
  - 1. Verify their identity. (Officers should be familiar with Penal Code Section 38.02. Persons are not required to identify themselves unless they are under arrest; however, if they are legally detained and choose to identify themselves, they must do so accurately.)
  - 2. Account for their conduct and/or their presence.
  - 3. Discover whether a crime occurred.
  - 4. Determine person's involvement.
- (c) Officers shall release a person from an investigative stop if:
  - 1. The person eliminates the officer's reasonable suspicion of criminal involvement; or
  - 2. The officer fails to develop the probable cause necessary to arrest within a reasonable time.

➤ **Austin Police Department Policy 402.1.1: Incident Reporting and Documentation: General Guidelines**

**402.1.1 General Guidelines**

Officers will not write an offense report when they are the victim of a crime. The victim officer will write a supplement. The offense report will be written by an officer who is not a victim.

An incident number will be assigned and all required fields completed during documentation anytime an employee observes or receives any information concerning the following, but not limited to:

- (a) Criminal or suspected criminal offenses, regardless of the victim's level of cooperation.
- (b) Citizen complaints of non-criminal incidents requiring action by the police.
- (c) Self-initiated stops
- (d) When Crime Scene personnel are assigned to an incident that was first initiated or responded to by sworn personnel and no tele-serve report has been made.
- (e) Crashes involving bicyclists will be will be investigated and reported as defined in Section 346.3 Crash Investigation. Non-crash events involving a bicyclist will be documented in a Versadex report using title code 4311 under the following circumstances:
  - 1. The incident occurred on a public place
  - 2. At least one of the involved subjects sustained bodily injury; and
  - 3. The incident occurred as a result of a potential criminal act, violation of the Transportation Code, violation of a City Ordinance, or the actions of another party.
- (f) Any other situation where documentation is required by law or another section of departmental general orders.

If in doubt as to whether an incident should be documented, employees shall confer with a supervisor. For the purpose of this order, Corporals may function as the designated supervisor.

By copy of this memo, Officer Vasquez 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, Officer Vasquez 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, Officer Vasquez is advised of the following provisions of Article 18, Section 1, of the Meet and Confer Agreement:

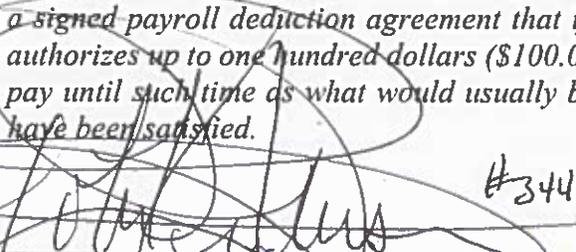
*The parties agree that when an officer is suspended for 1, 2, or 3 days the officer may choose one of two methods of dealing with the suspensions as listed below.*

- 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, Interim Chief of Police

#3441  
July 23, 2021  
Date

ASSI.  
ON BEHALF OF CHIEF CHACON

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.

 5378  
Police Officer Gabriel Vasquez #5378

7-23-2021  
Date