



November 6, 2020

Brian Manley, Chief of Police
Austin Police Department
715 E. 8th Street
Austin, TX 78701

RE: Changes to APD Impartial Attitude and Courtesy/Personal Conduct Policies

Dear Chief Manley:

The Office of Police Oversight (OPO) objects to Austin Police Department (APD) policy sections 301.2 Impartial Attitude and Courtesy and 900.3.4(c) Personal Conduct as revised by the Department on October 22, 2020. Furthermore, OPO recommends that APD engage in meaningful dialogue with OPO about more fully incorporating the recommended content and discipline changes made by OPO on September 15, 2020.

Why Policy Sections 301.2 and 900.3.4 Matter

Some of the most common complaints against officers that OPO sees allege rudeness, lack of professionalism, bias, and use of derogatory or profane language. As you know, these issues have historically fallen under policy sections 301.2 Impartial Attitude and Courtesy and 900.3.4(c) Personal Conduct. A look through the complaints and discipline documents on OPO's website reveals that these are pervasive issues within all levels of APD, and that community members have not been the only ones at the receiving end of this kind of misconduct.

OPO's Repeated Recommendations to Improve These Policies

OPO is charged with providing recommendations on APD policy in areas where there is room for improvement. Due to the frequency with which these two policies come up and their relative ineffectiveness in practice both as a deterrent and a remedy, it was incumbent upon OPO to offer recommendations for improving these two policies.

As you know, over the past several months, OPO has sent APD a series of recommendations on both phrasing and discipline to help make these two policies more effective. Regrettably, the drafts that OPO has received back from APD have consistently watered down the language and associated discipline to the point that both the meaning and intent are lost.

OPO's most recent attempt to encourage APD to change these two policies was on September 15, 2020. These recommendations were based upon our review of professionalism and impartiality policies from police departments in peer cities in both Texas and across the country. As you may recall, OPO not only sent recommendations, but also 18 pages of policy from the police departments referenced. As you may also recall, OPO's analysis revealed that APD's policies did not align with best practices and lacked the sort of detail and corresponding discipline that would enable them to be more effective in real-world situations. Unfortunately and unsurprisingly, APD responded with revisions that did little more than perpetuate the status quo. In terms of clarity and comprehensiveness, these two policies are still inconsistent with peer departments across the country, even those in Texas.



APD's Demonstrated Reluctance to Change

If APD had questions about any of OPO's recommendations, OPO would have been more than willing to engage in a meaningful discussion. Instead, APD received OPO's recommendations and a month later sent OPO the amended policy language on a form bearing your signature. APD's determined refusal to align with best practices speaks to the superficial attitude with which the Department approaches OPO recommendations, as well as its staunch resistance to change. APD's intransigence is misguided, particularly as we stand on the precipice of the colossal transformation that will inevitably come with Austin's Reimagining Public Safety (RPS) efforts. APD is a crucial stakeholder in RPS, and it behooves the Department to be more proactive at this stage instead of resisting any substantive change until the last possible moment.

Austin is demanding changes within APD, and that starts with ensuring that all officers demonstrate professionalism and impartiality when dealing with the public and each other. This is low-hanging fruit, and the Department's failure to appropriately respond to even this baseline issue does not inspire confidence in the likelihood that the Department will make the more comprehensive changes that are necessary and forthcoming.

Recommendations to 301.2 and 900.3.4 that APD Failed to Incorporate

APD's documented reason for the revisions to 301.2 and 900.3.4(c) was "to clarify officer's use of profane language into one section of policy with input from OPO." The results of this revision project demonstrate that the Department's goals for this revision really did start and stop with one objective: consolidating the language policies that were already in existence.

Fundamentally, the changes made by APD merely pay lip service to the idea of professionalism and courtesy by incorporating OPO's recommendations to explicitly reference more sectors of Austin's population, but simultaneously failing to incorporate most of the recommendations that would require an affirmative effort. APD also unilaterally added language that creates more ambiguity, thereby impeding officers' ability to follow policy and the Department's ability to enforce it.

All recommendations that OPO made were based on instances when OPO may have seen APD's policies seemed to fail either as a deterrent or a remedy. Below are some of the recommendations that APD failed to incorporate. Below the recommendations are only some of the examples of similar policies adopted by other police departments.

- **Encouraging employees to engage with the community outside of enforcement activities;**
 - Examples of Police Departments with Similar Policies
 - Seattle: "The Department expects all employees to treat all people with dignity; remember that community care-taking is at times the focus, not always command and control..."
- **Requiring employees to follow data-driven practices mutually agreed upon by the Department, OPO, and the Equity Office;**
 - Examples of Police Departments with Similar Policies
 - Portland: "Members shall adhere to established legal, ethical, and best practice standards. The Bureau shall provide introductory and ongoing training to all sworn members that emphasizes developing an understanding of racial, ethnic, national, religious, cultural, and other differences...The Bureau recognizes the reality of



implicit bias, the scope of its potential influence on human behavior and, as it pertains to policing, how it can affect interactions and relationships between the Bureau and Portland's diverse communities. Therefore, the Bureau is committed to offering resources and instruction that help members identify and acknowledge their own subconscious perceptions or associated stereotypes about or attitudes towards people about which they may not be aware."

- **Making every effort to be kind and patient;**
 - Examples of Police Departments with Similar Policies
 - San Antonio: "Members shall at all times be courteous, kind, patient, and respectful in dealing with the public, and shall strive to merit the esteem of all law abiding citizens by an impartial discharge of their official duties." Policy goes on to say, "officers must remain customer-oriented..." and lists the following six-step process that officers should follow: "(1) extend a customary greeting to each person they stop or detain; (2) identify themselves by name; (3) explain the reason for the stop; (4) afford the person the opportunity to provide their explanation of their behavior, (5) politely ask for the person's identification; (6) remain courteous and project a professional demeanor during the interview or questioning."
- **Refraining from the use of indecent, profane, or harsh language or gestures around other City employees;**
 - Examples of Police Departments with Similar Policies
 - Dallas: "Employees will be courteous and civil when dealing with members of the public or other City employees. Employees will not treat members of the public or other employees in a discourteous, irresponsible, or indifferent manner."
 - Portland: "The use of profanity is generally prohibited, except when necessary to quote another person in reports or in testimony. All other uses of profanity will be judged on the totality of the circumstances in which it was used. Members shall document uses of profanity in a police report."
- **Refraining from the use of indecent, profane, or harsh language or gestures when communicating with the chain of command or fellow officers;**
 - Examples of Police Departments with Similar Policies
 - Houston: "Employees shall be courteous, civil, and respectful to all department employees and citizens, and shall not use threatening or insulting language."
 - Portland: "Members shall, on all occasions, when reasonable, in the performance of their duties or after identifying themselves as a Bureau member, be courteous and considerate toward all their supervisors, their subordinates, all other members, and the public." Policy also states "the use of profanity is generally prohibited, except when necessary to quote another person in reports or in testimony. All other uses of profanity will be judged on the totality of the circumstances in which it was used. Members shall document uses of profanity in a police report."
- **Requiring employees and supervisors to report potential violations of section 301.2 within a certain amount of time;**
 - Examples of Police Departments with Similar Policies
 - Seattle: Bias-Free Policing policy states, "Supervisors and commanders who fail to respond to, document, and review allegations of bias-based policing will be subject to discipline." Policy goes on to state that "Employees who have observed or are aware of others who have engaged in bias-based policing shall specifically report such incidents to a supervisor before the end of their shift." Policy also states that responsibilities of employees concerning alleged violations include



referring policy violations that include “biased policing, including language that is derogatory based on an individual’s sex, race, ethnicity, religion, homes status, or other protected class” to the Office of Police Accountability (the equivalent of OPO).

- **Prohibiting employees from displaying not just derogatory, offensive or lewd pictures, but instead any content or materials; and**
 - Examples of Police Departments with Similar Policies
 - Dallas: “While on-duty or on City premises, employees’ will neither display nor wear items that they know another person could reasonably consider offensive.”
- **Revising the discipline matrix to establish predictable disciplinary outcomes that reflect the seriousness of the misconduct.**

Below is a visual representation of the revisions made to 301.2 Impartial Attitude and Courtesy and 900.3.4(c) and the corresponding discipline. All underlined text is wording that was recommended by OPO, would be new to the policy, and did not already appear in other sections of APD policy. All **highlighted** text is wording that APD failed to incorporate. All **red** text is wording that APD added unilaterally.

301.2 IMPARTIAL ATTITUDE AND 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 beyond engagement in law enforcement activity. Employees will perform all duties objectively and without regard to personal feelings, animosities, friendships, financial status, occupation or employment status, sex, disability status, familial status, housing status, mental health or ability, attire or physical appearance, citizenship, language, national origin, creed, color, race, religion, 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 above-listed categories or characteristics 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 follow data-driven best practices, as agreed upon by the Chief or a designee and entities such as the Office of Police Oversight, the Community Police Review Commission, and the Equity Office, in executing their duties in an equitable and impartial manner.*
2. *Employees will endeavor to understand and respect cultural, national, racial, religious, physical, mental, and other differences.*
3. *Employees will respect the rights of individuals and will not engage in discrimination, oppression, or favoritism whether by language, act, or omission.*



4. *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, and will be make every effort to be courteous, kind, patient, 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, profane, or harsh language or gestures while interacting with, or in the vicinity of, members of the community or other City employees.*
- (f) *Employees will not use indecent, profane, or harsh language or gestures when communicating with their chain of command or fellow officers.*
- (g) *Officers shall not encourage, condone, or ignore any of the behaviors described in subsections (a)-(f) (e).*
- (h) *Employees shall report any potential violations of this order in writing to a supervisor in the employee's chain of command up to and including the Chief of Police. Employees shall make such reports by the end of the shift in which the potential violation occurred. Supervisors will initiate investigations of any reported violations of this order within 3 days of being notified.*

Proposed Discipline Matrix for 301.2 Impartial Attitude and Courtesy

<u>Impartial Attitude and Courtesy</u>	301 – <u>Responsibility to the Community</u> 301.2(a)	Fact Specific <u>Temporary suspension and training relevant to the violation (training will be agreed upon by the Chief or a designee and entities such as the Office of Police Oversight, the Community Police Review Commission, and the Equity Office)</u>	<u>Indefinite Suspension</u>	
<u>Impartial Attitude and Courtesy</u>	301 – <u>Responsibility to</u>	<u>Written reprimand to 1-3 days</u>	<u>Increased one level</u>	<u>Increased one level</u>



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	<u>the Community 301.2(b)-(e), (h)</u>			
<u>Impartial Attitude and Courtesy</u>	<u>301 – Responsibility to the Community 301.2(f)</u>	<u>SR Minor Policy Violation</u>	<u>Increased one level</u>	<u>Increased one level</u>
<u>Impartial Attitude and Courtesy</u>	<u>301 – Responsibility to the Community 301.2(g) [related to violations of subsection (a)]</u>	<u>Temporary suspension and training relevant to the violation (training will be agreed upon by the Chief or a designee and entities such as the Office of Police Oversight, the Community Police Review Commission, and the Equity Office)</u>	<u>Indefinite suspension</u>	
<u>Impartial Attitude and Courtesy</u>	<u>301 – Responsibility to the Community 301.2(g) [related to violations of subsections (b)- (e), (h)]</u>	<u>Written reprimand to 1-3 days</u>	<u>Increased one level</u>	<u>Increased one level</u>
<u>Impartial Attitude and Courtesy</u>	<u>301 – Responsibility to the Community 301.2(g) [related to violations of subsection (f)]</u>	<u>SR Minor Policy Violation</u>	<u>Increased one level</u>	<u>Increased one level</u>



900.3.4 PERSONAL CONDUCT

(c) While on-duty or on the premises of City facilities, employees will not:

- 1. Indulge in "horseplay."
2. Produce or display graffiti of any nature.
3. Post or display derogatory, offensive or lewd content and materials which could degrade or lower the self-esteem of fellow-employees and would undermine the goal of professionalism within APD.
4. Engage in any sexual conduct including lewd acts or solicitation for sex.

Proposed Discipline Matrix for 900.3.4(c)

Table with 4 columns: Personal Conduct, 900 - General Conduct and Responsibilities 900.3.4, Fact specific, and an empty cell.

The OPO recommends that APD more fully incorporate the content and discipline changes made by our office on September 15, 2020. Doing so would not only demonstrate to both officers and the community that APD takes these types of allegations seriously, but it would also demonstrate the Department's desire to reimagine its policies and align them with best practices.

Sincerely,

Handwritten signature of Farah C. Muscadin

Farah C. Muscadin, JD
Director

cc: Spencer Cronk, City Manager
Nuria Rivera Vandermyde, Deputy City Manager
Rey Arellano, Assistant City Manager
Christopher Shorter, Assistant City Manager