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Civil Service Office

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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:** January 10, 2020

**SUBJECT:** Temporary Suspension of Police Sergeant Eric Cleveland #5145  
Internal Affairs Control Numbers 2019-0753

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 Sergeant Eric Cleveland #5145 from duty as a City of Austin, Texas police officer for a period of ten (10) days. The temporary suspension is effective beginning on January 11, 2020 and continuing through January 20, 2020.

I took this action because Sergeant Cleveland 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 Sergeant Cleveland in violation of Rule 10:

On July 16, 2019, the APD's Street Narcotics Unit conducted a buy/bust operation. Sgt. Eric Cleveland was assigned as a close cover officer during the operation. During his assignment, Sgt. Cleveland assisted with the apprehension of the fleeing suspect by driving his city vehicle onto the sidewalk, causing the suspect's bicycle to collide with his vehicle.

Upon review of Sgt. Cleveland's use of force by his chain of command, it was determined that Sgt. Cleveland's involvement and subsequent use of force violated APD Street Narcotics Standard Operating Procedures and APD General Orders. Sgt. Cleveland acknowledged to Internal Affairs that he did not operate his vehicle in a prudent manner, which culminated in the collision with the suspect. He further stated in hindsight, although he had no malicious intent, his decisions in this case were erroneous. Moreover, Sgt. Cleveland acknowledged he did not fully comply with APD's General Orders on Body Worn Camera (BWC) devices as his device was not properly attached to his person nor was it powered on for the entirety of the time that he was involved in enforcement actions.

By these actions, Sergeant Cleveland 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 200.3: Response to Resistance**

**200.3 Response to Resistance**

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this order.

- (a) Assessment shall be ongoing – As the circumstances of a situation change, the force necessary to affect a detention, arrest, search, or transportation of a subject or to protect officer or other persons from imminent harm may also change. Officers will therefore need to re-evaluate their determination of the appropriate response to resistance as circumstances change.
- (b) Officer Discretion - Understanding that no order can realistically predict every situation an officer might encounter, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the objectively reasonable response to resistance in each incident.
- (c) Improvising Permitted - Circumstances may arise in which officers reasonably believe that it would be impracticable or ineffective to use a standard tool, weapon, or method provided by the Department. Officers may find it more effective or practicable to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances,

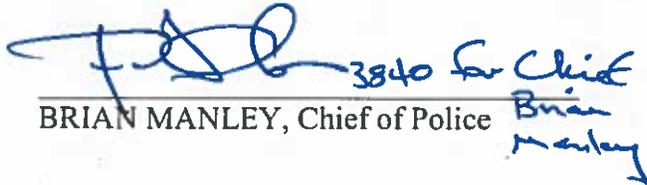
the use of any improvised device or method must still be objectively reasonable and used only to the extent which reasonably appears necessary to accomplish a legitimate law enforcement purpose.

- (d) Injury to Officer Not Required - While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this order requires an officer to actually sustain physical injury before applying objectively reasonable force.
- (e) Reporting Required - Any complaint by a subject that an officer caused pain or injury shall be treated as a response to resistance force incident, except complaints of minor discomfort from unresisted handcuffing.

By copy of this memo, Sgt. Cleveland 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, Sgt. Cleveland is hereby advised that such provides for an appeal to an independent third party hearing examiner. 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.

By copy of this memo, Sgt. Cleveland is hereby advised that this temporary suspension may be taken into consideration in my determination as to whether a valid reason may exist to bypass Sgt. Cleveland for promotion in accordance with APD General Order 919.

  
3840 for Chief  
BRIAN MANLEY, Chief of Police  
Brian Manley

Date

1/10/2020

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.

Handwritten signature of Eric Cleveland in blue ink, including the number 5145.

Police Sergeant Eric Cleveland #5145

Handwritten date 01/10/2020 in blue ink.

Date