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Civil Service Office
October 8, 2020
4:01 pm

MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: October 8, 2020

SUBJECT: Temporary Suspension of Police Corporal Gerardo Molina #2435
Internal Affairs Control Numbers 2020-0145

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 Corporal Gerardo Molina #2435 from duty as a City of Austin, Texas police officer for a period of five (5) days. The temporary suspension is effective beginning on October 9, 2020 and continuing through October 13, 2020.

I took this action because Corporal Molina 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 Cpl. Molina in violation of Rule 10:

On January 18, 2020, at 2:45 pm, Cpl. Gerardo Molina was operating an Austin Police Department (APD) marked unit in the 500 block of Barton Springs Road when the front of the unit made contact with the rear of a white Chevrolet Malibu. Cpl. Molina immediately made contact with the other driver. He also checked the vehicles for damage and asked the civilian about any injuries. While the civilian advised Cpl. Molina that the impact caused the civilian's head to thrust forward, the civilian left him with the impression that the civilian was uninjured and there was no reportable damage to the vehicle.

Cpl. Molina and the civilian parted ways, without Cpl. Molina notifying a supervisor, exchanging contact or identifying information with the civilian, or completing an accident report. After Cpl. Molina left the scene, the civilian called 311 and was transferred to 911. Another APD officer was dispatched to investigate a possible crash. This investigation was documented in an APD incident report. The investigation showed apparent minor damage (scuff marks) to the other vehicle and apparent minor injury to the civilian.

Shortly thereafter, APD Internal Affairs (IA) received an Internal Complaint Memorandum from Lieutenant Zac Pruett, directing IA to conduct an administrative investigation to determine if any violation of APD policy, civil service rules, or state law had been committed by Cpl. Molina.

The IA investigation showed that Cpl. Molina failed to operate the APD vehicle in a safe and prudent manner. Cpl. Molina conceded to this fact and admitted that he was using a cellular phone while he was operating the vehicle. Cpl. Molina also acknowledged that he violated APD policy after the minor collision, as he neglected to turn on his Body Worn Camera (BWC), in spite of APD General Orders and training that require him to do so.

The IA investigation also showed that communication between Cpl. Molina and the civilian, in the immediate aftermath of the collision, suggested there was no physical damage to the vehicle. The IA investigation also confirmed that the civilian's vehicle did have scuff marks and that Cpl. Molina erroneously concluded that this minor collision did not rise to the level of a reportable crash. Moreover, the IA investigation confirmed that the civilian complained of injury. However, the civilian stated to IA that during their dialogue with Cpl. Molina, they conveyed to him that they did not have any injury from hitting their head on the steering wheel. However, after the initial "adrenaline" passed, the civilian did begin to feel pain approximately 20-25 minutes after the parties parted ways.

In sum, Cpl. Molina accepted full responsibility for his actions, including his failure to contact a supervisor to investigate this minor collision. In hindsight, Cpl. Molina acknowledged he could now see how this rose to the level of a reportable crash in which he was admittedly at fault. Moreover, he accepted responsibility for not calling for an independent third party to investigate and for any miscommunication between himself and the civilian. He also understood that by failing to turn on his BWC, in accordance with General Orders, he failed to create a recording that would have shown the communication between the parties.

By these actions, Cpl. Molina 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 303.3.1: Body Worn Camera System: When Department Issued BWC System Use Is Required**

303.3.1 When Department Issued BWC System Use Is Required

This section is not intended to describe every possible situation where the system may be used. In some circumstances it may not be possible to capture images of an incident due to conditions or location of the camera, however the audio portion can be valuable evidence and is subject to the same activation requirements. The BWC should only be activated for law enforcement purposes.

- (a) All units responding to a scene shall activate their department issued BWC equipment when they:
 - 1. Arrive on-scene to any call for service;
 - 5. Any consensual contact in which the employee or a citizen believes activation of the BWC would be in the best interest of the community.
- (b) Examples of when the department issued BWC system must be activated include, but are not limited to:
 - 1. Traffic stops;
 - 6. Any contact that becomes adversarial in an incident that would not otherwise require recording.
- (d) In addition to the required situations, employees may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

➤ **Austin Police Department Policy 346.6: Crash Investigation and Reporting: Crashes And Damage To APD City Vehicles; Crashes Involving City Of Austin Vehicles Operating As An Emergency Vehicle (EMS, Fire, Other Operating Code Two Or Three)**

346.6 Crashes And Damage To APD City Vehicles; Crashes Involving City Of Austin Vehicles Operating As An Emergency Vehicle (EMS, Fire, Other Operating Code Two Or Three)

- (a) APD Vehicles are:
 - 1. Any vehicle owned, leased, or rented by the department

2. Any vehicle loaned or granted to the department for use by an employee
- (b) A supervisor shall be notified of all crashes involving APD vehicles and vehicles operating in an emergency capacity.
1. Supervisors will respond to the scene of APD involved crashes within the city limits or if directed by a Commander or above to conduct an investigation:
 - (a) The involved employee's immediate supervisor shall be contacted if he is on-duty.
 - (b) If the involved employee's supervisor is off-duty, another supervisor on-duty shall be notified.
- (e) Supervisors will determine if the incident meets the criteria for a crash or "damage to city vehicle".
1. "Damage to City Vehicle" is:
 - (a) Any physical contact between a city vehicle while being operated and another city vehicle, property, object, unoccupied and parked vehicle, or animal which results in visible damage to either the city vehicle(s) or another object with the following results:
 1. No injuries
 2. Damage to vehicle(s) and/or property is cosmetic
 3. Vehicle(s) can still be safely and legally operated and
 4. Damage to property is minor and there is no impairment to the property's intended function
 2. Reporting requirements for damage to city vehicle incidents:
 - (a) Involved officer(s) will notify their supervisor.
 - (b) Supervisors will inspect the damage and make a determination if the incident is a crash or damage to city vehicle.
 - (c) The involved officer will complete the Damage to City Vehicle incident report.
 - (d) Photographs of the scene, vehicle(s), and/or property will be taken and downloaded into the appropriate records management system.
 - (e) Vehicle damage will be documented and repair requests will be submitted (if necessary) in PCO.
 - (f) Reviewing supervisors shall:

1. Send e-mail notifications with the incident report number prior to the end of the tour of duty to the:
 - (a) Involved employee's chain of command up to the lieutenant; and
 - (b) APD Risk Management
 2. Review the primary reporting employee's incident report and add a Versadex case note to the report to document they were notified, if they responded to the scene, and whether they have reviewed the incident.
- (g) Lieutenants in the reporting officers' chain of command will review reports, photos, and any information related to the incident.
1. If the reviewing lieutenant determines that the officer is not negligent, no further action is needed.
 2. If the reviewing lieutenant determines that the officer is negligent in the incident; the information is forwarded to the commander for further review and action if appropriate (documented in field notes, training, IAD, etc.).

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

804.2 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.
- (d) The use of a Personal Communication Device (PCD), such as a mobile phone, PDA, or wireless two-way communication device while driving can cause unnecessary distractions and presents a negative image to the public.
1. Employees operating emergency vehicles should restrict the use of these devices while driving to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to complete the call.
 2. Except in the case of an emergency, employees who are operating non-emergency vehicles will not use PCDs while driving unless it is specifically designed and configured to

allow hands-free listening and talking. Such use should be restricted to business-related calls or calls of an urgent nature.

By copy of this memo, Cpl. Molina 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, Cpl. Molina 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.

 3940 *to Chief Aubrey*

BRIANA MANLEY, Chief of Police

10/8/20
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.

 #2435

Police Corporal Gerardo Molina #2435

10-8-20
Date