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City of Austin

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Human Resources Dept

MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Interim Chief of Police

DATE: December 27, 2016

SUBJECT: Temporary Suspension of Officer Spencer Bradley # 6757
Internal Affairs Control Number 2016-0852

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 Spencer Bradley # 6757 from duty as a City of Austin, Texas police officer for a period of three (3) days. The temporary suspension is effective beginning on December 27th, 2016, and continuing through December 31th, 2016.

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

On July 5, July 12, and August 3, 2016, Office Bradley was subpoenaed to appear for Administrative License Revocation Hearings (ALR) but failed to appear as required by the subpoenas. Officer Bradley acknowledges that he violated APD Policy 935.2.2.

By these actions, Officer Bradley 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 935.2.2: General Subpoena and Notification Guidelines**

- (a) Employees should be aware that compliance with all served subpoenas and notifications is mandatory.
- (b) Employees may be subpoenaed or notified on short notice. If contacted by a Court Liaison, the employee will be required to appear in court regardless of whether the employee received the subpoena or written notification.
- (c) Employees are responsible for keeping track of all court dates, times, and locations.
- (d) Employees are required to appear in court for all "Must Appear" subpoenas and notifications unless excused by the court.
 - 1. All ALR subpoenas (e.g., court appearance or telephonic hearing) are considered "Must Appear."
- (e) Employees who will be unable to honor any subpoena or notification shall request to be excused by completing the required documentation (e.g., Motion for Continuance) and contacting the appropriate Court Liaison.
 - 1. An employee's regular day off and/or living outside the city limits of Austin are not valid reasons for being unavailable for any subpoena.
 - 2. Approved leave, in-service training, and/or supervisor approval alone does **not** relieve an employee from attending court; employees must complete the required documentation and request to be excused.
 - 3. Employees are responsible for confirming whether they have been excused from court; this can be done by contacting a Court Liaison.
 - 4. If the employee suffers an illness or injury that prevents appearing in court as directed by a previously served subpoena, the employee shall, at least one hour before the appointed date and time, inform the Court Liaison of the situation. It shall be the responsibility of the Court Liaison to notify the court/prosecutor of the employee's unavailability to appear.

By copy of this memo, Officer Bradley 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) calendar 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 Bradley 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 Bradley 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.

Spencer Bradley #6757 for Chief Brian Manley
BRIAN MANLEY, Interim Chief of Police

12/27/16
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. I also acknowledge the options set forth in this memorandum of temporary suspension, including my right to waive an appeal of a suspension of three (3) days or less, and my financial and contractual obligations under the Meet and Confer Agreement if I elect to appeal a suspension of three (3) days or less and do not prevail.

Spencer Bradley #6757
Police Officer Spencer Bradley #6757

12/27/16
Date