



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

Human Resources Dept

2016 DEC -1 PM 2:06

City of Austin

Received

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: December 1, 2016

SUBJECT: Temporary Suspension of Officer Michael Castillo #2937
Internal Affairs Control Number 2016-0711

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 Michael Castillo #2937 from duty as a City of Austin, Texas police officer for a period of 3 days. The temporary suspension is effective beginning on December 2, 2016 and continuing through December 4, 2016.

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

On June 11, 2016 and June 15, 2016, Officer Michael Castillo utilized Precision Immobilization Technique (PIT) maneuver to terminate a vehicle pursuit. Officer Castillo acknowledged to Internal Affairs his use of the PIT maneuver on both occasions were in violation of a directive and written policy.

By these actions, Officer Castillo 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 110.4.3(c): Organizational Structure and Responsibility: Obedience to Orders**

110.4.3 Obedience to Orders

The Department is an organization with a clearly defined hierarchy of authority. This is necessary because obedience of a superior's lawful command is essential for the safe and prompt performance of law enforcement operations. This section also applies to orders received by an employee in the field training program from a Field Training Officer (FTO).

- (a) Orders from a supervisor to a subordinate will be in clear and understandable language, civil in tone, and issued pursuant to departmental business.
- (b) Employees will not publicly criticize nor comment derogatorily to anyone about instructions or orders they have received from a supervisor.
- (c) Employees will promptly obey any lawful order from a supervisor of higher rank, regardless if the supervisor is outside of the employees' chain-of-command.
 - 1. Employees will obey any lawful order from a supervisor even if the order is relayed through an employee of a lower rank.

➤ **Austin Police Department Policy 214.6.3: Vehicle Pursuits: Precision Immobilization Technique**

214.6.3 Precision Immobilization Technique

The use of the PIT should be approved in advance by the control supervisor. Officers and supervisors should weigh the need to immediately stop the vehicle based on the driving behavior and risk to the public, versus apprehension of the suspect, or termination of the pursuit.

(c) PIT Application

1. The primary unit involved in a pursuit may attempt to utilize the PIT to end a pursuit provided the risks to the public outweigh the risks of continuing the pursuit.
 - (a) The primary unit will be certified to perform the PIT. If the primary unit is not certified, the control supervisor will authorize a PIT certified officer to move to the front of the other police vehicles to perform the PIT.

3. Prior to deploying PIT officers shall:
 - (a) Give the operator of the suspect vehicle a reasonable opportunity to stop and comply with police authority.
 - (b) Ensure that there are at least two additional units in the pursuit.
 - (c) Consider the risk to the public and suspect from utilizing the PIT, versus terminating the pursuit.
 - (d) Advise communications and the officers involved in the pursuit that he/she is going to attempt the PIT by using the phrase "PIT, PIT, PIT" and identify whether or not the Tactical Vehicle Containment (TVC) is a "two" or "three" vehicle containment.
 - (e) Under normal circumstances, a PIT maneuver at speeds above 40 mph should not be applied. However, if exigent circumstances exist, higher speeds may be authorized with supervisor approval.
 - (f) At the conclusion of a successful PIT application, tactical vehicle containment procedures shall be used by all officers when practical.

By copy of this memo, Officer Castillo 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 Castillo 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 Castillo 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.

Brian Manley *FOR CHIEF BRIAN MANLEY*
Brian Manley, Chief of Police

December 1, 2016
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) 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

Michael Castillo *2937*
Police Officer Michael Castillo #2937

12/01/2016
Date