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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: September 19, 2017

SUBJECT: Agreed Suspension of Police Officer Blaine Eiben #4133
Internal Affairs Control Number 2017-0336

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 agreed to temporarily suspended Officer Blaine Eiben #4133 from duty as a police officer for a period of ninety (90) days. The temporary suspension is effective beginning on September 20, 2017, and continuing through December 19, 2017.

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

Officer Blaine Eiben was interviewed by Internal Affairs regarding his conduct at his assigned work station, the Austin Bergstrom International Airport. During his disciplinary review hearing, Officer Eiben apologized to his chain of command, including myself, and acknowledged that he provided misleading statements and brought discredit to the Austin Police Department during the course of the events and subsequent investigation. Officer Eiben further indicated he was impacted by extenuating health circumstances, to which the chain of command, including myself, gave substantial consideration.

By these actions, Officer Eiben 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 900.4.3(i): General Conduct and Responsibilities: Neglect of Duty**

900.4.3(i) Neglect of Duty

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (i) Employees are expected to be truthful at all times in the performance of their duties. However, there may be instances where, initially, the employee has not been truthful; but, before the investigation is complete, the employee provides an accurate and detailed accounting of their true culpability in a situation, and accepts full responsibility for their actions. In those cases, the Chief may consider each case on a fact-specific basis.

➤ **Austin Police Department Policy 900.3.2 Acts Bringing Discredit Upon the Department 900.3.2**

900.3.2 Acts Bringing Discredit Upon the Department

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

In addition to this agreed suspension, Officer Eiben agrees to the following additional terms and conditions:

- 1) Officer Eiben agrees to a one (1) year probationary period, with additional requirement that, if during the probationary period, he commits the same or similar act of misconduct for which he being suspended, as determined by me, he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, to an Independent Third Party Hearing Examiner, or

to District Court. The one year period begins on the day Officer Eiben returns to duty after completing his agreed suspension. Should Officer Eiben commit the same or similar violation outside the one year period, he will be indefinitely suspended but retains the right to appeal.

- 2) Officer Eiben agrees to submit to a Fitness for Duty Process at the conclusion of the 90 day suspension period, pursuant to Local Government Code 143.081. Officer Eiben also agrees if at any stage in the Fitness for Duty process he is deemed not fit for duty, that he will resign effective immediately upon receipt of that finding by the Civil Service Commission. Should Officer Blaine Eiben fail to comply with the terms of this paragraph, he agrees he will be Indefinitely suspended, and waives all right to appeal to that indefinite suspension to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.
- 3) Officer Eiben agrees that he, and all others claiming under him named herein or not, fully discharge, release and waive any and all known or unknown claims or demands of any kind of nature whatsoever that he now has, or may have in the future, including without limitation, claims arising under any federal, state or other governmental statute, regulation, or ordinance relating to employment discrimination, termination of employment, payment of wages or provision of benefits, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act, the Fair Labor Standards Act, and the Texas Commission on Human Rights Act, against the City of Austin, the Austin Police Department, or their respective agents, servants and employees, arising from the above-referenced incident, and any actions taken as a result of that incident, including but not limited to, the negotiation and execution of this agreed temporary suspension.
- 4) Officer Eiben understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass him for a future promotion in accordance with APD Policy 919.
- 5) Officer Eiben acknowledges that he had the opportunity to discuss this agreed suspension and the additional terms and conditions set forth herein with an attorney of his choice prior to signing his acceptance where indicated below.

By signing this Agreed Discipline, Officer Eiben understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Officer Eiben waives all right to appeal to this agreed suspension and the additional terms and condition to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.


BRIAN MANLEY, Interim Chief of Police

9-19-17
Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing memorandum of agreed temporary suspension and I understand that by entering into this disciplinary agreement the Chief forgoes his right to indefinitely suspend me for the conduct described above. I further understand and agree that by entering into this agreement, I have no right to appeal this suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to the District Court, and I may not file a grievance under Article 20 of the Meet and Confer Agreement.

A handwritten signature in blue ink, consisting of several loops and a horizontal stroke, followed by the number '4133'.

9-19-17

Police Officer Blaine Eiben #4133

Date