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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 1, 2017

**SUBJECT:** Temporary Suspension of Police Officer Albino Cadenas #7407  
Internal Affairs Control Number 2017-0822

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 Albino Cadenas #7407 from duty as a police officer for a period of fifteen (15) days. The suspension is effective beginning on December 2, 2017 and continuing through December 16, 2017.

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

In September 2016, Sergeant Steve Urias ordered Officer Albino Cadenas not to conduct any interdiction traffic stops while working his normal patrol shift. On July 3, 2017, Officer Cadenas conducted an interdiction stop and a lawful consent search without supervisory approval. Officer Cadenas acknowledged to Internal Affairs that his actions on July 3, 2017, were in direct violation of the order given to him by Sergeant Urias in September 2016 and Officer Cadenas also took full responsibility for his insubordination.

By these actions, Officer Cadenas 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 110.4.4: Organizational Structure and Responsibility: Insubordination**

**110.4.4 Insubordination**

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence.

➤ **Austin Police Department Policy 306.5: Search and Seizure: Consent**

**306.5 Consent**

(a) Entry into a location or vehicle for the purpose of conducting a search for any item reasonably believed relevant to any investigation is permitted once valid consent has been obtained. Officers should be aware that overuse of the consent search can negatively impact the Department's relationship with our community and only request a consent search when they have an articulable reason why they believe the search is necessary and likely to produce evidence related to an investigation. A search by consent is only allowed if the following criteria are met:

1. The officer has explained the reason for the consent search request to their supervisor (or their Corporal/Detective if their supervisor is unavailable) and received their approval prior to requesting consent. If the officer is:


(a) Assigned to a specialized unit that has received specific training on consent searches; or

- (b) The officer has completed the department's Interdiction for the Protection of Children (IPC) training and is actively conducting an IPC investigation; then the officer would not need supervisor approval prior to requesting consent.
  - 2. Consent is voluntary (e.g., clear, specific and unequivocal).
  - 3. Consent is obtained from a person who has the authority to give the consent (e.g., care, custody and control of the location or vehicle).
  - 4. The search does not exceed the scope of the consent given.
- (b) Consent must be obtained as the product of a free will. It cannot be obtained through submission to authority, either expressed or implied.
  - (c) Although officers are not required to conduct searches within the plain view of suspects, those who have the authority to grant or revoke consent should be in a position to communicate a withdrawal of consent should they so desire. If consent was obtained by telephone from a person who has authority to grant the consent, the person should be provided with contact information to revoke the consent.
  - (d) Absent other legal justification, any related search should be discontinued at any point that consent is withdrawn, even if the withdrawal is made by a different party who is at the scene and who also has authority over the area being searched.

By copy of this memo, Officer Cadenas 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 Cadenas 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.

By copy of this memo, Officer Cadenas 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 Officer Cadenas for promotion in accordance with Austin Police Department Policy 919.

 2746 For CHIEF MANLEY  
BRIAN MANLEY, Interim Chief of Police

12/01/17  
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.

 #7407  
Police Officer Albino Cadenas #7407

12/07/17  
Date