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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, Chief of Police

**DATE:** November 26, 2018

**SUBJECT:** Temporary Suspension of Police Officer Mark Lakes #1259  
Internal Affairs Control Numbers 2018-0565

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 Mark Lakes #1259 from duty as a City of Austin, Texas police officer for a period of ten (10) days. The temporary suspension is effective beginning on November 27, 2018 and continuing through December 6, 2018.

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

On June 1, 2018, Austin Police Department (APD) Officer Mark Lakes worked a secondary employment assignment at Altitude Trampoline Park located in the City of Austin. During the course of the assignment, Officer Lakes initiated an encounter with four male juveniles that entered a video game simulator designed to accommodate single players. As Officer Lakes attempted to clear everyone from the video game simulator to have only one person inside, one of the juveniles that exited the simulator made a pointing motion with his right hand toward Officer Lakes' chest area.

This prompted Officer Lakes to grab the juvenile by the wrist, who then attempted to pull his hand back. Officer Lakes then used his left hand to control the juvenile by the back of his neck. The juvenile eventually complied and Officer Lakes released his grip. The juvenile was released to his parents at the scene without further incident.

Officer Lakes verbally reported the incident to his corporal the next day, which did not afford an opportunity for an on scene response to resistance (R2R) investigation. Officer Lakes documented the incident in an APD report on June 2, 2018. However, Officer Lakes' failure to report the R2R in a timely fashion as an on scene R2R incident, prompted an Internal Affairs (IA) investigation.

Officer Lakes was interviewed by IA and took responsibility for his actions, by admitting to each of the policies contained in this memorandum. Officer Lakes indicated he felt his actions at the time of the incident fell into a "gray area" as he was unsure whether this was an R2R incident. He acknowledged that since it was unclear to him, he should have called a supervisor to the scene of a R2R and/or potential R2R incident.

Officer Lakes also elaborated, upon further reflection "*at the time because it was more of a gray area, now I look back, hindsight it was a response to resistance.*" Additionally, Officer Lakes stated he violated general orders by "*enforcing house rules*" and not turning on his department issued Body Worn Camera (BWC). He went on to say "*I forgot to turn it [his BWC] on, there's no reason behind it. I know I violated policy.*"

By these actions, Officer Lakes 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 211.9: Response to Resistance Inquiry, Reporting, and Review: Incidents during Secondary Law Enforcement Related Employment**

#### **211.9 Incidents during Secondary Law Enforcement Related Employment**

Officers involved in a force incident while working secondary law enforcement related employment (LERE) shall be required to comply with this order.

Supervisors in the area where the force incident occurred shall conduct the inquiry. However, for Level 3 force incidents, should the LERE assignment employ two or more officers and one of the officers is a supervisor not involved in the force incident, the LERE supervisor may conduct the review.

### **211.8 Level 3 Incident Inquiry, Reporting, and Review Requirements**

Level 3 force incidents require the involved employees to document the incident in a report and notify their supervisors. Supervisors shall conduct a review of Level 3 force incidents as outlined below but may upgrade any Level 3 force incident to a Level 2 force incident in order to conduct a more extensive review.

(a) Supervisors shall respond to the scene of any Level 3 incident involving:

4. Any incident resulting in injury or complaint of pain beyond the temporary discomfort of unresisted handcuffing. Supervisors shall review the general circumstances of the incident with the involved personnel and ensure the reporting level is correct based on the facts.

### **➤ Austin Police Department Policy 303.2.1: Body Worn Camera Systems: When Department Issued BWC System Use is Required**

#### **303.2.1 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:
  2. Have detained or arrested a person; or
  3. Are attempting to detain or arrest a person
- (b) Examples of when the department issued BWC system must be activated include, but are not limited to:
  6. Any contact that becomes adversarial in an incident that would not otherwise require recording.
- (c) Officers that are issued a BWC will be required to utilize the BWC when engaging in Off-Duty LERE Overtime.

- (e) There may be instances in which an officer is required to take immediate action to an event that occurs directly in front of them which may not allow time to activate their BWC. In those situations, it may be impractical or unreasonable for employees to activate their BWC system before taking police action. It is expected that once the immediacy of the situation is over, employees will activate their BWC system to record

➤ **Austin Police Department Policy 949.4.3: Secondary Employment: Prohibited Types of Secondary Employment**

**949.4.3 Prohibited Types of Secondary Employment**

Employees shall not work for, or engage in, the following types of secondary employment:

- (e) Where it is expected the employee will enforce company policies or rules (commonly known as "house rules").
  1. The Department shall have the absolute discretion to determine which businesses, establishments or events fall within this section.

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

*Brian Manley, Asst Chief*  
BRIAN MANLEY, Chief of Police

*11/25/18*  
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.

*Mark Lakes 4514*  
Police Officer Mark Lakes #1259

*11/26/18*  
Date