



## MEMORANDUM

### Austin Police Department *Office of the Chief of Police*

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City of Austin  
2016 AUG 30 PM 12:54  
Human Resources Dept

**TO:** Joya Hayes, Interim Director of Civil Service

**FROM:** Art Acevedo, Chief of Police

**DATE:** August 30, 2016

**SUBJECT:** Temporary Suspension of Police Officer Cameron Caldwell, #7408  
Internal Affairs Control Number 2016-0248

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 suspend Police Officer Cameron Caldwell #7408 from duty as a City of Austin, Texas police officer for a period 45 days. The agreed temporary suspension is effective beginning on August 31, 2016 and continuing through October 14, 2016.

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

On March 17, 2016, Mr. Tyrone Wilson was arrested by the Austin Police Department (APD) for public intoxication, handcuffed, and transported to Caritas at 611 Neches Street. Mr. Wilson was placed in the back of an APD prisoner transport van (PTV) for transport to the Travis County Jail and guarded by Officer Caldwell.

While the PTV was in the Caritas parking lot, Mr. Wilson kicked the back door several times. Officer Caldwell ordered him several times to stop. The last time Mr. Wilson kicked the door, Officer Caldwell opened the door and sprayed Mr. Wilson in the face with his pepper spray. At the moment Officer Caldwell sprayed Mr. Wilson, Mr. Wilson was seated in the PTV and was not kicking the door and was not violently or aggressively resisting. APD's DMAV (in-car audio/video system), as well as a citizen, recorded Officer Caldwell spraying Mr. Wilson in the face with pepper spray.

Officer Caldwell administered the pepper spray in an attempt to stop Mr. Wilson from continuing his aggressive behavior. His use of the pepper spray in this instance was not objectively reasonable in that Officer Caldwell had other lesser means of controlling the subject readily available to him. The video of this incident was posted on-line and made both the local and national news, which brought discredit upon Officer Caldwell, the Austin Police Department, and the City of Austin.

During his Disciplinary Review Hearing, Officer Caldwell acknowledged that his use of force was not objectively reasonable and agreed that lesser means of controlling Mr. Wilson (stopping him from kicking the door of the PTV) were available to him. In hindsight he acknowledged he should have used other available options to handle the circumstances, while expressing sincere regret and contrition.

By these actions, Officer Caldwell 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 206.4.1: Control Devices & Techniques: Chemical Agent Guidelines**

**206.4.1 Prohibited Uses**

The following are prohibited uses of chemical agents:

- (a) To torture, psychologically torment, elicit statements or inflict undue pain on any individual.
- (b) Horseplay or practical jokes.
- (c) Demonstrations without the permission of a supervisor.
- (d) *When a subject exhibits **only** verbal and/or passive resistance to arrest or authority.*
- (e) *When a subject is under physical restraint unless the subject is still aggressively resisting and lesser means of controlling the subject have failed.*

➤ **Austin Police Department Policy 301.2: Responsibility to the Community:**

Employees are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, or social or ethnic background.

(b) Employees will be tactful in the performance of their duties, control their tempers, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.

➤ **Austin Police Department Policy 900.3.2: General Conduct and Responsibilities: Acts Bringing Discredit upon the Department**

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.

(a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.

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

1. Officer Caldwell shall be evaluated by the Austin Police Department Psychologist or a qualified professional designated by the Chief.
2. If the Psychologist or qualified professional recommends a program of counseling, Officer Caldwell must successfully complete that program of counseling.
3. If a program of counseling is recommended, said program will be completed on Officer Caldwell's off duty time, unless the Chief approves the use of accrued vacation leave.
4. Officer Caldwell shall be responsible for paying all costs of the program of counseling that are not covered by his health insurance plan.
5. If Officer Caldwell fails to successfully complete the program of counseling, the Chief may, at his sole discretion, indefinitely suspend him without right of appeal to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and Officer Caldwell may not file a grievance under Article 20 of the Meet and Confer Agreement.

6. If this evaluation and/or the program of counseling raises a question whether Officer Caldwell is sufficiently mentally or physically fit to continue his duties as a police officer, it could trigger the fitness for process set forth in Texas Local Government Code Chapter 143.081.
7. Officer Caldwell shall attend any training specified by his chain of command.
8. Officer Caldwell shall assist the cadet training academy staff as determined by his chain of command and the academy staff.
9. Officer Caldwell agrees to a one (1) year probationary period to begin on the day he returns to duty after serving this agreed suspension. Officer Caldwell agrees that if during that one year period the Chief of Police sustains another violation involving the same or similar conduct (Officer Caldwell agrees that the Chief of Police has the final decision whether the conduct is the same or similar and that decision is not subject to review or appeal), he will be indefinitely suspended without the right to appeal that indefinite suspension to the 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.
10. Officer Caldwell 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.
11. Officer Caldwell may not appeal this agreed suspension or any of these additional terms and conditions 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.
12. Officer Caldwell is put on notice that should he be indicted and/or convicted of a crime, that indictment or conviction may form the basis of additional disciplinary action, up to and including indefinite suspension.

By signing this Agreed Discipline, Officer Caldwell 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 Caldwell waives all right to appeal to this disciplinary action, as well as the additional terms and conditions included herein, 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.

  
ART ACEVEDO, Chief of Police

8/30/2016  
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 or the additional terms and conditions included herein 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.

  
Police Officer Cameron Caldwell # 7408

8/30/16  
Date