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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: March 30, 2018

SUBJECT: Indefinite Suspension of Police Officer Robert Mathis #7318
Internal Affairs Control Number 2017-1233

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 indefinitely suspended Police Officer Robert Mathis #7318 from duty as a police officer for the City of Austin, Texas effective March 30, 2018.

I took this action because Officer Mathis 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 specific acts committed by Officer Mathis in violation of Rule 10:

On October 6, 2017, Officer Robert Mathis and Officer Nathaniel Stallings were working a daytime shift, operating as a two-officer unit. The officers were patrolling near Georgian Drive and Powell Lane when they observed a male driver (hereafter “male”) interacting with a female (hereafter “female”) pedestrian, who they knew from past experience was a prostitute. The nature of the interaction gave them reasonable suspicion to believe that the male and female were making a prostitution deal.

The officers intended to investigate the possible prostitution deal as it was in progress, but they were apparently spotted by the subjects before the transaction could be consummated, as the negotiations abruptly abated. The officers proceeded to stop the vehicle first, hypothesizing it would be harder to track down due to its increased mobility. The driver of the vehicle pulled over, without incident, in a parking lot of a nearby public housing facility.

The driver identified himself via his license. Officer Stallings interviewed him while Officer Mathis returned to the patrol vehicle to run the standard license, warrants, and criminal involvement checks. The male claimed to be on his lunch break to eat at a nearby restaurant. He stated he worked from home, located in Steiner Ranch. Officer Stallings confronted the male subject’s dubious explanation, inducing the male to acknowledge that he was soliciting a prostitute.

Officer Mathis also discovered and informed Officer Stallings that the driver had been arrested for prostitution in 2015 and was driving with a suspended license. Officer Mathis discerned that the male’s license was suspended due to a prior DWI. Operating the vehicle under those circumstances is a Class B misdemeanor. In spite of the male’s admission and the traffic offense, Officers Mathis and Stallings warned and released him without taking any enforcement action, allowing him to drive away in their presence.

The officers believed their reasonable suspicion to conduct an investigatory detention of the female subject had been bolstered by what they learned during the traffic stop with the male subject. The officers then sought to locate the female. The officers revealed to investigators that they did not have any reason to believe the female was armed, dangerous, intoxicated, and/or otherwise physically or mentally impaired.

Despite a previous encounter with the female, the officers did not recall enough biographical information to check her for outstanding warrants or involvement with the Department.¹ The officers located her on Georgian Drive and they pulled up alongside the east curb line, parked their vehicle, and exited to make contact with the female. Officer Stallings stated, “*Hello. Come here.*” She stood still, glanced at the officers, and looked over at two men seated on a nearby retaining wall. Officer Mathis walked up to and pointed at her, and stated, “*You.*

¹ Two months earlier, Officers Stallings and Mathis stopped and detained the female for crossing at a point other than a designated crosswalk. They were able to overcome her lack of cooperation by employing patience and diplomacy. The interaction ended cordially, with the officers issuing the female a warning and admonishing her for being disrespectful. The encounter was captured on the digitally mobile audio visual system (DMAV).

Come over here," as he gestured toward the patrol vehicle. The female replied, *"Why?"* Both officers then grabbed her and she leaned back and held her body in a rigid posture.

Officer Mathis had control of the female subject's left arm and Officer Stallings had control of her right arm. Officer Mathis stated, *"We're not going this route,"* as the officers walked her toward the front of their patrol car. The female subject protested, *"I haven't even done anything."* Officer Stallings responded, *"It's called Manifestation of Prostitution."* The female subject, who was holding a water bottle in her right hand and a purse in her left hand, appeared to resist the officers by tensing her arms and leaning backward.

Officer Mathis said, *"You're about to get your ass slammed."* The subject leaned backward. The officers twisted her hands behind her back and bent her torso onto the hood of their patrol vehicle. She cried out *"Ow!"* Officer Stallings told her to, *"Knock it off,"* as she attempted to spin around toward the officers. The officers did not provide her with any verbal instructions or direction (e.g. *"Put your hands behind your back,"* or *"You're under arrest."*)

She asked, *"What did I do?"* and, *"I haven't even done anything."* Officer Mathis replied, *"Manifestation of Prostitution,"* as he secured one handcuff on her left wrist while Officer Stallings had a grip of her other hand. The subject turned toward Officer Mathis and stated, *"For what?"* Officer Mathis responded, *"Don't make me slam you,"* as Officer Stallings simultaneously pushed her onto the hood of the patrol vehicle. Her face forcefully impacted the hood. She cried out, *"Ow! Oh my God! Oh my God! What are y'all slamming me for?"*

As the struggle continued, Officer Mathis delivered the first of six knee strikes to the left side of the female subject's body. Officer Mathis yanked on her left hand to try to cuff her. Meanwhile, Officer Stallings maintained control of her right hand. Officer Mathis then delivered five more knee strikes. Between the second and third strikes, Officer Stallings declared, *"You're under arrest. Stop resisting."* Officer Mathis told her to, *"Stop resisting,"* between the fourth and fifth knee strikes, and then twice more after the final strike.

The officers eventually secured the second handcuff onto the female subject. The female subject yet again inquired, *"What did I do?"* Officer Stallings informed her she was under arrest for Manifestation of Prostitution. The female subject continued to cry out and asked, *"Why are y'all treating me like this?"* Officer Stallings answered, *"Because you're resisting,"* and Officer Mathis told her twice more to, *"Stop resisting."*

The officers searched her in front of the police car. Then, they attempted to escort her from the front of the car to the back seat. She yelled, *"Stop,"* and appeared to resist by dropping to her knees and not walking. The officers quickly forced her up and walked her to the back right door of the vehicle. The officers opened the back door of the patrol vehicle and ordered her to, *"Get in!"* She refused, pushed back with her body, and exclaimed, *"No! No! No!"*

Officer Stallings then forced the subject inside the vehicle, and her face forcefully hit against the back seat. However, her feet remained planted outside of the car and she refused to get in the vehicle. Officer Stallings pushed and pulled her by forcing her handcuffed wrists up toward her head. Eventually, Officer Mathis was able to help pull her inside the vehicle from the opposite side. Subsequently, two additional backup officers arrived on scene.

The officers called the Austin-Travis County Emergency Medical Services (EMS) to the scene to treat a minor laceration on the female's lip. In separate conversations with EMS personnel and Officer Mathis, Officer Stallings surmised the injury occurred when the subject was "put" on the car. The cut did not require stitches. The female was medically cleared by EMS and taken to the county jail.

Allegation #1: Use of Force

Less than ten seconds elapsed from the time Officers Stallings and Mathis exited their vehicle until they grabbed the female. They did not ask any questions. Neither officer articulated an overriding safety consideration, imminent threat of danger, or other exigent circumstances to justify their abrupt use of force in their reports or statements to their corporal, who arrived on the scene in the immediate aftermath and conducted the initial Response to Resistance (R2R) Inquiry of the incident.

Officer Stallings admitted to Internal Affairs (IA) that had he and Officer Mathis taken the time to give the female commands and communicated better, their use of force could have been avoided altogether. On the other hand, Officer Mathis believed the use of force was unavoidable due to a nebulous "feeling" he had about the encounter.

Allegation #2: Reporting

Officer Mathis completed the initial report and filed the affidavit for *Resisting Arrest* against the subject. Officer Stallings submitted a supplement to the report. Although permitted to do so, Officer Stallings did not review the video prior to writing his supplement.

The first halves of Officer Mathis' report and Officer Stallings' supplement are essentially identical. The communal account includes the officers' initial observations, the traffic stop of the male subject, and the articulation for the detention of the female. The narratives from the report and supplement diverge at the point each officer describes his own use of force.

IA obtained the officers' electronic messages sent to and from their in-car computer from the day of the incident. IA learned Officer Mathis sent a copy of the first half of his narrative to Officer Stallings. Officer Stallings admitted receiving Officer Mathis' report, declared he should not have used it, and stated he understood the purpose of the policy against "Group Reporting" for R2R incidents.

Both officers omitted the following material details in their respective reports:

- The male subject was driving with a suspended license
- Officer Mathis told the female, she would be "slammed" if she continued to resist
- Officer Stallings slamming the female's head against the hood and backseat of the patrol car
- The female could have used her water bottle as a weapon, which was brought up for the first time by Officer Stallings in his Special Investigations Unit (SIU) interview and by Officer Mathis during his IA interview.

IA also asked Officer Mathis about the following inaccurate statements in his report:

- Report: “[the female] immediately became aggressive and started backing away from us.” (emphasis added)
- DMAV: There was nothing overtly aggressive about the female’s actions at that time of the incident.
- IA Statement: Officer Mathis concluded that “aggressive” was possibly the wrong choice of words, and he would omit that word if he were writing the same sentence at the time of his interview. He acknowledged that labelling the female as “aggressive” from the onset of the report could have a substantial impact on how the rest of the incident was perceived. Officer Mathis told IA that he may have overlooked that aspect of the incident because he was primarily focused on his knee strikes when he reviewed the DMAV prior to writing his report.
- Report: “In an attempt to gain compliance from the female subject and effect an arrest, I delivered approximately four knee strikes to the female’s upper left leg and buttocks area, so she could be handcuffed.”
- DMAV: Officer Mathis used six knee strikes against the female subject.
- IA Statement: IA asked Officer Mathis why he approximated the number of knee strikes he used, particularly after having the benefit of reviewing the DMAV of the incident and considering that the knee strikes were—in his own words—the main focus of that review. Officer Mathis stated he was not sure why he wrote “approximately four knee strikes,” but stated his intent was not to be misleading.

Officer Mathis conceded to IA that he had violated the policy prohibiting “Group Reporting” and that he should have been more detailed in his reporting of the incident.

Allegation #3: Lack of Impartial Attitude

The evidence establishes that the officers did not perform their duties in a tactful manner and did not exercise patience, courtesy, or show the proper respect towards the female.

Allegation #4: Responsibility to Know and Comply

Officer Mathis cited Austin City Ordinance #9-4-16, *Manifesting the Purpose of Engaging in Prostitution Prohibited*, to justify the detention and subsequent arrest of the female even though he has previously issued citations for violations of this ordinance. The law states:

A person commits an offense if the person loiters in a public place in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting, or procuring another person to commit an act of prostitution.

The ordinance restricts officers from immediately arresting an alleged violator prior to taking further action. The law states:

A peace officer may not arrest a person for a violation of this section unless the officer has given the person an opportunity to explain the person's conduct.

Neither officer asked the female subject any substantive questions prior to making physical contact with her. That physical seizure precipitated the female's resistance and arrest. As the officers were escorting the female toward the front of their patrol vehicle shortly after making contact with her, she protested, *"I haven't even done anything,"* which elicited an immediate rejoinder from Officer Stallings, *"It's called Manifestation of Prostitution."*

Less than twenty seconds later—in the midst of the struggle—the female subject asked, *"What did I do?"* and stated, *"I haven't even done anything."* Officer Mathis responded, *"Manifestation of Prostitution."* She turned toward Officer Mathis and stated, *"For what?"* just prior to being slammed against the hood of the patrol vehicle by Officer Stallings.

Officer Mathis did not concede to IA that he and Officer Stallings failed to comply with this ordinance in spite of what is depicted on video and their obvious failure to give the female the same opportunity to explain her conduct that was afforded to the male subject. Instead, Officer Mathis (along with Officer Stallings) immediately resorted to force. In fact, Officer Mathis placed blame on the female for the way she reacted.

Allegation #5: Dishonesty

During the IA investigation Officer Mathis' chain of command served Officer Mathis a "Notice of allegations" followed by a "Notice of sustained allegation" for a violation of APD's Honesty policy. As found in the "Allegation #2: Reporting" section of this memorandum, Officer Mathis' reporting in this case—specifically his description of the female as "aggressive"—is a direct violation of APD's Honesty policy. Officer Mathis later conceded to IA that "aggressive" was not the appropriate word choice to describe her behavior prior to the officers going hands on. Also, Officer Mathis conceded to IA that his depiction of the female as "aggressive" could have had substantial implications on how others perceived the incident.

Officer Mathis violated the Honesty policy through several pertinent omissions in his report. These omissions include, but are not limited to, his multiple threats to "slam" the female, Officer Stallings subsequent "slamming" of the female on the hood, and the force used to get her into the vehicle. Additionally, even though Officer Mathis stated his primary focus of reviewing his DMAV was to accurately document his knee strikes, Officer Mathis documented that he used approximately four knee strikes when he actually used six.

With respect to the woman being slammed on the hood of the car, Officer Mathis told Internal Affairs he did not know that happened. That is not credible given his threats to slam her on the car, he was standing right next to Officer Stallings with his hands on the female when it occurred, the sound of her hitting the hood is loud and can be clearly heard on the DMAV, he and Officer Stallings had a discussion on scene in the immediate aftermath about how the female sustained the injury on the scene, and he watched a recording of the incident prior to writing his report.

These pertinent omissions, along with the omissions regarding the male subject, including his commission of a driving offense, violated the Honesty policy.

Conclusion

Officer Mathis' supervisors and I unanimously concur with Officer Stallings' conclusion that the officers should have taken the time to communicate with the female, and that their use of force could have been avoided altogether. Officer Mathis failed to take responsibility in his IA interview or in his Disciplinary Review Hearing (DRH) for a situation that devolved into a need to use force that resulted in the female suffering an injury. At his DRH, Officer Mathis told his chain of command and I that he did nothing "wrong" in this incident. In fact, during his IA interview, he placed blame on the female, even though his and Officer Stallings' actions did not conform to the law and policy.

Moreover, their deviation in this case from issuing a citation to the female is inconsistent with the warning given to the male. The male was not only given an opportunity to explain his actions, but he initially lied about his true culpability. The Officers independently discovered that the male had a previous arrest for soliciting a prostitute. Additionally, the officers spent approximately six minutes speaking with the male subject, during which he reluctantly acknowledged his culpability. The officers then allowed the male to drive away, in spite of a suspended driver's license, without taking any type of enforcement action.

Whereas, neither officer provided the transient female "prostitute" an opportunity to explain her conduct. Like the male, the female stated she did nothing wrong. In fact, she exhibited a dumbfounded reaction to the officers, which was similar to a past experience with the officers. However, in this instance, the officers immediately reacted, failing to give her a fair and reasonable opportunity to explain her interaction with the male subject. Within 30 seconds, the officers were engaged in a physical altercation that devolved into Officer Stallings slamming the woman's head onto the patrol vehicle. Officer Mathis then delivered six knee strikes to the woman. Officer Stallings then forcefully pushed the woman into the patrol vehicle where she hit her head on the back seat. As a result of hitting the hood or the back seat, the woman suffered a laceration to her lip.

Even giving Officer Mathis the benefit of the doubt that the knee strikes were within policy at that moment in time that he administered those strikes, this situation should not have gotten to that point. Although the woman was uncooperative and resisted the officers' efforts, after they went hands on, the officers' failure to initially follow policy directly resulted in the unnecessary need to use the force that they administered.

Compounding matters, the intentional omissions by Officer Mathis in his report of the fact that he made statements to the female that she would be "slammed" moments before she was slammed violates APD's Honesty policy, 900.3.1. Moreover, his omissions that the woman's head was slammed onto the hood and/or the backseat of the patrol car are also violations of the Honesty policy. In fact, the officers had a discussion depicted on the DMAV shortly after the struggle, during which they discussed how the female sustained her injury from one of those actions.

Officer Mathis took no responsibility for these omissions and stated in his IA interview and at his DRH that he was unaware of the fact that the female was “slammed” onto the hood of the car when he wrote his report. Officer Mathis stated this in spite of the fact that he forewarned the female with that potential outcome, was present and engaged with her when Officer Stallings “slammed” her moments later, had a discussion with Officer Stallings in the immediate aftermath about how the female sustained the injury on the scene, and then watched a recording of the incident prior to writing his report. His explanation during his IA interview and at his DRH that he failed to notice that portion of the incident is not credible.

Of further significance, Officer Mathis also violated the Honesty policy by referring to the female as “aggressive” upon initial contact in his report, even though there was no evidence to support that assertion. That assertion was also contained in a sworn arrest affidavit for a charge that was ultimately dismissed by a Prosecutor after their objective review of the incident.

The level of resistance faced, the force used, and any resulting injury are key pieces of the information that must go in every report documenting response to resistance. The purpose of documenting an officer’s response to resistance is to discern the truth. The intentional addition and/or intentional omissions of pertinent facts by Officer Mathis concealed the context of this case. The evidence also shows that Officer Mathis intentionally omitted from his report the fact that the male driver was not arrested for driving with a suspended license. Officer Mathis also made no mention of this fact to his corporal on the day of the incident.

Furthermore, “group reporting” is a serious violation that calls into issue the integrity and the accuracy of each officer’s account. The purpose of a report is to individually document the portions of an event that each officer independently recollects, or the actions the officer performed, during the course of an event or investigative process. Group reporting obscures the facts, and reduces the accountability each officer has for his or her recollections or actions. The collective reporting violations in this case do not conform to the APD’s policy.

Lastly, if an officer demonstrates that he or she cannot or will not take responsibility for their actions and/or give a truthful account of the force that they used or the surrounding circumstances for their use of force, I as Chief of police would be remiss in my duties and responsibilities if I allowed such an Officer to be bestowed the power to continue to have the duties and responsibilities that are designed to protect and serve the public. Furthermore, if dishonesty was the only sustained violation, under the Disciplinary Matrix, the discipline is an indefinite suspension. Therefore, after careful consideration and deliberation with Officer Mathis’ chain of command, I made the decision to indefinitely suspend Officer Mathis.

By these actions, Officer Mathis 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 200.2: Response to Resistance Policy**

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears

necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

➤ **Austin Police Department Policy 200.2.2(a): Use of Force to Affect a Detention, an Arrest, or to Conduct a Search**

An officer is justified in using reasonable force when the officer reasonably believes the use of such force is immediately necessary (Tex. Penal Code 9.15(a)):

- (a) To make or assist in a detention or an arrest, or to conduct a search that the officer reasonably believes is reasonable.
- (b) To prevent or assist in preventing escape after an arrest, provided the officer reasonably believes the arrest or search is lawful.
- (c) To make an arrest or conduct a search under a warrant that the officer reasonably believes is valid.

➤ **Austin Police Department Policy 200.2.1(a): Response to Resistance: Determining the Objective Reasonableness of Force**

200.2.1 Determining the Objective Reasonableness of Force

Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him.

- (a) When determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:
 - 1. The conduct of the individual being confronted as reasonably perceived by the officer at the time;
 - 2. Officer and subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers versus subjects;
 - 3. Influence of drugs and alcohol or mental capacity;
 - 4. Proximity of weapons;
 - 5. The degree to which the subject has been effectively restrained and his ability to resist despite being restrained;
 - 6. Time and circumstances permitting, the reasonable availability of other resources to the officer;

7. Seriousness of the suspected offense or reason for contact with the individual;
8. Training and experience of the officer;
9. Potential for injury to citizens, officers and subjects;
10. Risk of escape;
11. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others; or
12. Other exigent circumstances.

➤ **Austin Police Department Policy 211.4.1(c) & (d): Response to Resistance Inquiry, Reporting, and Reviewing: Employee Reporting Guidelines for All Force Level Incidents**

211.4.1: Employee Reporting Guidelines for All Force Level Incidents

The following outlines the reporting guidelines for involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident.

- (a) An incident report shall be completed by the primary reporting employee and include title code 8400. This report shall be written regardless of whether a report or supplement would normally be written for the initial incident.
- (b) Supplements shall be completed by:
 1. All other employees who are involved in a force incident.
 2. Employees who witness a force incident.
 3. Employees assisting at the scene of a force incident.
- (c) The following information shall be included in each report and supplement:
 1. The original reason for police presence on the scene.
 2. The name and employee number of the supervisor notified of the incident.
 3. A detailed description of the circumstances and subject actions that resulted in the use of force.
 4. A detailed description of the force used.
 - (a) Include specific details regarding any weapon used on a subject (e.g., when OC spray is used you document the number of bursts, duration of each burst, the approximate distance from the subject, the location of spray contact).
 5. Subject and witness information.

6. Reports shall not contain "boilerplate" or "pat" language (e.g., "furtive movement" or "fighting stance") without descriptive details of the action.
 7. Involved employees shall also complete the force section of the "Details" page in their report/supplement.
- (d) All incident reports and supplements shall be completed separately and without discussing the details of the incident with other personnel. "Group reporting" is prohibited. Debriefing after an incident and/or the necessary discussions to further the training requirements of officers enrolled in the Field Training Program (FTP) are allowed.
 - (e) A copy of the response to resistance incident report, any supplements, and any ancillary documents should be submitted to the reviewing supervisor prior to the end of the employee's tour of duty.

➤ **Austin Police Department Policy 301.2: Responsibility to the Community: Impartial Attitude and Courtesy**

301.2 Impartial Attitude and Courtesy

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, gender identity or gender expression 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.
- (c) Employees will make every effort to be courteous and respectful toward all persons.

➤ **Austin Police Department Policy 900.1.1: General Conduct and Responsibility: Responsibility to Know and Comply**

900.1.1 Responsibility to Know and Comply

The rules of conduct set forth in this policy do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD written directives which pertain to their assigned duties.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and will consult their immediate supervisor for clarification and explanation.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

TO WIT:

Austin City Code §9-4-16 Manifesting The Purpose Of Engaging In Prostitution Prohibited.

- (A) In this section:
 - (1) KNOWN PROSTITUTE OR PANDERER means a person who has, within the knowledge of the arresting officer, been convicted of prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution within one year previous to the date of an arrest for a violation of this section.
 - (2) PROSTITUTION has the meaning provided in Section 43.01 (*Definitions*) of the Texas Penal Code.
 - (3) PUBLIC PLACE has the meaning provided in Section 1.07 (*Definitions*) of the Texas Penal Code.
- (B) A person commits an offense if the person loiters in a public place in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting, or procuring another person to commit an act of prostitution.
- (C) In making a determination that a person is in violation of this section, a peace officer may consider whether the person:
 - (1) is a known prostitute or panderer;
 - (2) repeatedly beckons to, stops or attempts to stop, or engages in conversation with persons passing by; or
 - (3) repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms, or any other bodily gesture.

- (D) A peace officer may not arrest a person for a violation of this section unless the officer has given the person an opportunity to explain the person's conduct.
- (E) It is an affirmative defense to prosecution under this section if the explanation given the arresting officer under Subsection (D) is true and discloses a lawful purpose.

➤ **Austin Police Department Policy 900.3.1(a)(1) & (2): General Conduct and Responsibility: Honesty**

900.3.1 Honesty

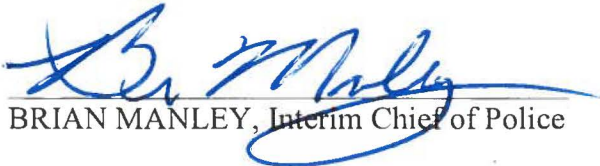
Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

- (a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":
 - 1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations
 - 2. Verbal or written statements made by an officer in connection with their official duties to:
 - (a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.
 - (b) A supervisor conducting an inquiry into the officer's use of force.
 - (c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

By copy of this memo, Officer Mathis is hereby advised of this indefinite 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 Mathis is hereby advised that such section and the Agreement Between the

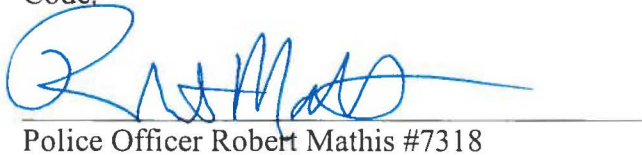
City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance with the provisions of Section 143.057 and such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided 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.


BRIAN MANLEY, Interim Chief of Police

3-30-18
Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of indefinite 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.


Police Officer Robert Mathis #7318

3-30-18
Date