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MEMORANDUM

Austin Police Department
Office of the Chief of Police

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: ~~December ___, 2012~~ TG 1/10/13

SUBJECT: Temporary Suspension of Officer Jermaine Gaspard #6446
Internal Affairs Control Number 2012-1156

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighter's and Police Officers' Civil Service Commission, I have temporarily suspended Officer Jermaine Gaspard #1156 from duty as a City of Austin, Texas police officer for a period of ~~two~~ (2) days. The temporary suspension is effective on ~~December~~ TG, ~~2012~~ and continuing through ~~December~~ TG, ~~2012~~. JANUARY 12, 2013 JANUARY 13, 2013.

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

On October 9, 2012, Officer Gaspard initiated a traffic stop on a vehicle for amplified music and failure to signal intent. The suspect vehicle took off as Officer Gaspard exited his patrol unit. Officer Gaspard followed after the suspect vehicle with his overhead lights on but without activating the siren. The suspect vehicle ran a stop sign and Officer Gaspard provided radio updates on the vehicle's location and evasive actions taken. Sergeant. Mares terminated the pursuit after being informed by Officer Gaspard that the pursuit was for failure to signal intent.

By these actions, Officer Barnes 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 214.3.1: Pursuit Considerations and Restrictions: Restrictions on Vehicle Pursuits**

  214.3.1 Restrictions and Vehicle Pursuits

  Officers will not engage in a pursuit under any of the following circumstances:

  (a) The subject evades after having committed only:

  1. Any Class C Offense, including traffic; or
  2. A non-hazardous traffic violation, regardless of the class of offense.

- **Austin Police Department Policy 214.4: Pursuit Considerations and Restrictions: Pursuit Guidelines**

  214.4 Pursuit Guidelines

  Pursuit units shall be limited to three vehicles (two units and a control supervisor); however, a control supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely stop the pursuit and/or arrest the subject(s). All other officers will stay out of the pursuit but should remain alert to its progress and location.

  (b) All officers involved in a pursuit shall:

  1. Operate their police unit with emergency lights and siren activated (Code 3).

By copy of this memo, Officer Gaspard 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 Gaspard 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.

In addition, if this disciplinary suspension is for three (3) days or less, Officer Gaspard is advised of the following provisions of Article 18, Section 1, of the Meet and Confer Agreement:

> *The parties agree that when an officer is suspended for 1, 2, or 3 days the officer may choose one of two methods of dealing with the suspensions as listed below.*
>
> a) ***Suspensions that may not be appealed.*** *The officer may choose to use vacation or holiday time to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, promotion, or any other purpose. The officer must agree that there is no right to appeal if this method of suspension is chosen.*
>
> b) ***Suspensions that may be appealed.*** *The officer may appeal the suspension to arbitration or the Civil Service Commission. If the officer chooses to appeal the suspension, the arbitrator or Civil Service Commission's authority is limited to ruling on whether or not the charges against the officer are true or not true. If the arbitrator or Civil Service Commission finds the charges to be true, there is no authority to mitigate the punishment. If the arbitrator or Civil Service Commission finds the charges to be not true, the officer shall be fully reinstated with no loss of pay or benefit.*

Arbitration Costs on Appealable Suspensions

In the event that an officer appeals a 1, 2 or 3 day suspension to arbitration, it is agreed that the party that loses the arbitration shall be responsible for all costs of the arbitrator, including travel and lodging if necessary.

To facilitate such payment on the part of the officer he shall submit, at the time of appeal, a signed payroll deduction agreement that if the arbitrator rules in favor of the City he authorizes up to one hundred dollars ($100.00) per month to be deducted from his regular pay until such time as what would usually be the City's portion of the arbitrator's costs have been satisfied.

Rmd [signature] #1132 for Chief Acevedo

ART ACEVEDO, Chief of Police

1/10/13

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) 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. I also acknowledge the options set forth in this memorandum of temporary suspension, including my right to waive an appeal of a suspension of three (3) days or less, and my financial and contractual obligations under the Meet and Confer Agreement if I elect to appeal a suspension of three (3) days or less and do not prevail.

[signature] #6446

Officer Jermaine Gaspard #6446

1/10/13

Date