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MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: October 15, 2020

SUBJECT: Agreed Temporary Suspension of Police Officer Sean Menezes #8772
Internal Affairs Control Number 2020-0340

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 Sean Menezes #8772 from duty as a City of Austin, Texas police officer for a period of forty five (45) days. The agreed temporary suspension is effective beginning on October 16, 2020 and continuing through November 29, 2020.

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

On January 22, 2020, the Austin Police Department received two family disturbance calls from a hotel in Northeast Austin. Officer Sean Menezes was one of several officers dispatched to the scene, where the officers gathered evidence for a complaint of assault involving strangulation. After gathering this evidence, the officers located the subject outside the hotel room and were able to place him into custody. Thereafter, the subject was escorted to the back seat of a patrol unit and secured inside.

A short time later, Officer Menezes attempted to photograph the subject for documentation purposes. During this interaction, the subject made derogatory remarks to Officer Menezes, while also moving his foot outside of the vehicle. Officer Menezes asked the subject to put his foot back into the vehicle. The subject replied, "*Or what?*" and kicked Officer Menezes in the area of his inner thigh/groin. Officer Menezes reacted by throwing a punch towards the subject's face. Officer Menezes later admitted the maneuver was not defensive in nature, but rather an emotional response. The evidence showed that Officer Menezes instantly attempted to retract the force of his punch. Officer Menezes then told the subject, "*Don't kick me dumbass.*"

Ultimately, Officer Menezes conduct was referred to Internal Affairs (IA) for investigation. During Officer Menezes' IA interview, he acknowledged it was wrong of him to react by throwing a punch towards the subject, even though he subsequently retracted the punch, and caused no injury. When asked about his intentions behind throwing the punch, Officer Menezes stated:

"I think first and foremost, it was an emotional response. I think it was an unprofessional emotional response. Uh, I wanted him to stop, uh, attempting to be, uh, physically combative with me. Uh, like I said, this was a hard individual to read and he had just, uh, he just kicked me. Um, and I feel like it's an emotional response because I stopped myself from completing the action. Uh, that's why I feel like this was not a - a tactical or a decisive action."

Officer Menezes further stated "*I got into a heightened emotional state and I completely lost my cool. I completely lost my temper and my bearing.*" Officer Menezes went on to accept full responsibility by acknowledging that he violated General Order 301.1.2 (*Impartial Attitude and Courtesy*), "*because I had lost my temper as I mentioned and also because I failed to be courteous and respectful toward, [the subject].*" He also acknowledged that he violated General Order 900.3.4 (*Personal Conduct*), "*[b]ecause I used - profane, harsh language towards [the subject].*"

By these actions, Officer Menezes 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 301.2(b)(c): Responsibility to the Community: Impartial Attitude and Courtesy**

301.2(b)(c) 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 900.3.4(c)(1): General Conduct and Responsibilities: Personal Conduct**

900.3.4(c)(1) Personal Conduct

- (c) While on-duty or on the premises of City facilities, employees will not:
 - 1. Use loud, indecent, profane, harsh, derogatory language, or use belittling term in any communications.

In addition to this agreed temporary suspension, Officer Menezes agrees to the following terms and conditions:

1. Officer Menezes shall attend any training specified by his chain of command.
2. Officer Menezes agrees to a probationary period of one (1) year, with the additional requirement that if, during the probationary period, he commits the same or a similar act of misconduct for which he is being suspended (the determination whether an act is the same or similar is solely within the purview of the Chief of Police and is not subject to review by the Civil Service Commission, an Independent Third Party Hearing Examiner, or District Court), he will be indefinitely suspended without the right to appeal

that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, and to District Court. The one-year period begins on the day Officer Menezes returns to duty after completing his agreed suspension. Should Officer Menezes commit the same or similar violation outside the one-year period, he will be indefinitely suspended but retains the right to appeal that suspension.

3. Officer Menezes 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 General Order 919.11.
4. Officer Menezes agrees that he, and all others claiming under him named herein or not, fully discharge, release and waive any and all known or unknown claims or demands of any kind or nature whatsoever that he now has, or may have in the future, including without limitations, claims arising under any federal, state or other governmental statute, regulation, or ordinance relating to employment discrimination, termination of employment, payment of wages or provision of benefits, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act, the Fair Labor Standards Act, and the Texas Commission on Human Rights Act, against the City of Austin, the Austin Police Department, or their respective agents, servants and employees, arising from the above-referenced incident, and any actions taken as a result of that incident, including but not limited to, the negotiation and execution of this agreed temporary suspension.
5. Officer Menezes acknowledges that he had the opportunity to discuss this agreed suspension and the additional terms and conditions set forth herein with a representative of his choosing prior to signing his acceptance where indicated below.

By signing this Agreed Discipline, Officer Menezes 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 Menezes waives all right to appeal this agreed suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third- Party Hearing Examiner, and to District Court.


BRIAN MANLEY, Chief of Police

10-15-2020
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 and that by agreeing to the suspension, I have no right to appeal this disciplinary action, as well as the additional terms and conditions, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, and to District Court.

 8772

Police Officer Sean Menezes #8772

10/15/2020

Date