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City of Austin

2017 JUN 21 PM 12:39

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: June 21, 2017

SUBJECT: Agreed Temporary Suspension of Police Officer Iven Wall #5681
Internal Affairs Control Number 2017-0038

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 Iven Wall #5681 from duty as a City of Austin, Texas police officer for a period of twenty days (20) days. The agreed temporary suspension is effective beginning on June 22, 2017, and continuing through July 11, 2017.

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

On January 8, 2017, Austin Police Department (APD) Officer Iven Wall responded to a shoplifter in custody at a department store located inside the Barton Creek Mall located at 2901 Capitol of Texas Highway. The department store's loss prevention personnel detained a male subject after they witnessed him use a "multi-tool" to cut off merchandise tags from a watch and a pair of earrings. The subject had then concealed the items in a shopping bag.

Prior to APD officers' arrival, loss prevention personnel handcuffed the subject's hands behind his back, and escorted him back to their loss prevention office. Loss prevention personnel also searched the subject and placed him in a holding room within their office. They placed the subject's personal belongings, which included a wallet, cell phone, and pants onto a table, while placing \$83.00 worth of recovered stolen merchandise onto another table. APD officers then arrived and initially sought to identify the subject.

Officer Wall was the first officer to arrive on scene. He entered the security office and found the subject seated with his hands cuffed behind his back. The subject initially provided a false name, age and date of birth, but was later identified by Officer Wall. Once Officer Wall believed he had properly identified the subject, he ran a warrant check and discovered the subject had several outstanding felony warrants for his arrest.

Officer Wall ultimately entered the holding room and performed a pat down of the subject, switching out the loss prevention handcuffs with his APD issued handcuffs, while a backup officer stood nearby. Officer Wall subsequently placed the subject for transport in the backseat of his patrol unit and secured the seatbelt.

Officer Wall then began transporting the subject to the Main Police Station for fingerprinting purposes to positively confirm the subject's identity, as the backup officer drove behind them. While in the backseat, with his hands handcuffed behind his back, the subject was able to remove his seatbelt, and advised Officer Wall he was suicidal. The subject then produced a firearm from a concealed position along the right side of his waistband. Minutes later, the subject committed suicide by shooting himself in the head.

As a result, an administrative investigation was initiated into this matter. During the course of the investigation, Officer Wall advised investigators that he only patted the subject down inside the loss prevention office instead of doing a complete search. Officer Wall acknowledged this was a significant error on his part. Officer Wall also advised investigators that he threw away the "multi-tool" box cutter that was used by the subject to cut off the merchandise tags. Officer Wall acknowledged this was not in accordance with policy and procedures as he should have seized and logged the "multi-tool" as evidence.

Officer Wall also advised investigators, before placing any subject in a police unit, he normally conducts a full and complete search in front of his unit camera. Officer Wall acknowledged he obviously did not do such a search in this case and he could not offer an explanation as to why he deviated from his normal practice. Officer Wall acknowledged it was his responsibility to perform a thorough and complete search of the subject and his failure to do so violated the search protocol policy. During the course of the investigation, Officer Wall conveyed his substantial regrets for his mistakes in this matter and advised investigators he hopes others learn from his mistakes, while voluntarily expressing a desire to speak at the police academy to future cadet classes, to prevent such a tragic reoccurrence.

By these actions, Officer Wall 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 306.3.1: Search and Seizure: Search Protocol**

306.3.1 Search Protocol

(d) It is the responsibility of each individual officer to search a prisoner for weapons or contraband anytime he gains custody of that prisoner, regardless of whether the prisoner was previously searched by another officer.

➤ **Austin Police Department Policy 618.3: Property and Evidence Collection Procedures: Evidence Collection**

618.3 Evidence Collection

Employees will assess a crime scene before seizing any item of physical evidence. Only items of physical evidence that relate to allegations of criminal conduct or the identity of a suspect will be seized. Employees will ensure that items identified as evidence are not tampered with in any way prior to being photographed and collected.

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

1. Officer Wall shall attend any training specified by his chain of command.
2. Officer Wall shall assist the cadet training academy staff as determined by his chain of command and the academy staff.
3. Officer Wall 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, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement. The one year period begins on the day Officer Wall returns to duty after completing his agreed suspension. Should Officer Wall commit the same or similar violation outside the one year period, he will be indefinitely suspended but retains the right to appeal that suspension.
4. Officer Wall 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.

5. Officer Wall 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.
6. Officer Wall acknowledges that he had the opportunity to discuss this agreed suspension and 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 Wall 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 Wall waives all right to appeal to this agreed suspension and the 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.




BRIAN MANLEY, Interim Chief of Police

6.21.17

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, to District Court, and I may not file a grievance under Article 20 of the Meet and Confer Agreement.



Police Officer Iven Wall #5681

6.21.17

Date