THE CITY OF
BRENTWOOD
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To: Police Officer Paul Matejcek

From: Chief Thomas Hansen

Date: August 15, 2022

Re: Notice of Intent to Terminate

This memorandum provides you notice of my preliminary decision that you be terminated from your position of a Police Officer with the City of Brentwood Police Department ("Department"). My recommendation is based upon the materials set forth in the attached Administrative Investigation (IA 22-07) and your violations of Department policy cited herein. All materials I considered in reaching my proposed decision are attached to this notice.

As set forth in greater detail below, no disciplinary action shall be imposed upon you until you have had the opportunity to participate in a pre-disciplinary meeting during which you shall be afforded the opportunity to state your positions and any other factors in mitigation. Following your participation in the pre-disciplinary meeting (or following your failure to request such a meeting), I will decide whether or not the proposed termination will be imposed.

I. POLICY VIOLATIONS

The recommended termination is based upon my preliminary findings that you have committed one or more of the following violations of Department policies and procedures, a violation of any of which would support a decision to terminate your employment:

339.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Brentwood Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

339.2 POLICY

The continued employment or appointment of every member of the Brentwood Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

339.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California constitutions and all applicable laws, ordinances, and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

339.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

339.5.1 LAWS, RULES AND ORDERS

(a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals…

(c) Violation of federal, state, local or administrative laws, rules or regulations.

339.5.7 EFFICIENCY

(b) Unsatisfactory work performance including but not limited to failure, incompetence inefficiency, or delay in performing and/or carrying out proper orders, work assignments, or the instructions of supervisors without a reasonable and bona fide excuse.

339.5.9 CONDUCT

…(b) Unreasonable and unwarranted force to a person encountered or a person under arrest.

(c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct...

(f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City...

(h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department...

(m) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Government Code § 7286(b)). These factors include but are not limited to:

(a) The apparent immediacy and severity of the threat to officers or others (Penal Code§ 835a).

(b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time (Penal Code § 835a).

(c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).

(d) The conduct of the involved officer leading up to the use of force (Penal Code § 835a).

(e) The effects of suspected drugs or alcohol.

(f) The individual's apparent mental state or capacity (Penal Code § 835a).

(g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).

(h) Proximity of weapons or dangerous improvised devices.

(i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.

(j) The availability of other reasonable and feasible options and their possible

effectiveness (Penal Code § 835a).

(k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.

(l) Training and experience of the officer.

(m) Potential for injury to officers, suspects, bystanders, and others.

(n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.

(o) The risk and reasonably foreseeable consequences of escape.

(p) The apparent need for immediate control of the subject or a prompt resolution of the situation.

(q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.

(r) Prior contacts with the subject or awareness of any propensity for violence.

(s) Any other exigent circumstances.

B. FACTS IN SUPPORT OF THE CHARGES[1]

You violated the above referenced policies, rules, and/or codes during the incident documented below:

On April 23, 2022, at approximately 5:30 a.m., you and two other Department officers, Officers David Franson and Josh Flynn, responded to a call of a person screaming from a line of garden sheds for sale in the parking lot of the Home Depot on Lone Tree Way. You discovered a local unhoused person, V1 V1 hiding in one of the sheds. You handcuffed, detained, and sat V1 on the ground pending further investigation. Approximately eight minutes after she was detained, V1 stood up while she remained handcuffed. At that point, you took about three quick steps toward V1 and with your right foot, kicked V1 in her torso area, knocking her backwards into the open shed before she fell back to the ground. You arrested V1 for Battery on a Police Officer (Penal Code section 243 (b)) and Public Intoxication (Penal Code section 647(f)).

You then wrote your report in a manner that attempts to minimize the violent force with which you kicked V1 You stated in convoluted fashion that you "utilized my right leg to force her off balance and back onto the ground with as less intrusive force as possible"; "kicked my right foot forward planting the ball of my foot against V1 left side . . . and extended my leg"; and, "chose to use my foot to push V1 off balance."

C. ANALYSIS

In determining that penalty which is appropriate in this matter, I am guided by *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 218-219, in which the State Supreme Court said:

> the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated, is likely to result in harm to the public service .... Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence.

Applying this standard, I believe that your conduct warrants termination of your employment. (See, e.g., *Cranston v. City of Richmond* (1985) 40 Cal.3d 755.)'

As a preliminary matter, I note the justice system holds law enforcement professionals to the highest standards of conduct given the trust and power afforded to them. (See, e.g., *Titus v. Los Angeles County Civil Service Commission* (1982) 130 Cal.App.3d 357, 364; *Ackerman v.*

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[1] I am aware that the District Attorney is evaluating your conduct to determine whether to file criminal charges. If the District Attorney does not file criminal charges, that will not affect my proposal since the District Attorney evaluates whether to file criminal charges using a different standard. If the D.A. does file charges, then dismisses them or you are acquitted, that similarly will not affect my proposal. However, if you are charged and convicted, that may be an independent basis for new disciplinary charges.

State Personnel Board (1983) 145 Cal.App.3d 395, 400) ["There are certain professions which impose upon persons attracted to them, responsibilities and limitations on freedom of action which do not exist in other callings. Public officials such as judges, policemen, and school teachers fall into such a category"].)

Furthermore, the use of force is one of the most significant actions that a police officer can take. The use of force implicates the constitutional rights of the individuals upon whom it is used and excessive force creates the potential for significant liability exposure to the Department. An egregious use of excessive force like that which you used against V1 tends to undermine public confidence in the professionalism and trustworthiness of the Brentwood Police Department, which in turn undermines our effectiveness.

V1 an unhoused person who you believed to be alcohol and substance impaired, was unarmed, outnumbered, undersized, handcuffed, and surrounded by three armed and able-bodied police officers. Nothing can justify the violent force that you used under the circumstances. You were not faced with imminent danger and the need to make a split-second decision. You employed what can be fairly described as bully tactics. Your manner of describing your force underscores for me your understanding that what you did was improper.

While V1 was not seriously injured, my sworn duty is to protect the public and this incident has broken my trust and confidence that you can or will safely perform the duties of a police officer. I do not believe that additional training would address or prevent similar instances in the future. Similarly, I do not think the public and the Department should have to risk that you will use force so indiscriminately or irresponsibly in the future. Thus, I believe that termination is the only appropriate course of action.

II. JOINT AND SEVERAL BASIS FOR DISCIPLINE

Please further be aware that my recommendation that you be terminated need not be based upon a determination that each and every policy, rule, and/or code cited above was in fact violated, and/or that each and every fact cited above has been verified. Any one of the rule or regulation violations or any one of the factual bases described above, would in and of itself, be a proper basis for my recommendation that you receive such discipline.

III. PRE-DISCIPLINARY RIGHT TO RESPOND

Pursuant to Department Policy Section 1019.10.2 and *Skelly v. State Personnel Board*, you are entitled to an opportunity to respond, orally or in writing, to this proposed action prior to the effective date of discipline. I have calendared the pre-disciplinary meeting to occur on August 17, 2022 at 1:00 p.m. at the Brentwood Police Department, 9100 Brentwood Blvd., Brentwood, CA 94513. Please confirm your attendance at this meeting by contacting IP3 IP3 at IP3 Contact Information no later than August 16, 2022 at 5:00 p.m.

The pre-disciplinary review shall be an informal *Skelly* meeting at which time you will have the opportunity to rebut the charges against you and to state any mitigating circumstances. Although the meeting with me is informal, an individual of your choice may represent you (i.e.

an attorney or an employee organization representative.) In addition or as an alternative to the *Skelly* meeting, you may respond to this notice in writing. Any such written response must be received in my office no later than August 17, 2022 at 10:00 a.m. in order to be considered. The written response should be sent to me at thansen@brentwoodca.gov.

If you do not attend the *Skelly* meeting or submit a written response, then you will have waived your opportunity to respond and the disciplinary determination will be based upon my assessment of this Notice of Intent to Terminate and the attachments thereto.

IV. WARNING AGAINST RETALIATION

This provision is to notify you that it is illegal and inappropriate to retaliate against any person who has participated in reporting or providing information regarding these allegations. You may not contact or in any way retaliate against any individual who has provided information to the Department regarding your conduct and performance.

V. ATTACHMENTS

I considered your personnel file in its entirety. Although your personnel file is not attached, you may contact IP3 to arrange a reasonable time to examine your file. Attached for your review are the following materials forming the basis of this action:

Administrative Investigation Report IA 22-047 by Todd Simonson including the following attachments:

1. Officer Franson's body-worn camera video that captured Officer Matejcek's use of force against V1 (at 9:07)

2. Officer Franson's dash camera video that captured the sound of V1 reaction to being kicked by Officer Matejcek (at 8:50)

3. BPD Misdemeanor Report, Case Number 2201912, regarding the arrest of V1 V1 on April 23, 2022

4. Audio recording of reporting party's call with dispatcher about person screaming near garden sheds at Brentwood Home Depot on April 23, 2022; audio recording of BPD radio traffic regarding the same call

5. CAD Incident Report regarding call at Brentwood Home Depot on April 23, 2022

6. Memorandum dated April 23, 2022, from Sergeant Alvarez to Chief Thomas Hansen regarding "Use of Force by Officer Matejcek #595, Case #2201912"

7. Six photographs of V1 and one photograph of beer cans recovered from Ms. V1 clothing following her arrest on April 23, 2022

8. Email on April 27, 2022, from Lieutenant Mark Louwerens to Sergeant Alvarez regarding corrections and clarifications to Officer Matejcek's report

9. Pages from Officer Matejcek's police academy workbooks: Learning Domains 20-2 (overcoming active resistance), 33-1 (the foot as a personal weapon), and 33-7 (the midsection of a suspect as a target for impact weapons)

10. Six BPD police reports documenting arrests of [redacted] by BPD officers for obstructing a police officer (Penal Code §148(a)(1)), between February 8, 2019 and January 31, 2022

11. Six CAD Incident Reports regarding calls involving [redacted] when Officer Matejcek was present at the scene, between October 13, 2018 and January 6, 2022

12. BPD Person Record for [redacted]

13. BPD Misdemeanor Report, Case Number 1702597, regarding arrest during which [redacted] kicked the suspect in the "head area" on May 17, 2017

14. Officer Matejcek's training records

15. BPD Policy 300 – Use of Force

16. BPD Policy 306.5 – Application of Spit Hoods

17. Email from BPD Captain Herbert to Investigator regarding BPD officers' access to spit hoods

18. All audio and transcripts of interviews in IA 22-07

19. Department Policies: 339 and 1019.10.2

ACKNOWLEDGEMENT OF RECEIPT:

OFFICER PAUL MATEJCEK — DATE 8/15/2022

WITNESSED BY:

DATE 8/15/22