



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

Human Resources Dept

2018 OCT -1 PM 4: 00

City of Austin

Received

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: September 28, 2018

SUBJECT: Temporary Suspension of Police Officer Jonathan Espinosa #8274
Internal Affairs Control Numbers 2018-0485

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 Jonathan Espinosa #8274 from duty as a City of Austin, Texas police officer for a period of five (5) days. The temporary suspension is effective beginning on September 29, 2018 and continuing through October 3, 2018.

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

On May 18, 2018, Officer Jonathan Espinosa, while on personal vacation in California, was arrested for Public Intoxication by the Los Angeles County Sheriff Department (Public Intoxication is also a violation of Texas Penal Code Section 49.02). Officer Espinosa immediately notified his supervisor of his arrest. Officer Espinosa's chain of command then initiated an administrative investigation on May 20, 2018.

Shortly thereafter, Officer Espinosa completed 100 hours of community service, which resulted in the dismissal of his criminal case. During his administrative investigation, Officer Espinosa took full responsibility for his conduct and candidly acknowledged his conduct met the elements of Public Intoxication as defined by the California Penal Code when he stated, *"I believe I fit the elements of the crime so had I stopped someone in my condition I would have arrested them too."* The fact that Officer Espinosa was arrested by another law enforcement agency has brought discredit to himself and the Austin Police Department.

By these actions, Officer Espinosa 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 900.1.1: General Conduct and Responsibilities: 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.

TO WIT:

California Penal Code § 647(f).

It is a misdemeanor crime to be found in any public place under the influence of any liquor, drug, or controlled substance if the individual is unable to exercise care for their own safety or the safety of others or the individual interferes with or obstructs or prevents the free use of any street, sidewalk or other public way.

➤ **Austin Police Department Policy 900.3.2: General Conduct and Responsibilities: Acts Bringing Discredit Upon the Department**

900.3.2 Acts Bringing Discredit Upon the Department

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.

In addition to this temporary suspension, Officer Espinosa must comply with the following additional terms and conditions, which are not subject to appeal:

1. Officer Espinosa shall be evaluated by a qualified substance abuse professional designated by the Chief of Police.
2. If the qualified professional recommends a program of counseling, Officer Espinosa must successfully complete that program of counseling.
3. If a program of counseling is recommended, said program will be completed on Officer Espinosa's off-duty time, unless the Chief approves the use of accrued vacation leave.
4. Officer Espinosa shall be responsible for paying all costs of the program of counseling that are not covered by his health insurance plan.
5. If Officer Espinosa fails to successfully complete the program of counseling, or fails to comply with any of these additional terms and conditions, the Chief may, at his sole discretion, indefinitely suspend him.
6. If this evaluation and/or the program of counseling raises a question whether Officer Espinosa is sufficiently mentally or physically fit to continue his duties as a police officer, it could trigger the fitness for process set forth in Texas Local Government Code Chapter 143.081.
7. If Officer Espinosa commits another violation of Department policy involving the use or abuse of alcohol, he will be subject to progressive discipline, up to and including indefinite suspension.

By copy of this memo, Officer Espinosa 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 Espinosa is hereby advised that such section provides for an appeal to an independent third party hearing examiner. 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, Chief of Police

9/28/18
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) 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 Jonathan Espinosa #8274

9/28/18
Date