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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:** May 2, 2018  
**SUBJECT:** Temporary Suspension of Officer Gustavo Guzman #6451  
Internal Affairs Control Number 2017-1379

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 Gustavo Guzman #6451 from duty as a City of Austin, Texas police officer for a period of fifteen (15) days. The temporary suspension is effective beginning on May 3, 2018, and continuing through May 17, 2018.

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

On November 9, 2017, Officer Gustavo Guzman attended the annual Distinguished Awards Gala hosted by the Austin Police Association (APA) at the Austin City Limits Live at the Moody Theater located in Austin, Texas. Officer Guzman became intoxicated at the event and urinated outside of the banquet hall as he was leaving the facility. Officer Guzman's actions were witnessed by at least three people, which brought discredit to the Austin Police Department (APD).

Internal Affairs conducted an investigation into Officer Guzman's conduct, interviewing eye witnesses including members of the APA. The testimony, facts, and evidence were undisputed by all accounts, including that of Officer Guzman. These undisputed facts demonstrate that Officer Guzman violated APD's responsibility to know and comply general order, and that his actions brought discredit to the APD.

Specifically, Officer Guzman advised Internal Affairs:

*"On November 9, 2017, I did attend the gala... [I] had a good time and had some alcoholic beverages. I made the poor choice to have too many alcohol beverages."*

*"The allegation of me urinating in public...I take full responsibility for those actions. I'm truly sorry for my behavior and poor choice making."*

*"I don't want to minimize this at all. I take full responsibility for it. I will continue to seek help and guidance [so] this will never occur again."*

By these actions, Officer Guzman 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 order 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.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and will consult their immediate supervisor for clarification and explanation.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

TO WIT:

**Austin City Ordinance: Prohibited Activities § 9-4-15**

**§ 9-4-15 - URINATING OR DEFECATING IN PUBLIC PROHIBITED.**

(A) A person commits an offense if the person urinates or defecates:

- (1) in or on a public street, alley, sidewalk, yard, park, building, structure, plaza, or utility right-of-way or other public place; or
- (2) in public view.

(B) It is an affirmative defense to prosecution under this section if the person is in a restroom.

➤ **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 Guzman agrees to the following additional terms and conditions:

1. Officer Guzman 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 Guzman must successfully complete that program of counseling.
3. If a program of counseling is recommended, said program will be completed on Officer Guzman's off-duty time, unless the Chief approves the use of accrued vacation leave.
4. Officer Guzman shall be responsible for paying all costs of the program of counseling that are not covered by his health insurance plan.
5. If Officer Guzman fails to successfully complete the program of counseling, 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 Guzman 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. Officer Guzman is also hereby placed on notice if he has another sustained violation involving the use or abuse of alcohol, he will be subject to additional discipline up to and including an indefinite suspension.

By copy of this memo, Officer Guzman 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.

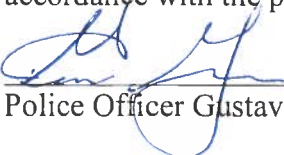
By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Officer Guzman is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance 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.

By copy of this memo, Officer Guzman is hereby advised that this temporary suspension may be taken into consideration in my determination as to whether a valid reason may exist to bypass Officer Guzman for promotion in accordance with Austin Police Department Policy 919.

  
BRIAN MANLEY, Interim Chief of Police                      Date 5/2/2018

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.

  
Police Officer Gustavo Guzman #6451                      Date 5/2/18