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City of Austin

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Human Resources Dept

MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: June 5, 2015

SUBJECT: Temporary Suspension of Police Commander David Mahoney # 3007
Internal Affairs Control Number 2015-0316

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighter's, Police Officers' and Emergency Medical Services Personnel's Civil Service Commission, I have temporarily suspended Police Commander David Mahoney # 3007 from duty as a City of Austin, Texas police officer for a period of ten (10) days. The temporary suspension is effective beginning on June 6, 2015, and continuing through June 15, 2015.

I took this action because Commander Mahoney 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 Commander Mahoney in violation of Rule 10:

On December 9, 2014, Officer Ryan Hancock was involved in an on-duty motor vehicle crash while responding Code 3 to a Hot Shot call (motor vehicle crash). Officer Hancock left the scene of the crash (a possible violation of the Texas Transportation Code hereafter referred to as “hit and run”) and did not stop to check on the amount of damage or confer with the other driver. The other driver called the police and reported the hit and run crash. After arriving at the scene of the Hot Shot call, Officer Hancock was advised by another officer that the other driver had reported the crash. Sergeant John Spillers conferred with Officer Hancock about what occurred. Sergeant Spillers, Lieutenant Brian Jones, and Commander Mahoney all failed to properly review the incident, failed to conduct a thorough investigation, and failed to properly address the potential criminal conduct. One glaring example is that Commander Mahoney did not watch Officer Hancock’s in-car DMAV until more than a month after the incident occurred.

By these actions, Commander Mahoney 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 900.4.3: Requirements of Duty – Neglect of Duty**

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

(c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.

➤ **Austin Police Department Policy 346.6.2 – Crash Investigation and Reporting - Investigative Supervisor Responsibility for Crashes Involving APD Vehicles**

A supervisor shall be notified of all crashes involving APD vehicles and respond to the scene if within the city limits or if directed by a Commander or above. Additionally the supervisor will:

(a) Conduct an assessment of the situation and determine the appropriate reporting parameters.

(b) Complete all required Workers' Compensation forms as outlined in Policy 956 (On Duty Injury and Illness) for each APD employee who was an occupant in the APD vehicle AND has an injury, suspected injury, or any complaint or statement of pain or injury, regardless of the level of complaint or statement. Supervisors will submit the completed forms to the APD Workers' Compensation Office no later than 24 hours from the crash.

1. During the supervisory investigation of the crash, if there are no reports of injury, complaint/statement of pain; but the supervisor believes the totality of the incident or the mechanism of the crash could have resulted in injury to any occupant, the supervisor should complete all necessary Workers Compensation forms.

(c) Initiate an IA investigation if they reasonably believe there is credible evidence a violation of law or policy may have occurred concerning the officer's operation of an APD vehicle.

(d) Ensure an Equipment Repair Request form is completed and turned into PCO.

(e) Send e-mail notifications with the incident report number, prior to the end of the tour of duty, to the involved employee's chain of command up to the commander.

(f) Review the primary reporting employees' incident report for accuracy and completeness.

(g) Ensure that any DMAV associated with the crash is properly categorized as Veh Hom Crash Investigation - 3 yrs

(h) Compile an electronic Supervisory Investigation Packet that includes:

1. A memorandum to the commander detailing:

(a) The vehicle(s) involved; and

(b) The findings of the investigation; and

(c) Any training issues or policy violations on the part of the involved officer(s), if applicable.

(d) A synopsis of any witness statements, if applicable.

(e) Whether there were any injuries and if so, a description of those injuries.

(f) Whether photographs were taken and uploaded into the Digital Crime Scene Management application.

(g) A notation identifying the applicable DMAV files and that they have been reviewed and appropriately bookmarked.

2. An electronic copy of the CR-3, if required (the original CR-3 shall be forwarded to Highway Enforcement)

3. An electronic (scanned) diagram of the crash.

(i) Create an electronic folder with the case number in the folder G:\Digital Crash Packet containing the Supervisory Investigation Packet. A physical folder is no longer required.

(j) Forward the electronic link to Supervisory Investigation Packet within eight (8) working days from the date of the crash as follows:

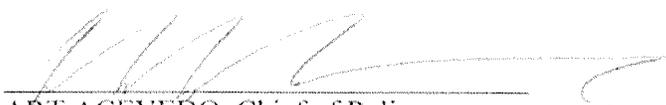
1. APD Risk Management Accreditation@austintexas.gov

2. The involved employee's chain-of-command, up to the commander, for review.

The Neglect of Duty by Commander Mahoney is more egregious in that it was his responsibility as the Commander to ensure that his subordinates conducted a thorough and complete investigation of this incident, which did not occur. Furthermore, this is not the first time that Commander Mahoney's substandard performance has been addressed by his chain of command. Commander Mahoney is hereby put on notice that if his performance does not improve, it will result in additional corrective action, including but not limited to an involuntary demotion or indefinite suspension.

By copy of this memo, Commander Mahoney 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) calendar 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.

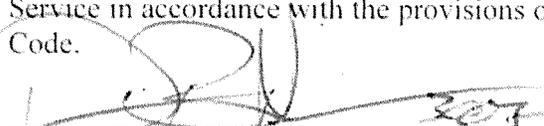
By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Commander Mahoney is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance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


ART ACEVEDO, Chief of Police

6/5/2015
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) 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 Commander David Mahoney # 3007

6-5-2015
Date