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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: Art Acevedo, Chief of Police

DATE: August 12, 2016

SUBJECT: Agreed Temporary Suspension of Police Officer Benito Sanchez #6688
Internal Affairs Control Number 2016-0208

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, Article 18 of the Meet and Confer Agreement between the City of Austin and the Austin Police Association, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have agreed to temporarily suspend Police Officer Benito Sanchez # 6688 from duty as a City of Austin, Texas police officer for a period sixty (60) days. The agreed temporary suspension is effective beginning on August 13th, 2016 and continuing through October 11th, 2016.

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

On June 6, 2014, Officer Sanchez was issued a lawful, direct order by Sergeant Greg White mandating that he receive specific authorization from a supervisor prior to engaging in any vehicle pursuit other than a pursuit initiated by himself. Sergeant White issued this order in response to Officer Sanchez' history of pursuit policy violations. Despite this lawful order, which had not been rescinded at any time even after Sergeant White was no longer Officer Sanchez' supervisor, Officer Sanchez engaged in a pursuit that he did not initiate, which constitutes insubordination, in addition to committing violations of the APD Pursuit Policy.

Specifically, on February 20, 2016, at approximately 10:58 a.m. Officer Butler identified a stolen Ford F-150 pick-up truck traveling near US Hwy 290 and N I 35 and attempted to conduct a traffic stop. Officer Bozelli positioned himself as the second officer in the pursuit at which time Officer Sanchez radioed Sergeant Hubbs and requested approval to join the pursuit as a third officer. Sergeant Hubbs denied the request. Despite being denied participation in this pursuit, Officer Sanchez' DMAV shows him driving on the highway at speeds of up to 118 miles per hour before being denied permission to participate in the pursuit. When permission was denied, the DMAV shows Officer Sanchez deactivating his emergency lights and siren but continuing to drive at a high rate of speed on the highway and speeds of up to 58 miles per hour on residential streets (30 mile per hour zone) while attempting to position himself to deploy stop sticks for the continuing pursuit. During his Internal Affairs interview, Officer Sanchez admitted that he violated the APD Pursuit Policy.

Not only was Officer Sanchez insubordinate, his actions during the pursuit violated the pursuit policy. Even though Officer Sanchez was not authorized to be in the pursuit, the fact that he was actively engaged in the pursuit required him none-the-less to comply with the Pursuit Policy. Officer Sanchez not only drove at an excessive speeds, but he ran a red light and cut in front of another police car that had the right of way and was operating Code 3 (the other officer had a green light), causing the other officer to brake to avoid a collision. In addition, Officer Sanchez drove at an excessive rate of speed after being ordered not to participate in the pursuit and also drove at a high rate of speed between (splitting) two civilian vehicles that had slowed, narrowly avoiding a crash with one or both of them.

Officer Sanchez' conduct is aggravated by the fact that he has a history of sustained violations of Department policy involving vehicle pursuits for which he was disciplined, required to take driving classes at the APD Academy, and required to meet with the Department's staff psychologist. That history includes a 1 day suspension in 2014 for pursuit violations, a 30-day agreed suspension in 2014 for Neglect of Duty and Secondary Employment, and a written reprimand in 2014 for pursuit violations. This history constitutes Neglect of Duty.

By these actions, Officer Sanchez 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 110.4.4: General Conduct and Responsibilities: Insubordination**

110.4.4 Insubordination

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence

➤ **Austin Police Department Policy 214: Vehicle Pursuits**

214.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers, and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law. Another purpose of this policy is to minimize the potential for pursuit-related crashes. Vehicular pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a subject is generally not more important than the safety of the public and pursuing officers.

214.1.1 PHILOSOPHY

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the risk to public safety created by vehicle pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicle pursuit due to the risk involved. This includes circumstances where department policy would permit the initiation or continuation of the pursuit. It is recognized that vehicle pursuits are not always predictable and decisions made pursuant to this policy shall be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

Officers must remember that the most important factors to the successful conclusion of a pursuit are self-discipline and sound professional judgment. Officers' conduct during the course of a pursuit must be objectively reasonable; that is, what a reasonable officer would do under the same circumstances. An unreasonable desire to apprehend a fleeing subject at all costs has no place in professional law enforcement.

214.3.3 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known, or which reasonably ought to be known, to the officer or supervisor during the pursuit indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the subject's escape. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to motorists, themselves, and the public when electing to continue a pursuit. This section shall not be construed to authorize a pursuit that is expressly prohibited as outlined in the Restrictions on Vehicle Pursuits section of this policy.

(a) The factors listed in this policy on when to initiate a pursuit are expressly included herein and shall also apply to the decision to discontinue a pursuit. In addition to those factors listed, the following should also be considered in deciding whether to terminate a pursuit:

4. Hazards to uninvolved bystanders or motorists.

6. Directed by a supervisor.

7. Pursuit speeds:

(a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.

214.3.4 PURSUIT DRIVING CONSIDERATIONS AND RESTRICTIONS

The decision to use specific driving tactics requires the same assessment of factors to be considered concerning pursuit initiation and termination. The following driving tactics apply to units involved in a pursuit:

(a) Officers will space themselves from other involved vehicles, in consideration of their driving skills and vehicle performance capabilities, so they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle and other police units.

b) Officers should not attempt to pass other units in a pursuit unless the situation indicates otherwise or requested to do so by the primary unit or control supervisor.

(e) Officers have an obligation to drive with a due regard for the safety of lives and property.

214.4 PURSUIT GUIDELINES

Pursuit units shall be limited to four vehicles (three units and a control supervisor); however, a control supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of officers involved would be insufficient to safely stop the pursuit and/or arrest the subject(s). All other officers will stay out of the pursuit but should remain alert to its progress and location.

(a) All officers involved in a pursuit shall:

1. Operate their police unit with emergency lights and siren activated (Code 3).

(b) Any officer who drops out of a pursuit may, with permission of a control supervisor, trail the pursuit to the termination point in order to provide necessary information and assistance in the arrest of the subject(s).

1. The term "trail" means to follow the path of the pursuit at a safe speed while obeying all traffic laws and without activating emergency equipment. If the pursuit is at a slow rate of speed, the trailing unit will maintain sufficient distance from the pursuit units so as to clearly indicate an absence of participation in the pursuit.

214.4.3 UNITS NOT INVOLVED IN A PURSUIT

(a) There shall be no paralleling of a pursuit route by officers not authorized to be in a pursuit.

(b) Officers not directly involved in the pursuit are authorized to proceed safely to controlled intersections ahead of the pursuit and use emergency equipment to warn vehicular and pedestrian traffic in an effort to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.

(c) Non-pursuing personnel needed at the termination of a pursuit should respond in the appropriate manner based on the totality of the circumstances and type of assistance needed.

➤ Austin Police Department Policy 900.4.3: Neglect of Duty

900.4.3 Neglect of Duty

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

(g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.

In addition to this agreed suspension, Officer Sanchez agrees to the following additional terms and conditions:

- 1) Officer Sanchez shall attend any training specified by his chain of command. The failure to successfully complete the specified training will be considered an act of insubordination for which Officer Sanchez agrees that he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, or to District Court.
- 2) Officer Sanchez agrees to a one (1) year probationary period to begin on the day he returns to duty after serving this agreed suspension. Officer Sanchez agrees that if during that one year period the Chief of Police sustains another violation involving the same or similar conduct (Officer Sanchez agrees that the Chief of Police has the final decision whether the conduct is the same or similar and that decision is not subject to review or appeal), he will be indefinitely suspended

without the right to appeal that indefinite suspension to the 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.

- 3) Officer Sanchez is put on notice that should he commit the same or similar act of misconduct for which he is being suspended, but such conduct or failure occurs after the expiration of the one year probationary period, he will be indefinitely suspended but retains the right to appeal that suspension as provided for in Chapter 143 and the Meet and Confer Agreement.
- 4) Officer Sanchez 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.
- 5) Officer Sanchez may not appeal this agreed suspension or any of these 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.
- 6) Officer Sanchez 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 limitation, claims arising under any federal, state, or other governmental statute, regulation, or ordinance relating to employment discrimination, termination of employment, payment of wages or provisions 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 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 incidents, and any actions taken as a result of these incidents, including but not limited to, this agreed temporary suspension.
- 7) Officer Sanchez acknowledges that he had the opportunity to discuss this agreed suspension and the additional terms and conditions set forth herein with an attorney of his choice prior to his acceptance where indicated below.

By signing this Agreed Discipline, Officer Sanchez 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 Sanchez waives all right to appeal to this agreed suspension 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.


ART ACEVEDO, Chief of Police

8/12/2016
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. I further understand and agree that by entering into this agreement, I have no right to appeal this suspension to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to the District Court, and I may not file a grievance under Article 20 of the Meet and Confer Agreement.


Police Officer Benito Sanchez # 6688

8/12/16
Date