



## **MEMORANDUM**

### **Austin Police Department *Office of the Chief of Police***

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City of Austin  
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Human Resources Dept

**TO:** Joya Hayes, Interim Director of Civil Service  
**FROM:** Art Acevedo, Chief of Police  
**DATE:** February 22, 2016  
**SUBJECT:** Temporary Suspension of Officer John Zavala #6706  
Internal Affairs Control Number 2015-0770

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 John Zavala #6707 from duty as a City of Austin, Texas police officer for a period of three (3) days. The temporary suspension is effective beginning on February 23, 2016 and continuing through February 25, 2016.

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

On August 30, 2015, Officer Zavala was in an on-call capacity for APD's Crisis Incident Negotiation Team (CINT). A page was sent out at approximately 11:34 p.m., for Special Weapons and Tactics (SWAT), and CINT to respond to an armed barricaded subject. Officer Zavala texted his Sergeant advising he was not responding to the call due to a [REDACTED] illness. A Corporal went to Officer Zavala's residence to retrieve CINT equipment. During the Corporal's interaction with Officer Zavala, he believed Officer Zavala may be under the influence of an alcoholic beverage, which was investigated and deemed inconclusive.

During the meeting with his chain of command regarding the incident, Officer Zavala stated he had taken medication for a verified ongoing medical condition the night of the call out, and this was the same reason he had called in sick for his regular duty assignment on Monday, August 31, 2015. However, this was not the reason he provided to Sergeant Greenwalt in a text message when he requested the time off.

The side effects from the prescribed medication hindered Officer Zavala from responding to the call and he should have informed his supervisor prior to the call out.

By these actions, Officer Zavala 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: General Conduct and Responsibilities: 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:

- (a) Lack of knowledge of the application of laws required to be enforced.
- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.
- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.
- (e) Absence without approved leave.
- (f) Repeated poor evaluations.

- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.
- (h) Failure to follow department standardized training and tactics when it was objectively reasonable to do so.
- (i) Employees are expected to be truthful at all times in the performance of their duties. However, there may be instances where, initially, the employee has not been truthful; but, before the investigation is complete, the employee provides an accurate and detailed accounting of their true culpability in a situation, and accepts full responsibility for their actions. In those cases, the Chief may consider each case on a fact-specific basis.

➤ **Austin Police Department Policy 950.3.2 On-Call Assignment**

**950.3.2 On-Call Assignment**

On-call assignments may be established to meet the operational needs of the Department. On call assignments are generally paid in compensatory time unless otherwise approved by the appropriate commander. Employees assigned to be on-call will:

- (a) Accept an on-call assignment that might result in a call back to work.
- (b) Maintain any necessary equipment when in an on-call status (e.g., radio, pagers, mobile phone).
- (c) Respond when called back to work.
- (d) Maintain the physical and mental fitness standards that are regularly required for performing job tasks when in an on-call status.
- (e) Notify their supervisor if, due to illness, injury or other circumstances, the employee is unable to be on-call.

**950.1.1 Definitions**

**On-Call** - A period of time outside of normally scheduled working hours during which an employee must remain fit for duty and available to return to work.

By copy of this memo, Officer Zavala 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 Zavala 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.

In addition, if this disciplinary suspension is for three (3) days or less, Officer Zavala is advised of the following provisions of Article 18, Section 1, of the Meet and Confer Agreement:

*The parties agree that when an officer is suspended for 1, 2, or 3 days the officer may choose one of two methods of dealing with the suspensions as listed below.*

- a) **Suspensions that may not be appealed.** *The officer may choose to use vacation or holiday time to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, promotion, or any other purpose. The officer must agree that there is no right to appeal if this method of suspension is chosen.*
- b) **Suspensions that may be appealed.** *The officer may appeal the suspension to arbitration or the Civil Service Commission. If the officer chooses to appeal the suspension, the arbitrator or Civil Service Commission's authority is limited to ruling on whether or not the charges against the officer are true or not true. If the arbitrator or Civil Service Commission finds the charges to be true, there is no authority to mitigate the punishment. If the arbitrator or Civil Service Commission finds the charges to be not true, the officer shall be fully reinstated with no loss of pay or benefit.*

#### **Arbitration Costs on Appealable Suspensions**

*In the event that an officer appeals a 1, 2 or 3 day suspension to arbitration, it is agreed that the party that loses the arbitration shall be responsible for all costs of the arbitrator, including travel and lodging if necessary.*

*To facilitate such payment on the part of the officer he shall submit, at the time of appeal, a signed payroll deduction agreement that if the arbitrator rules in favor of the City he authorizes up to one hundred dollars (\$100.00) per month to be deducted*

*from his regular pay until such time as what would usually be the City's portion of the arbitrator's costs have been satisfied.*

*[Handwritten signature]*  
ART ACEVEDO, Chief of Police  
*2-22-14*

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. I also acknowledge the options set forth in this memorandum of temporary suspension, including my right to waive an appeal of a suspension of three (3) days or less, and my financial and contractual obligations under the Meet and Confer Agreement if I elect to appeal a suspension of three (3) days or less and do not prevail.

*[Handwritten signature]* 4707 2/22/14  
Police Officer John Zavala #6706  
*2/22/14*

Date