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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:** Joya Hayes, Interim Director of Civil Service

**FROM:** Art Acevedo, Chief of Police

**DATE:** September 23, 2015

**SUBJECT:** Indefinite Suspension of Police Officer Albert Arevalo #6422  
Internal Affairs Control Number 2015-0463

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 indefinitely suspended Police Officer Albert Arevalo #6422 from duty as a City of Austin, Texas police officer effective September 23, 2015.

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

On May 21, 2015 Officer Albert Arevalo, while off-duty was stopped for speeding, in the 2400 block of North Mopac by an Austin Police Department (APD) Patrol Officer at approximately 1:45am. The officer approached Officer Arevalo and their interaction revealed evidence that Officer Arevalo may be intoxicated, necessitating further investigation. The initial officer requested a Driving While Under the Influence (DWI) unit and notified his supervisor. An Officer with the DWI unit responded and conducted the Standardized Field Sobriety Tests (SFST's). At the conclusion of the SFST's Officer Arevalo exhibited 6/6 clues on the Horizontal Gaze & Nystagmus Test (HGN), 2/8 clues on the Walk & Turn Test and 3/4 clues on the One Leg Stand Test. Additionally, Officer Arevalo submitted to a Breath Test, Blood Alcohol Test (BAC), and the results of .175 and .178 are over twice the legal limit. Based on the results of the field observations and the aforementioned tests, Officer Arevalo was arrested for DWI.

Additionally Officer Arevalo submitted to an administrative blood draw pursuant to the an internal investigation and the results of that test were .171, which is also over twice the legal limit. During the course of the Internal Affairs investigation it was revealed by Officer Arevalo and corroborated by his companions that the group went to six (6) bars and consumed at least one (1) drink each at every establishment during the (4) hour span between 9:30p.m.on May 20<sup>th</sup> 2015 and the time when Officer Arevalo was pulled over for DWI at approximately 1:30a.m. on May 21<sup>st</sup> 2015. Moreover, Officer Arevalo stated he made a series of bad decisions that night and also acknowledged his awareness of the Chief of Police and the Department's zero tolerance policy on Officer involved DWI's.<sup>1</sup>

By these actions, Officer Arevalo 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.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and

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<sup>1</sup> Chief Acevedo sent out an email message to all APD employees on 2/27/14 and also placed a video message on the Informa website to put all APD employees on notice of his zero tolerance policy regarding DWI's. There is evidence to show Officer Arevalo viewed this message on 5/1/14.

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:**

**Texas Penal Code Section 49.04: Driving While Intoxicated**

- (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.
- (b) Except as provided by Subsections (c) and (d) and Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.
- (c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.
- (d) If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor.

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

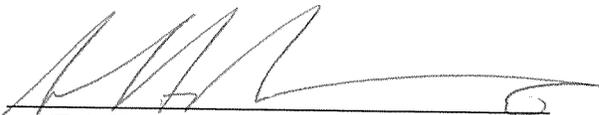
**900.3.2 Acts Bringing Discredit Upon the Department**

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.

By copy of this memo, Officer Arevalo is hereby advised of this indefinite 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 Arevalo 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.



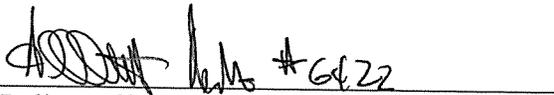
ART ACEVEDO, Chief of Police

9/23/2015

Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of indefinite 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 Albert Arevalo #6422

9/23/15

Date