



MEMORANDUM

Austin Police Department Office of the Chief of Police

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: May 24, 2013

SUBJECT: Temporary Suspension of Police Sergeant Darrell Burnham #2084
Internal Affairs Control Number 2012-0284

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 and Police Officers' Civil Service Commission, I have temporarily suspended Police Sergeant Darrell Burnham #2084 from duty as a City of Austin, Texas police officer for a period of one (1) day. The temporary suspension is effective on May 26, 2013.

I took this action because Sergeant Burnham 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 Sergeant Burnham in violation of Rule 10:

On November 28, 2012, officers of the Adam 700 shift were engaged in a pursuit along Capitol of Texas Highway. Sergeant Burnham engaged in the pursuit as Code 2 instead of Code 3. Additionally, as control supervisor for the pursuit, Sergeant Burnham failed to properly manage the pursuit and the officers involved.

By these actions, Sergeant Burnham 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 214.4: Vehicle Pursuits: Pursuit Guidelines**

214.4 Pursuit Guidelines

Pursuit units shall be limited to three vehicles (two 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) An officer or supervisor involved in a pursuit should request aircraft assistance as soon as practicable.
- (b) All officers involved in a pursuit shall:
 - 1. Operate their police unit with emergency lights and siren activated (Code 3).
 - 2. Ensure their Mobile Audio Video (MAV) recording system has been activated if their vehicle is equipped with one.
- (c) 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.
- (d) Pursuit communications shall be handled as follows:
 - 1. If a pursuit is confined within the City limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher

2. If a pursuit contains multiple agencies and/or leaves APD jurisdiction, Communications will determine the appropriate radio channel to use.

➤ **Austin Police Department Policy 214.5.3: Vehicle Pursuits: Control Supervisor Responsibilities**

214.5.3 Control Supervisor Responsibilities

It is the policy of this department that supervisor control shall be exercised over all vehicle pursuits involving officers from this department.

- (a) The immediate supervisor of the officer initiating the pursuit, or if unavailable, the nearest available field supervisor shall assume the responsibility as the control supervisor.
- (b) Corporals serving as acting sergeants shall assume the responsibility as the control supervisor during a pursuit initiated in their area if no other sergeant is on-duty or immediately available in that area; however, corporals may not be the control supervisor when a sergeant initiates a pursuit.
- (c) The control supervisor is responsible for the following:
 1. Upon becoming aware of a pursuit, immediately ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
 2. Engage in the pursuit when appropriate and provide on scene supervision.
 3. Exercise management and control of the pursuit even if not engaged in it.
 4. Ensuring that no more than the number of required police units needed are involved in the pursuit under the guidelines set forth in this policy.
 5. Direct that the pursuit be terminated if, in his judgment, it is unjustified to continue the pursuit under the guidelines of this policy.
 6. Ensure that aircraft assistance is requested.
 7. Ensure that the proper radio channel is being used.
 8. Ensure the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
 9. Control and manage APD units when a pursuit enters another jurisdiction.

10. Prepare a post pursuit critique and analysis of the pursuit for training purposes.

By copy of this memo, Sergeant Burnham 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, Sergeant Burnham 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, Sergeant Burnham 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.


ART ACEVEDO, Chief of Police

5-22-13
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.


Police Sergeant Burnham #2084

5/24/2013
Date