



MEMORANDUM

Austin Police Department Office of the Chief of Police

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: January 8, 2014

SUBJECT: Agreed Temporary Suspension and Voluntary Demotion of
Corporal Jerry Muhamet #4709
Internal Affairs Control Number #2013-0761

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 Corporal Jerry Muhamet #4709 from duty as a City of Austin, Texas police officer for a period of twenty (20) days. The temporary suspension is effective beginning on January 8, 2014, and continuing through January 27, 2014.

I took this action because Corporal Muhamet 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 Corporal Muhamet in violation of Rule 10:

On June 11, 2013, Corporal Muhamet was provided with a direct written order from his sergeant listing the duties expected of him to perform as a corporal, which included the requirement that Corporal Muhamet be in the Property Control Office at least 30 minutes prior to the end of shift to receive and inventory equipment from his officers. After review of the equipment logs on June 26, 2013, Corporal Muhamet was again ordered to sign in the shift's equipment on the PCO equipment log as the equipment is turned in by his officers. Despite being twice ordered to do so, Corporal Muhamet failed to be present in the PCO at least 30 minutes before the end of shift or to appropriately inventory the equipment turned in by his officers on several dates in July. Corporal Muhamet also failed to comply with a direct order given him on June 26, 2013 to update his status when responding to or on the scene of a call using his MDC or radio. Additionally, on June 26, 2013, Corporal Muhamet failed to respond to a request for additional officers at the scene of a large disturbance.

By these actions, Corporal Muhamet 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: Organizational Structure and Responsibility: 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 904.3: 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.

In addition to this agreed temporary suspension, Corporal Muhamet agrees to the following terms and conditions:

1. Pursuant to Section 143.054(e) of the Texas Local Government Code, Corporal Muhamet agrees to a voluntary demotion to the rank of Police Officer to be effective on January 9, 2014. Additionally, Corporal Muhamet agrees that he will not be eligible to take the promotional examination for the rank of Police Corporal/Detective for a period of three (3) years from January 28, 2014, the date that Corporal Muhamet returns to duty after completing his twenty (20) day suspension. Further, Corporal Muhamet understands that, pursuant to APD Policy 919.2, this suspension can be considered to determine whether a valid reason exists to bypass him for a promotion for a period of five (5) years from the date of its issuance, and agrees to meet with his chain of command to discuss his promotional eligibility prior to taking a promotional examination prior to the end of the five (5) year period.
2. Corporal Muhamet is required to be evaluated by a qualified professional approved by the Chief of Police. Should this professional recommend a program of counseling, Corporal Muhamet must successfully complete that program of counseling, as determined by the professional administering the program. The failure to comply with this evaluation and/or successfully complete the program of counseling will be considered an act of insubordination for which Corporal Muhamet 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.
3. Corporal Muhamet agrees to a probationary period of one (1) year, with the additional requirement that if, during that probationary period, he commits the same or a similar act of misconduct for which he is being suspended for twenty (20) days, 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. The one year period begins on the day Corporal Muhamet returns to duty after completing his twenty (20) day suspension.
4. Corporal Muhamet is put on notice that should he commit the same or similar act of misconduct for which he is being suspended for 20 days, but that act occurs after the expiration of the one year period referenced in paragraph 3, 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.

5. Corporal Muhamet agrees that he, his heirs, executors, administrators, estate, legal representatives, assigns, 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, 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 provision 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 and 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 and voluntary demotion.
6. Corporal Muhamet had the opportunity to discuss this agreed temporary suspension and voluntary demotion, and the additional terms and conditions set forth herein, with an attorney of his choice prior to signing his acceptance where indicated below.

By signing this Agreed Temporary Suspension and Voluntary Demotion, Corporal Muhamet 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 and voluntary demotion, Corporal Muhamet waives all right to appeal this disciplinary action and voluntary demotion, including the additional terms and conditions cited herein, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, or to District Court.


Art Acevedo
Chief of Police

JANUARY 8 2014
Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing Memorandum of Agreed Temporary Suspension and Voluntary Demotion and I understand that by entering into this disciplinary agreement and voluntary demotion, the Chief forgoes his right to indefinitely suspend me for the conduct described above, and that by agreeing to the suspension and

voluntary demotion, I have no right to appeal this disciplinary action, voluntary demotion or the additional terms and conditions cited herein, to the Civil Service Commission, to the District Court, or to an Independent Third Party Hearing Examiner.

Jerry M. Muhamet #4709
Corporal Jerry Muhamet #4709

1-8-14
Date