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MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: March 2, 2012

SUBJECT: Temporary Suspension of Police Officer Manuel Garcia #1371
Internal Affairs Control Number 2011-1280

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 Officer Manuel Garcia #1371 from duty as a City of Austin, Texas police officer for a period of five (5) days. The temporary suspension is effective beginning on March 23, 2012, and continuing through March 27, 2012.

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

On October 31, 2011 at 3:36 a.m., Officer Garcia initiated a traffic stop by initiating his lights but did not notify dispatch. The suspect vehicle slowed as it turned northbound onto Georgian Drive and a female was either pushed or jumped out of the passenger side of the vehicle onto the street. The suspect vehicle continued northbound and began making evasive actions. Officer Garcia notified dispatch that a female had been thrown out of the vehicle as it was travelling at approximately 30 miles per hour and she hit her head and rolled. Officer Garcia continued following the vehicle and was trying to get a license plate. Officer Garcia made no notification that he was in pursuit of the vehicle.

During the pursuit, Officer Garcia ran two posted stop signs with only his overhead lights on and without the use of his siren. Officer Garcia also travelled southbound into the northbound lanes of traffic on the frontage road of IH 35 until pulling into the Ramada Inn parking lot. Officer Garcia confirmed with another responding officer that it was the suspect vehicle in the lot and stated that he was going to go back and check on the female who was thrown from the car. Officer Garcia returned to the original scene (Georgian and Powell) approximately eight minutes later and could not locate the female. When Officer Garcia and other officers made contact with the suspect inside the hotel room at the Ramada Inn to investigate the incident, Officer Garcia used inappropriate language with another citizen in the room.

By these actions, Officer Garcia 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(b)(1): 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.

(b) All officers involved in a pursuit shall:

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

➤ **Austin Police Department Policy 214.5.1: Vehicle Pursuits: Pursuit Unit Roles and Responsibilities: Primary Unit Responsibilities**

214.5.1 Primary Unit Responsibilities

The initial pursuing officer will be the primary pursuit unit and is responsible for the conduct of the pursuit unless unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the subject(s) without unreasonable danger to themselves or other persons.

- (a) The primary unit should notify Communications on the appropriate primary channel corresponding to the area the vehicle pursuit was initiated in and, as soon as practicable, provide the following information:
 - 1. Reason for the pursuit.
 - 2. Location and direction of travel.
 - 3. Speed of the fleeing vehicle.
 - 4. Description of the fleeing vehicle and license number, if known.
 - 5. Number of occupants.
 - 6. The identity or description of the known occupants.
 - 7. Evasive actions being taken by the fleeing vehicle (e.g., disregard of traffic control devices, intentional collisions, driving on the wrong side of the roadway).
 - 8. Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.

- (b) Unless relieved by a supervisor or secondary unit, the officer in the primary unit shall be responsible for the broadcasting of the progress of the pursuit. Unless circumstances reasonably indicate otherwise, the primary unit should relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit to minimize distractions and allow the primary unit to concentrate foremost on safe pursuit tactics.

➤ **Austin Police Department Policy 900.4.3(c): General Conduct and Responsibilities: Requirements of Duty: 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:

- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.

➤ **Austin Police Department Policy 972.4(a): Employee Speech, Expression and Social Networking: Prohibited Speech, Expression and Conduct**

972.4 Prohibited Speech, Expression and Conduct

To meet the Department's safety, performance, and public-trust needs, the following is prohibited:

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Austin Police Department or its employees.

By copy of this memo, Officer Garcia 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 Garcia 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 1132 for Chief Acevedo
ART ACEVEDO, Chief of Police

1/24/12
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.

M Garcia 1371
Police Officer Manuel Garcia # 1371

3-2-12
Date