

AGREED SUSPENSION AND LAST CHANCE AGREEMENT

CITY OF

SAN ANTONIO HR

JUN 28 '18 10:43 AM

INTRODUCTION:

This is an agreement, pursuant to Article 28, Section 16 of the CBA, between The City of San Antonio, SAPD Detective Jose L. Orozco, Badge No. 2002, and the San Antonio Police Officers' Association in connection with Case Number FC2016-104.

DEFINITIONS:

"The City" as used herein refers to the City of San Antonio acting by and through Chief of Police William P. McManus;

"Det. Orozco" as used herein refers to SAPD Detective Jose L. Orozco, Badge No. 2002;

"The SAPOA" as used herein refers to the San Antonio Police Officers' Association;

"The Parties" as used herein refers to The City, Det. Orozco and the SAPOA collectively;

"SAPD" as used herein refers to the San Antonio Police Department;

"The CBA" as used herein refers to the Collective Bargaining Agreement between the City and the SAPOA, Ordinance No. 2016-09-01-0639, effective from September 1, 2016 through September 30, 2021;

"Civil Service Rules" as used herein refers to the City of San Antonio Fire Fighters' and Police Officers' Civil Service Commission Rules (said rules having been adopted on February 23, 1998, and thereafter from time to time amended, by the Fire Fighters' and Police Officers' Civil Service Commission as the Civil Service Rules for the Fire and Police Departments of the City of San Antonio);

"Civil Service Commission" as used herein refers to the Firefighters' and Police Officers' Civil Service Commission for the City of San Antonio;

"This Agreement" as used herein refers to the Agreed Suspension and Last Chance Agreement.

LEGAL ADVISORS OFFICE

JUN 27 2018

SAN ANTONIO POLICE DEPARTMENT

STIPULATIONS:

It is expressly agreed and stipulated by the Parties that:

Det. Orozco violated the Civil Service Rules as set forth in more detail in Sections 1 and 2 below;

Det. Orozco violated the Rules and Regulations of the San Antonio Police Department and/or the SAPD General Manual Procedure as set forth in more detail in Sections 1 and 2 below;

Det. Orozco was served with a Contemplated Indefinite Suspension on January 17, 2017;

Det. Orozco met with the Chief of Police regarding the Contemplated Indefinite Suspension as provided for in the CBA; and

The City, Det. Orozco, and the SAPOA have agreed to a resolution of this disciplinary matter;

THEREFORE, FOR AND IN CONSIDERATION OF THE AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. Det. Orozco agrees that he violated Rule XIII(C) (12) of the Civil Service Rules and Rules 3.04 (C) and 3.11 (B), of the Rules and Regulations of the San Antonio Police Department in effect on August 19, 2016.

SECTION 2. The factual basis for the Contemplated Indefinite Suspension is as follows:

On or about August 19, 2016, off-duty Detective Jose L. Orozco brought reproach and discredit on himself and the San Antonio Police Department. While off duty at his residence he fired three rounds from a personally owned handgun while in his master bedroom. The three rounds struck the master bed and all or some of the rounds penetrated the bed and floor and were found on the first floor. [REDACTED]

[REDACTED] fled to a neighboring residence and called the police. SAPD officers detained Detective Orozco and [REDACTED] him on an [REDACTED]

On or about August 19, 2016, off-duty SAPD Detective Jose L. Orozco drank intoxicating beverages and/or consumed medication(s) to the extent which, either alone or in combination, rendered him unfit to report for duty. [REDACTED] called the police after Detective Orozco, while in his intoxicated state, fired a personally owned handgun into a mattress in their common residence. This incident can be referred to SAPD case number 16-179077.

SECTION 3. Det. Orozco stipulates and agrees that the conduct described in Section 2, above, violates the following SAPD Rules and Regulations and/or provisions of the SAPD General Manual:

SAPD Rules and Regulations:

3.04– Individual Responsibilities; Responsibility to Serve the Public – (C) Conduct and Behavior: Members, on-or off-duty, shall be governed by the ordinary and reasonable rules of good conduct and behavior, and shall not commit any act tending to bring reproach or discredit on themselves or the department.

3.11 Use of Intoxicants: (B) Intoxication: Members shall not, at any time, be intoxicated while on-duty. Members shall not be intoxicated while in public view. No member, while off-duty, shall

drink intoxicating beverages to an extent which renders them unfit to report for duty.

CITY OF

SAN ANTONIO HR

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SECTION 4. Pursuant to Article 28, section 16 of the CBA, the City agrees to reduce the contemplated indefinite suspension, and Det. Orozco agrees to accept, an agreed disciplinary suspension without pay from the SAPD for a period of ninety (90) days, sixty (60) days of which will be held in abeyance for a one-year period beginning on April 17, 2018. The disciplinary suspension will commence on July 16, 2018, and end on August 14, 2018. Det. Orozco may forfeit accumulated compensatory time, vacation, bonus time or holiday leave pursuant to Article 28, Section 18 of the CBA. Det. Orozco waives any right to appeal this Agreed disciplinary suspension and agrees no administrative or judicial body shall have power to review this agreed disciplinary suspension or alter the terms of this agreement as per Article 28, Section 16 of the CBA.

SECTION 5. In further consideration for the City's agreement(s) to reduce the Contemplated Indefinite Suspension of Det. Orozco to an agreed thirty (30) day suspension as set forth herein, Det. Orozco agrees to the following:

- A. Det. Orozco agrees that he will voluntarily withdraw and be removed from the SAPD Eligibility List for the rank of Sergeant in effect on the date of this agreement. Det. Orozco will be required to re-take the promotional exam and re-fulfill any and all requirements to be placed on any future promotional list for SAPD. Det. Orozco is eligible to re-take the promotional exam.
- B. Det. Orozco expressly agrees that he will not violate Rule 3.04(C) Conduct and Behavior, for one (1) year beginning on the date of this agreement and further agrees that if, at any time, during the one (1) year period beginning 4/17/2018 and ending on 4/17/2019, Det. Orozco does violate Rule 3.04(C) of the Rules and Regulations of the SAPD, then Det. Orozco shall be in violation of this Agreement and shall be indefinitely suspended from the SAPD as a term of this Agreement.
- C. Det. Orozco will enter the SAPD's Officer Concern Program and continue any program or individual requirements as may be imposed upon him by the SAPD's Officer Concern Program, until released from supervision under that program.
- D. Following the execution of this Agreement, Det. Orozco shall begin or continue any program of counseling, mentoring, or training ordered by the Chief of Police.
- E. Prior to returning to regular duty, Det. Orozco shall satisfactorily complete any training classes or programs through the SAPD Training Academy or elsewhere as deemed necessary and ordered by the Chief of Police.
- F. Upon return to active duty after serving the agreed disciplinary suspension as set forth in this Agreement, Det. Orozco will be placed on

Administrative Duty until such time as he is given a permanent assignment by the Chief of Police.

- G. The Chief of Police shall have the discretion to assign Det. Orozco to any position based upon the operational needs of the SAPD and may impose any additional duty restrictions ordered by the Chief of Police. Det. Orozco expressly understands and agrees that he will be transferred out of the Robbery Division. Det. Orozco agrees that his transfer out of the Robbery Division and into a new assignment is a voluntary transfer. Det. Orozco will be prohibited from working in the Robbery Division

SECTION 6. Det. Orozco may appeal to the Firefighters' and Police Officers' Civil Service Commission or to a third party hearing examiner under the provisions of Chapter 143 of the Texas Local Government Code and the CBA *only* the question of whether a violation of this Agreement occurred. Det. Orozco expressly waives the right to appeal the level or severity of any discipline imposed for a violation of this Agreement, including but not limited to indefinite suspension.

SECTION 7. This Agreement in no way limits the SAPD's ability to discipline or indefinitely suspend Det. Orozco for conduct arising before or after the date of this Agreement not addressed herein. This Agreement does not limit the SAPD's right to use or make reference to this Agreement or any other prior discipline to justify a decision to discipline or indefinitely suspend Det. Orozco for any conduct arising during, before or after the execution of this Agreement.

SECTION 8. The filing of this Agreement with the Civil Service Commission will notify them of this agreement and the factual basis for this Agreement and Det. Orozco and his attorney, Robert Leonard agree that the notice and filing requirements of Chapter 143 of the Local Government Code and/or CBA have been fulfilled.

SECTION 9. In consideration of the agreements set forth herein, Det. Orozco agrees that he has no right to appeal the suspension referenced above, and that he must, as a term of his employment, comply with the other requirements of this Agreement, as set out above.

SECTION 10. It is further agreed and understood that by execution of this Agreement, Det. Orozco does hereby relinquish and waive any right to appeal said suspension to the civil service commission, a third-party arbitrator, the district court, or any other court having competent jurisdiction and that this Agreement is intended to be a full and final settlement of any and all claims, demands, causes of action, whether known or unknown, whether asserted or not having yet been asserted, arising out of the aforesaid agreed disciplinary suspension. Det. Orozco further agrees that he will not contest this Agreement or contest the validity of this agreement in any proceeding whatsoever, including, but not limited to, an administrative proceeding before the civil service commission, a proceeding before an arbitrator or hearing examiner, or a proceeding before a court of law.

SECTION 11. DET. OROZCO, FOR HIMSELF, HIS HEIRS, EXECUTORS, AND ASSIGNS, DOES HEREBY RELEASE, DISCHARGE, AND ACQUIT THE

CITY OF SAN ANTONIO, TEXAS, ITS SUCCESSORS, ASSIGNS, OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES, HIS HEIRS, EXECUTORS, ASSIGNS, AGENTS, SERVANTS, AND EMPLOYEES, AND WILLIAM P. MCMANUS, HIS HEIRS, EXECUTORS, ASSIGNS, AGENTS, SERVANTS, AND EMPLOYEES FROM ANY AND ALL ACTIONS, CAUSES OF ACTION, INCLUDING THOSE ARISING OUT OF CHAPTER 554 OF THE TEXAS GOVERNMENT CODE, CLAIMS, OR DEMANDS FOR DAMAGES, COSTS, EXPENSES, COMPENSATION, OR CONSEQUENTIAL DAMAGES, KNOWN OR UNKNOWN, ASSERTED OR NOT, ARISING OUT OF THE AFORESAID SUSPENSION.

SECTION 12. Det. Orozco acknowledges that he has relied upon his own judgment and that of his attorney, Robert Leonard, in negotiating this Agreed Suspension and Last Chance Agreement and that he has carefully read the agreement, that he knows and understands the contents of the agreement, and that he is satisfied with the contents of the agreement.

SECTION 13. This agreement may not be introduced into evidence or used for any purpose in any legal proceeding, arbitration, or grievance hearing before a court, arbitrator, panel or the Civil Service Commission as evidence of disparate treatment, nor as evidence relating to the appropriateness of any disciplinary suspension imposed on any SAPD officer other than Det. Orozco unless controlled otherwise by law, including the Public Information Act, by Subpoena or Court Order.

SECTION 14. Det. Orozco acknowledges that he has waived the right to file an appeal of the disciplinary suspension agreed to herein, and has agreed to limit his right to appeal any future disciplinary suspensions pursuant to the provisions of Chapter 143 of the Texas Local Government Code and the current or past CBA. Det. Orozco further acknowledges that this Agreed Suspension and Last Chance Agreement does not violate any provision of the aforementioned current or past CBA, that it does not constitute an amendment to any of those agreements, and that it does not change or alter the standards, privileges and/or working conditions enjoyed by SAPD officers for purposes of Article 8 of the CBA.

SECTION 15. It is understood and agreed by the Parties that the terms of this Agreement are considered to be material contractual terms and not merely recitals, and that the terms set forth in this Agreement constitute the entire agreement between the parties. No claimed additions, modifications or amendments to this Agreement, nor any claimed waiver of any of the terms or conditions, shall be effective, unless in writing and signed by all of the Parties.

ACKNOWLEDGEMENTS:

I, Det. Orozco hereby acknowledge receipt of the original of the foregoing Agreed Suspension and Last Chance Agreement.

I acknowledge having received notification of my right to file, within ten days from the date of receipt of the instant suspension, a written appeal of this suspension with the

Personnel Director of the City of San Antonio requesting either arbitration or the hearing of my appeal by the Fire Fighters' and Police Officers' Civil Service Commission.

I acknowledge that I have been informed that if I appeal to a hearing examiner/arbitrator, I waive all rights to appeal to a district court except as provided by subsection 143.057(j) of the Texas Local Government Code.

I also acknowledge that I have been informed that my right to appeal the decision of a hearing examiner/arbitrator to district court pursuant to section 143.057 of the Texas Local Government Code may have been modified by the provisions of article 28 of the current Collective Bargaining Agreement by and between the City of San Antonio and the San Antonio Police Officers' Association.

I further acknowledge that in light of my entry into this Agreed Suspension, I shall have no right to appeal said suspension nor will any administrative or judicial body have power to review same or alter its terms.

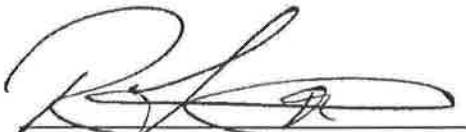
I do hereby waive any and all rights to appeal said suspension and no administrative or judicial body shall have power to review same or alter its terms.


DET. OROZCO HEREBY ACKNOWLEDGES THAT HE HAS CAREFULLY READ THIS AGREEMENT AND KNOWS THE CONTENTS OF THE AGREEMENT AND AFTER CONSULTING WITH HIS ATTORNEY AS TO THE MEANING AND EFFECT OF THIS DOCUMENT, HAS SIGNED IT AS HIS OWN FREE ACT AND DEED.

EXECUTED IN DUPLICATE ORIGINALS on June 27, 2018.


DET. OROZCO, #2002
POLICE OFFICER


WILLIAM P. McMANUS
POLICE CHIEF


ROBERT LEONARD
ATTORNEY FOR DET. OROZCO


MICHAEL D. SIEMER
ASSISTANT CITY ATTORNEY


MICHAEL HELLE
PRESIDENT SAPOA

6/28/18 Received by:


Yvette Ramirez
for FMP Com

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LEGAL ADVISOR'S OFFICE

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