



CITY HALL
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Veronica Vasquez

Maribel G. Reyna
CITY MANAGER

August 16, 2023

Rafael Silva
2330 High Street
Delano, CA. 93215

Re: FINAL NOTICE OF DISCIPLINARY ACTION – TERMINATION

Dear Mr. Silva,

This correspondence shall serve as your written Notice to Terminate your employment effective August 16, 2023, as a Community Service Officer with the City of Delano. Your final paycheck will be issued on September 1, 2023. This discipline is based on the skelly officer's decision to uphold the termination dated August 3, 2023 and the findings of an internal affairs investigation, which was initiated on March 23, 2023, regarding allegations you violated City and Department policy as noted below.

Policies Violated:

DPD Policy 320.5.2 (g) – ETHICS – any other failure to abide by the standards of ethical conduct.

DPD Policy 320.5.3 – Discrimination, Oppression or Favoritism

DPD Policy 320.5.9 (f) – CONDUCT – Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.

DPD Policy 320.5.9 (h) - CONDUCT – Criminal, dishonest, or disgraceful conduct, whether on or off duty, that adversely affects the member's relationship with this department.

DPD Policy 320.5.9 (m) – CONDUCT – Any other on or off duty conduct which any member knows or should reasonably know is unbecoming a member of this department, is contrary to the good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

DPD Policy 1027.4 (c) – PROHIBITED SPEECH, EXPRESSION AND CONDUCT – Speech or expression that could reasonably be foreseen as having a negative impact on the

credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.

Your conduct is also in violation of the following section(s) of the City of Delano Rules and Regulations:

18.02 (#8) Gross misconduct.

18.02 (#12) Discourteous treatment of the public or other employees.

18.02 (#16) Violation of any of the provisions of these working Rules and Regulations or departmental Rules and Regulations

18.02 (#17) Failure to abide by the ordinary and reasonable rules of behavior observed by law-abiding citizens or other failure of good behavior either during or outside of duty hours which is of such a nature that it reflects unfavorably upon or causes discredit to the City.

Incident(s):

The factual basis for the cited violation(s) is set forth in #IA 23-05, which is incorporated herein by this reference. The facts of your violation(s) are summarized generally as follows:

On April 6, 2023, the FBI National Threat Operations Section, Social Media Exploitation Team, received a tip from a subject regarding TikTok user “philbaker33,” making threats of mass violence towards transgender individuals, with an AR-15. Based on the nature of the messages, the FBI began investigating the postings and the individual associated with them. The threatening comments were as follows:

- “Oh my dutchess, it’s funny you think you have any form of power. The only power youll see is the one from from a barrel and a 9mm.”
- “I’ve lifted my AR, high than your rights”
- “But my AR will track y’all down like it did Aubrey from Tennessee.”¹
- “Send me the addy, I’ll pull up on you.”
- “Send me the addy, I’ll pull up rn.”
- “Don’t worry bro. You’re next. We gonna find you. You ain’t safe. We finna change your pronouns soon. Was/were.”

Based on its investigation, the FBI subsequently identified you as the subscriber for the philbaker33 TikTok account based on your name, date of birth, email address, location, and IP address. At the time, you were serving as a Police Officer with the City and the City’s Police Department was notified of the messages. During your investigative interview, you acknowledged that you sent the comments.

¹ This appears to be a reference to the Nashville school shooting that happened shortly before the messages were posted.

Your messages described above were threatening and derogatory. Your messages threaten and advocate violence against others. Moreover, they appear to demonstrate bias against individuals based on their protected status. Indeed, your comments were so threatening and derogatory that they led to a complaint to law enforcement, a law enforcement investigation, and law enforcement contacting the City regarding the comments. Your actions brought discredit to the City in the eyes of outside law enforcement agencies and wasted federal and local law enforcement efforts. Your conduct is unacceptable for a City employee, especially an employee working for the City's Police Department. It is even more egregious in that you were serving as a peace officer at the time the comments were made. However, even as a Community Service Officer, you are required to interface with and give directives to members of the public, and are given a significant amount of authority and deference. Your conduct is incompatible with this trust and responsibility.

Conclusion:

Your conduct meets the causes for disciplinary action listed in the Personnel Rules and Regulations Sections 18.02 (8), (12), (16), (17); and DPD Policies 320.5.2(g), 320.5.3, 320.5.9 (f), 320.5.9 (h), 320.5.9 (m), and 1027.4 (c). Your conduct was dangerous, irresponsible, and caused discredit to the City. Your actions cannot be tolerated by the City or the Police Department. Accordingly, I am recommending your termination from employment.

Acknowledgement:

I have read this Final Notice of Disciplinary Action - Termination. In addition, I understand that under Section 18.07 of the City of Delano Personnel Rules and Regulations, I have (10) calendar days after receipt of written notice of such disciplinary action within which to file an appeal to the City Manager. Failure to file an appeal within such period constitutes a waiver of right to appeal. The appeal must be in writing, signed by the appellant, and must state specifically the reasons upon which it is based. If I choose to request an appeal, my correspondence must be received by the City of Delano within ten (10) calendar days of this letter and shall be addressed as follows:

City of Delano
Attn: Maribel Reyna, City Manager
1015 Eleventh Avenue
P.O. Box 3010
Delano, CA 93216-3010

Notice of Service:

Signature: Rafael Silva
Rafael Silva

Date: 8-16-13

Served by: Sergeant Heriberto
Sergeant Heriberto

Date: 8-16-13

The following excerpts from the City of Delano Personnel Rules and Regulations describe the Pre-disciplinary Conference:

18.07 Right of Appeal

Any regular employee shall have the right of appeal to the City Manager regarding the following disciplinary actions: reduction in pay, demotion, suspension, and discharge. Such appeal must be filed with the City Manager within ten calendar days after receipt of written notice of such disciplinary action. Failure to file an appeal within such period constitutes a waiver of right to appeal. The appeal must be in writing, signed by the appellant, and must state specifically the reasons upon which it is based.

18.08 City Manager Hearing

A hearing on an appeal shall be conducted within ninety days after receipt thereof. The City Manager may continue the hearing for the convenience of the City; or, upon written application of the appellant, for a period not to exceed an additional fifteen days from the receipt of the appeal. Written notice of the time and place of the hearing, and any continuance thereof, shall be given to the appellant. Such hearings shall be conducted in accordance with the provisions of Sec. 11513 of the Government Code of the State of California, except that the appellant and other persons may be examined as provided in Sec. 19580 of said Government Code and the parties may submit all proper and competent evidence against or in support of the causes.

If you have any questions regarding this matter, please feel free to contact Human Resources Director, Noemi Zamudio, at (661) 720-2210.

Respectfully,



Maribel Reyna
City Manager

cc: Personnel File

Exhibits

A. (IA 23-05):

- a. Receipt of Complaint
- b. FBI emails
- c. Internal Affairs History
- d. Internal Affairs forms
- e. Policy Acknowledgments
- f. Miscellaneous papers
- g. Recorded interviews

B. Delano Police Department Policy

- a. 320.5.2(g)
- b. 320.5.3
- c. 320.5.9(f)
- d. 320.5.9(h)
- e. 320.5.9(m)
- f. 1027.4(c)

C. City of Delano Rules and Regulations

- a. 18.02
- b. 18.03
- c. 18.04
- d. 18.05
- e. 18.06
- f. 18.07
- g. 18.08
- h. 18.09
- i. 18.10
- j. 18.11
- k. 18.12

D. Skelly Determination

file. If the notice is to abandon all action, the notice of intended disciplinary action shall be removed from all personnel files.

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18.09 Representation

The appellants may appear in person or be represented by their Union Representative or Legal Counsel.

18.10 Notices to Witnesses

The City Manager shall issue notices for the appearances of witnesses for the appellant upon written request.

18.11 Failure to Appear at Hearing

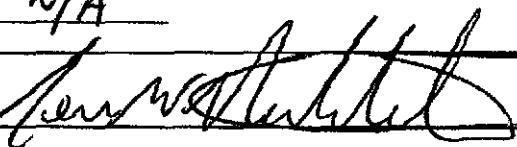
Failure of the appellant to appear at the hearing shall be deemed a withdrawal of an appeal and the action of the City Manager or Department Head shall be final.

18.12 Decision of City Manager

The City Manager shall thereafter render a written decision within thirty days after concluding the hearing. The City Manager's decision shall be final and conclusive. If the disciplinary action taken against the employee is reversed or modified by the City Manager, the employee may be compensated, in whole or in part, for the time lost at the sole

discretion of the City Manager. A copy of the City Manager's decision shall be forwarded to the employee. It shall be the responsibility of the employee to inform the City of his/her address. The City may also provide the final written findings and decision by e-mail.

**DELANO POLICE DEPARTMENT
INTERNAL INVESTIGATION FINAL REVIEW (POST SKELLY)**

I.A. # 23-05	Accused Name: RAFAEL SILVA		
Skelly Meeting Date: 08/03/2023	Represented By: Alexander Scott		
CHIEF OF POLICE: JERRY NICHOLSON			
THE FINAL DISCIPLINE TO BE IMPOSED IN THE INTERNAL AFFAIRS INVESTIGATION IS: TERMINATION			
Mitigation offered by Silva			
<p>Mitigation offered by Silva</p> <ul style="list-style-type: none"> • Lack of Disciplinary past, Work performance never below standard • Acknowledgment of Violations, Apologetic for embarrassing himself and department • Previous recipient for Officer of the Year award • Admits and acknowledges the gravity of the violations • Began professional counselling • Statements not made to threaten. No intention to follow through 			
<p>My Opinion: Due to the present violations relating to a criminal threats offense and hate crime, violation of Department Policies and City of Delano Rules & Regulations, I recommend Termination.</p>			
<input type="checkbox"/> DPD MEMBER HAS AGREED TO WAIVE APPEAL RIGHTS <input checked="" type="checkbox"/> DPD MEMBER DID NOT WAIVE APPEAL RIGHTS			
<input type="checkbox"/> ALL OR A PORTION OF THE SUSPENSION TO BE SERVED BY FORFEITURE OF ACCUMULATED HOLIDAY, CTO, AND/OR VACATION HOURS. INDICATE MAXIMUM ALLOWED HOURS FOR THIS PURPOSE. <u>N/A</u>		<input type="checkbox"/> SUSPENSION TIME OFF <u>N/A</u>	
SIGNATURE: 		DATE: 8/3/23	