



MEMORANDUM

TO: Stephen Gesell, Chief of Police

FROM: Scotty A. Douglass, City Manager

DATE: September 7, 2023

SUBJECT: **NOTICE OF INTENT TO TERMINATE CITY EMPLOYMENT**

Pursuant to Section 8 of the City of Cottonwood Employee Manual, 2021 edition, I am writing to advise you of my intent to terminate you from your employment with the City of Cottonwood as Chief of Police.

This decision is based on results of an independent investigation conducted following your actions during and after the May 9, 2023 City Council Special Meeting and your contributions to the Reasonable Cause Determination issued to the City by the Arizona Civil Rights Division, all of which violate several City and Police Department policies as outlined below.

The findings regarding the events of May 9, 2023, are set forth in detail in the September 5, 2023 Report of Investigation by Geoffrey M.T. Sturr, which is incorporated by reference. In summary, the investigation found the following:

On May 9, 2023, you learned the City Council was to be briefed on a recent Reasonable Cause Determination issued to the City from the Arizona Civil Rights Division (ACRD) of the Arizona Attorney General's Office to receive legal advice and provide instruction to legal counsel on possible settlement.

You were directed by then-Interim City Manager Rudy Rodriguez that you would not be needed to participate in the executive session (as the purpose was for the Council to obtain legal advice and provide direction to legal counsel, not to revisit the merits of the ACRD's findings). Nevertheless, you directly contacted Council Member Helaine Kurot to lobby for your attendance at the executive session, stating: "FYI. Rudy is attempting to keep me out of the executive session. It is either incompetence or malicious intent or both. I'm going to call him out if invited in. Horton is possibly involved but I'm speculating. Get me in please." You also called Council Member Lisa DuVernay expressing your desire to participate in the Council's executive session.

You then spoke to Mayor Tim Elinski during a break between the work session and special meeting. You advised Mayor Elinski that Mr. Rodriguez was attempting to "block" you from presenting information to the Council and insisted that you be allowed to participate in the executive session. Your demeanor during this conversation was irritated, agitated, angry, curt, disrespectful, and rude.

Despite your exclusion, you attempted to remain present for the executive session. Ultimately, you acquiesced to remain available outside the Council Chambers, at the request of Council, during the executive session.

At the conclusion of the meeting, you had an interaction with then-Interim City Manager Rudy Rodriguez during which you expressed agitation at being excluded from the executive session. You were hostile and aggressive while questioning Mr. Rodriguez and ignored his request to defer the issue until the following morning. Instead, you insistently made multiple requests in an angry and demeaning tone demanding that he give you answers immediately. You visibly lost control of your temper and yelled at Mr. Rodriguez on the street in front of the Council Chambers in the presence of other employees, Council Members, and members of the Public. The confrontation ended with you verbally yelling "this is a travesty" and "this is not over, Rudy." This left Mr. Rodriguez with the impression that he could be at risk of physical harm if the situation were not diffused.

As noted above, these interactions have been confirmed through an independent investigation. Your actions violated the following policies:

City of Cottonwood Employee Manual, 2021 edition, Section 8 – Corrective Action

- Discourtesy to another employee or to a member of the public
- Insubordination
- Any act, error, or omission detrimental to the mission of the City
- Any action, on or off the job, that brings discredit to the City

Cottonwood Police Department Policy Manual

- Section 321.5.1(a) – Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.
- Section 321.5.8(e) – Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- Section 321.5.8(i) – Any Act on-or off-duty that brings discredit to the department.
- Section 321.5.9(f) – Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
- Section 321.5.9(m) – Any other on or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

Additionally, you are found to have committed policy violations based on your discriminatory actions towards a female police officer. The ACRD's Reasonable Cause Determination outlines reasonable cause to believe that the Cottonwood Police Department discriminated against a female employee on the basis of a disability in violation of A.R.S. § 41-1463(B)(1). With regard to your conduct, the Reasonable Cause Determination states, in pertinent part:

- In June 2022, [the Charging Party] was released to return to full duty with no restrictions by a licensed psychologist based on an independent medical examination.
- In an email dated June 13, 2022, [Chief Gesell] stated that returning [Charging Party] to Detective was inappropriate because it "conflicts with the allegations alluded to in the AG [charge of discrimination] potentially placing the employee and employer [in] available positions before more is known."
- During his interview with the [ACRD], Gesell testified that he could never justify giving [Charging Party] "any type of concession like putting her back [in Investigations as a Detective]."
- [Charging Party] returned to work in June 2022 and instead of resuming her role as a Detective, she was informed by Gesell that she would be reassigned to Patrol Officer with supervision by a Field Patrol Officer. The reassignment from Detective to Patrol Officer resulted in a 5% salary decrease for [Charging Party] and a less favorable shift assigned that included weekend swing shifts.

In addition, during your interview with the ACRD and other communications, you expressed a belief that despite the female officer being released to return to duty with no restrictions, she may be mentally unfit to be a Detective.

You rejected the advice of a medical professional and decided to impose an adverse employment action on a female officer based on your own conjecture about her medical condition. Utilizing unsubstantiated concern over mental health as a reason to change an assignment of an employee after the employee was cleared by a medical physician to return to full duty was a clear violation of laws prohibiting disability discrimination. This decision contributed to a claim against the City, which in turn violated Employee Manual, 2021 edition, Section 8.II. Any act, error, or omission detrimental to the mission of the City and Any action, on or off the job, that brings discredit to the City.

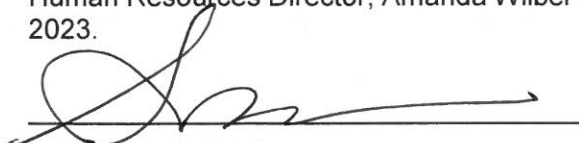
Your actions forced the City to devote significant resources to responding to the allegations of discrimination and participating in the ACRD's investigation. Ultimately, the City entered into a conciliation agreement that includes, among other terms, a payment of \$67,142.92 of taxpayer money to resolve potential liability that was created, at least in part, by your actions.

In determining the appropriate discipline, I have also considered your combative and remorseless behavior and your lack of self-awareness or acceptance of any responsibility. Your conduct is particularly troubling given your role as the leader of a paramilitary organization. Given your long history in law enforcement, you undoubtedly understand the importance of leading by example and respecting the chain of command. I find it deeply disturbing that you exhibited disrespect and hostility to your superior, the interim City Manager; privately and publicly displayed insubordination; and exhibited an inability to control your behavior and emotions.


Although I am not required to outline the grounds on which I intend to terminate you, as you are an at-will employee serving at the pleasure of the City Manager, it is important for me to convey to you that I have come to this decision based on your own choices and actions. You have lost my trust in your ability to act in the best interests of the Police Department and City as a whole. You have shown that you are unable to set aside your personal feelings regarding matters with which you do not agree and you are unable to follow direct orders when you feel it does not align with your agenda. I have no tolerance for disrespectful behavior and gross mistreatment of other employees and have decided that you are not fit to remain part of the City's executive team.

Pursuant to Section 8.IV. of the City's Employee Manual, 2021 edition, I have scheduled a 45-minute pre-disciplinary conference with you for Tuesday, September 12, 2023, at 1:00 p.m. via Teams. The Teams link will be e-mailed to you prior to your pre-disciplinary conference. At this pre-disciplinary conference, you will have an opportunity to rebut the allegations of misconduct or offer any reasons why you should not be dismissed. You are permitted to submit a written response in lieu of or in addition to your pre-disciplinary conference. Following the pre-disciplinary conference, you will receive written notice of my final decision.

If you do not wish to attend the September 12 pre-disciplinary meeting to rebut your dismissal, please notify the Human Resources Director, Amanda Wilber at awilber@cottonwoodaz.gov, prior to 9:00 a.m. on September 12, 2023.



Scotty Douglass, City Manager



Date

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Attachments: Report of Investigation dated September 5, 2023
ACRD Findings and Cause Determination dated April 25, 2023
Section 8 of the City of Cottonwood Employee Manual, 2021 Revision
Section 321 of the Cottonwood Police Department Police Manual

cc: Amanda Wilber, Human Resources Director
Jenny Winkler, City Attorney
Steve Coleman, Outside Counsel