

## ORDER OF REMOVAL

# COPY

Gerald Miller  
Police Officer  
Fresno Police Department  
City of Fresno

Under the provisions of Section 3-282 of the Fresno Municipal Code (FMC), you are hereby notified of the decision of your appointing authority to remove you from your position as Police Officer in the Fresno Police Department and from City employment.

On September 16, 2016, you were served with a Notice of Proposed Removal (Exhibit B). You were given a period of ten (10) calendar days from the date of service to respond, either verbally or in writing, to the charges therein. At your request, a Skelly meeting was held on October 7, 2016, during which you were given an opportunity to respond to the charges contained in the Notice of Proposed Removal and provide additional information to be considered before a final determination was made. You, Chief Jerry Dyer and Deputy Chief Robert Nevarez were present at the meeting. A further opportunity to respond to these charges was also provided to you in correspondence dated October 14, 2016. Your response was duly considered, and the determination has been made to uphold the Proposed Order of Removal. The City will therefore proceed with the Order of Removal.

### GROUND FOR REMOVAL

The authority for this proposed removal is contained in Section 3-282 of the Fresno Municipal Code.

The grounds for this proposed action is contained in the Fresno Municipal Code Section 3-286(a) and (c):

**Fresno Municipal Code Section 3-286(a):** Any employee holding a position in the classified service may be suspended without pay or removed from such position for malfeasance, misconduct, incompetence, inefficiency, or for failure to perform the duties of his position or to observe the established rules and regulation in relation thereto, or to cooperate reasonably with the superior or fellow employees.

**Fresno Municipal Code Section 3-286(c):** Any permanent or chronic physical or mental ailment or defect which incapacitates an employee for the proper, safe, and efficient performance of duties of his position.

### FACTUAL BASIS

This action is necessary after the exhaustion of the Interactive Process based upon the functional limitations imposed by your medical provider Dr. Marcel Ponton.

Your last day of regular work was October 13, 2015 and your department provided you with a Modified Assignment intermittently from December 9, 2015 through March 27, 2016 for a total of eleven days worked. Your paid leave balances were exhausted on December 8, 2015. You have been on Leave Without Pay since March 28, 2016.

Panel Qualified Medical Examiner (PQME), Dr. Marcel Ponton, identified work restrictions in his September 10, 2010 Comprehensive Evaluation (Exhibit 1). It was stated that you should not to be supervised by Sergeant Alvarez, nor should he have any input over your job conditions or performance.

Your department had reasonably accommodated this restriction up until October 5, 2015, at which time there was a change in position for Mr. Alvarez, as he was promoted to Lieutenant. The scope of duties and supervisory essential job functions of a Police Lieutenant are much broader than a Sergeant, encompassing all policing districts, and the City of Fresno as a whole. Therefore, as the department can no longer provide a reasonable accommodation of ensuring you would not be supervised by Lieutenant Alvarez. Without a reasonable accommodation for your limitations and restrictions, you are precluded from continuing to work as a Police Officer for the Fresno Police Department.

The City of Fresno continued the Interactive Process with you based upon a change in the department's ability to provide a reasonable accommodation for your work restrictions as identified by Dr. Ponton. Because of the change in scope of supervisory duties of Mr. Alvarez, you would be precluded from being able to perform the full range of duties of a Police Officer in the Fresno Police Department. The following outlines this process:

1. September 10, 2010, a comprehensive evaluation report from Dr. Ponton discussed your limitations and restrictions of not working under the supervision of Mr. Alvarez (Exhibit 1).
2. Police Chief Jerry Dyer met with you on multiple occasions in the spring of 2011 as part of the Interactive Process, and offered you, as a reasonable accommodation, employment within any of the Fresno Police Department's policing districts. You elected to remain in your then current assignment, Eliminate Narcotics in Public Housing, which was based in the southwest policing district.
3. In October of 2014, you were assigned to a training class in which Sergeant Alvarez was an instructor. Based upon your interpretation of Dr. Ponton's work restrictions, you declined to participate in the class taught by Sergeant Alvarez. The City accommodated your concerns and secured an alternate instructor for you.
4. December 9, 2015, a comprehensive MMI evaluation report from Dr. Ponton reiterated your limitations and restrictions of having no contact with Mr. Alvarez, placing this work restriction as permanent (Exhibit 2).
5. March 30, 2016, an Interactive Process meeting was held. The purpose of the meeting was to discuss the change in conditions of your work environment due to the promotion of Mr.

Alvarez to Lieutenant on October 5, 2015. It was determined there were no reasonable accommodations identified for your current limitations and restrictions identified by Dr. Ponton; you are therefore precluded from continuing in your position as Police Officer for the Fresno Police Department. You were given options to consider, but stated that you needed processing time before you could make any decisions. The options were summarized in a recap letter dated April 5, 2016.

6. April 4, 2016, a follow-up email you sent the City whereby you acknowledged the City and your department could not reasonably accommodate your limitations and restrictions and you requested to have your options identified in writing (Exhibit 3).
7. April 5, 2016, the City sent you a letter via regular mail and email recapping your Interactive Process meeting from March 30, 2016 including the options discussed and stating that we would place a follow-up call to you on April 6, 2016 (Exhibit 4).
8. April 6, 2016 through June 3, 2016, a series of phone calls, voice mails, emails and letters were exchanged between you and the City regarding the Interactive Process and Alternate Work Search. These various communications, as well as a summary table is attached (Exhibit 5).
9. June 3, 2016, the City emailed you a list of potential job classifications available through the Alternate Work Search. In a phone call that day with the City, we discussed the contents of the email and you were advised that a change in retirement systems would occur if you transferred into another City position. We requested you provide us with a decision regarding your interest in these positions early the following week of June 6, 2016 (Exhibit 6).
10. June 8, 2016 through June 27, 2016, a series of communications were sent from the City to follow-up on your interest in the potential alternate positions. You were informed that for the City to move forward in the Alternate Work Search process, we needed your decision regarding accepting a change in retirement systems. These various communications, as well as a summary table is attached (Exhibit 7).
11. June 28, 2016, the City received an email from you stating that you still did not understand the process. You also stated that you believed the City was responsible to provide you with an alternate position at the same rate of pay and with the same benefits of those that you had as Police Officer, and that the options that had been presented to you would decrease your salary up to \$4,000 per month (Exhibit 8).
12. July 7, 2016, the City sent you a letter responding to your email dated June 28, 2016. You were provided with excerpts from the Fresno Municipal Code which regulates the job classification transfer of employees who become physically incapacitated for the performance of duties, as well as a copy of the Reasonable Accommodation Process, which is also available on the City's website (Exhibit 9).
13. October 14, 2016, Deputy Chief Nevarez sent you a letter regarding Exhibit 5 attached to the Notice of Proposed Removal. Inadvertently, one page of that Exhibit had scanned as a

blank page, therefore you were provided with a copy of the page that had been missing. You were given a period of ten (10) days to respond either verbally or in writing. No response was received (Exhibit A).

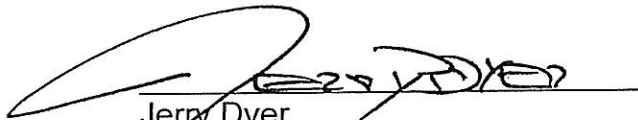
As a result of your declining to consider the potential available positions identified through the Alternate Work Search, and your limitations and restrictions which preclude you from performing the essential functions of a Police Officer based upon your permanent limitations and restrictions, it is necessary to proceed with this Order of Removal.

Upon receipt of this notice, please contact the Captain Lydia Carrasco at (559) 621-2151 to return all City property that may still be in your possession. You will be removed from the payroll at 5:00 pm on the effective date of this removal.

NOTICE TO EMPLOYEE:

Upon being served with this Order of Removal you may file with the Civil Service Board a written answer to the above allegations and charges and demand an appeal hearing before the Board. If applicable, you may expressly waive your right to a hearing before the Board and demand an appeal hearing under the alternate appeal procedure found in FMC Section 3-283. A demand for hearing before the Civil Service Board or the alternate appeal procedure shall be on the appropriate form provided by the Director of Personnel Services. You must file such form within fifteen (15) calendar days after service of this Order upon you or your right to such hearing will terminate and the Order shall be deemed final.

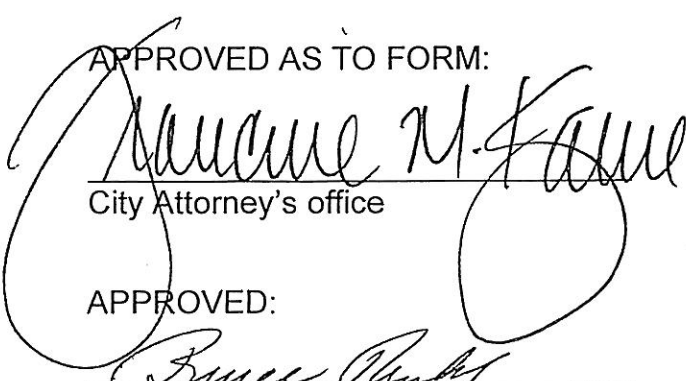
Dated this 31ST day of OCT 2016.

  
Jerry Dyer  
Fresno Chief of Police

APPROVED:

  
Personnel Services Department

APPROVED AS TO FORM:

  
City Attorney's office

APPROVED:

  
City Manager