

ORDINANCE NO. 2652

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS ADOPTING THE ATTACHED SUBSTANCE ABUSE POLICY AND AMENDING SECTIONS 5.5 OF THE CITY OF MESQUITE CIVIL SERVICE RULES AND REGULATIONS THEREBY INCORPORATING THE ENTIRE CITY OF MESQUITE DRUG TESTING POLICY AND PROCEDURES INTO SUCH CIVIL SERVICE RULES AND REGULATIONS AND AMENDING SECTION 8.1 OF THE CITY OF MESQUITE CIVIL SERVICE RULES TO CONFORM TO SUCH DRUG POLICY AND TESTING PROGRAM, PROVIDING A SEVERABILITY CLAUSE AND DECLARING AN EMERGENCY.

WHEREAS, drug and alcohol abuse is a source of concern for today's employers and employees alike with the estimated cost to the United States because of drug and alcohol abuse in the work place due to lost productivity in the billions of dollars a year; and

WHEREAS, users of drugs and alcohol have a higher absentee rate than other employees and are more likely to be injured on the job; and

WHEREAS, the City of Mesquite is dedicated to providing a drug free work place for its employees and believes such a workplace is in the best interests of the employees and all of the citizens of the City of Mesquite.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the Substance Abuse Policy attached hereto is adopted as the official Substance Abuse Policy of the City of Mesquite, Texas.

SECTION 2. That Section 5.5 of the Mesquite Civil Service rules is amended to read as follows, said section and rules in all other respects to remain in full force and effect:

Section 5.5 DRUG TESTING POLICIES AND PROCEDURES

1. POLICY

Effective immediately, any place the work and services of the City of Mesquite are done is declared a drug-free work place. This means:

The unlawful use, possession, distribution, dispensation, sale, or manufacture of any controlled substance while at work for the City of Mesquite is strictly prohibited. Controlled substances include illegal drugs, illicit drugs (including substances manufactured to look like controlled substances) and/or controlled substances and over the counter drugs including but not limited to narcotics (heroin, morphine, etc.), central nervous system stimulants (cocaine, diet pills, etc.) or depressants (tranquilizers), sedatives, anti-anxiety agents, hallucinogens (PCP, LSD, "designer drugs", etc.) marijuana, hashish and all other controlled, habit forming or performance altering substances and yet to be invented drugs. Reporting for work under the influence of any controlled substance is also prohibited. Any employee violating the above policy is subject to disciplinary action, up to and including termination for the first offence.

In addition, no employee shall consume alcohol while at work or on City property or be in possession of an open container of an alcoholic beverage while at work. No employee shall transport any open container of alcohol in a City vehicle or sell alcohol while at work or in a City vehicle, or on City property. Reporting for work under the influence of alcohol is prohibited. Any employee violating the above policy is subject to disciplinary action, up to and including termination for the first offence.

This policy will not include drugs prescribed by a physician to an employee if the employee has been advised by the physician that he/she can safely perform their work while taking the prescribed drug.

Employees have a right to know about the dangers of drug abuse in the work place, the City's policy about them, and what help is available to combat drug problems. This Section 1 spells out the City's policy, and all employees will receive a copy of this policy and be asked to acknowledge that they have read it and agree to abide by it in all respects. The City will be conducting an educational program on the dangers of drugs in the work place. Most important it is the City's objective to encourage and motivate employees with substance abuse problems to recognize and voluntarily seek professional assistance for these problems. The following help may be available for combating drug and alcohol abuse problems: Medical benefits for substance abuse treatment.

In addition, the City will provide supervisory training to assist in identifying and addressing illegal drug use by employees.

If an employee is convicted of violating a criminal drug statute for a violation occurring in the work place, he/she will be required to notify the City within five days of the conviction occurring. Failure to inform the City subjects the employee to disciplinary action up to and including termination for the first offense. By law, the City will notify any applicable federal granting agency within ten (10) days of receiving such notice from an employee or otherwise receiving notice of a conviction.

The City reserves the right to offer employees convicted of violating a criminal drug statute in the work place participation in an approved rehabilitation or drug abuse assistance program as an alternative to discipline, up to and including termination, with the employee required to participate satisfactorily as a condition of employment.

The City believes that rehabilitation is the preferred solution to any substance abuse problem from all standpoints, as it both protects our investment in a trained employee, and treats the individual concerned with dignity for what is in fact an illness. The City will therefore extend the rehabilitation option whenever possible. If an employee fails to avail him or herself of such help and violations of this policy do occur, the City will have little choice but to act severely against such violators in the interests of protecting all of our employees and the citizens of the City of Mesquite, and providing more cost efficient delivery of City services.

2. DEFINITIONS

Accident An occurrence associated with the operation of a City Vehicle, including a revenue service vehicle, whether or not such vehicle is in revenue service, where injury resulting in death, or requiring medical treatment to any person occurs, or property damage occurs.

Alcohol means alcohol or any beverage containing more than one-half of one per cent of alcohol by volume which is capable of use for beverage purposes either alone or when diluted.

Drug means a controlled substance as defined by section 1.02 of the Texas Controlled Substances Act and/or Section 202, Schedules I through V of the Federal Controlled Substances Act, including but not limited to marijuana, hashish, cocaine, heroine, morphine, opiates, amphetamines, barbiturates, phencyclidine (PCP), and hallucinogens.

Drug Testing means collection of a urine specimen by medical personnel and a laboratory analysis of that specimen by Enzyme Immunoassay (EMIT) screening and if appropriate confirmatory testing using the Gas Chromatography/Mass Spectrometry (GS/MS) methods and procedures, or the most current and appropriate technology.

Employee means all regular full-time and part-time, seasonal, and temporary employees.

Medical Review Officer means a licensed physician with knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's positive test result together with his or her individual medical history and any other biomedical information.

Reasonable Cause means a conclusion based on personal observation by any person of specific objective instances of employee conduct, subject to corroboration and documented in writing, that an employee is unable to satisfactorily perform his job duties due to use of drugs or alcohol. Such inability to perform may include, but is not limited to, a drop in the employees performance level or by impaired judgment, reasoning, level of attention or behavioral change or decreased ability of senses.

Physical characteristics indicating reasonable cause may be, among others, a pattern of abnormal or erratic behavior, physical symptoms such as glassy or bloodshot eyes, slurred speech, unsteady gait, poor coordination or reflexes, or direct observation of drug or alcohol use. Information provided by a reliable and credible source or possession of drugs or alcohol will constitute a basis for reasonable cause.

Revenue Service Vehicle means a bus, car, van, railcar, locomotive, trolley car, trolley bus, ferry boat, or vehicle used on a fixed guideway or incline plane used to transport passengers.

Safety Sensitive Position Means those positions that entail the operation and/or maintenance of City vehicles or equipment where employee use of drugs or alcohol could create a safety hazard and cause injury or harm to the employee, or other employees or citizens or damage to property.

Security Sensitive Position Means those positions that entail responsibility for City of Mesquite monies, materials, supplies, or other assets readily convertible to cash, and all executive, administrative and professional positions responsible for administrative and/or executive decision making.

Sensitive Safety Function Means any duty related to the safe operation of mass transportation service by the City of Mesquite for which the City of Mesquite is a Recipient of a grant from Urban Mass Transportation Administration, including the operation of a revenue service vehicle, whether or not such vehicle is in revenue service, controlling the dispatch or movement of a revenue service vehicle, maintaining revenue service vehicles or equipment used in revenue service or directly supervising an employee who performs a sensitive safety function as outlined herein.

3. DRUGS TO BE TESTED FOR When drug and alcohol screening is required under the provisions herein a urinalysis test will be given to detect the presence of the following drug groups: THC (marijuana), cocaine , hashish, opiates (e.g., codeine, heroine, morphine), phencyclidine (PCP), amphetamines (e.g., speed), barbiturates (e.g., amobarbital, butibarbital, phenobarbital, secobarbital), methaqualone (e.g., quaalude), methadone, alcohol, and substances similar to these listed.

4. TESTING PROCEDURE

a. Notice Individuals subject to drug tests herein shall be informed of the substances they will be tested for evidence cf.

b. Laboratory A qualified laboratory certified by the Department of Health and Human Services shall do the drug testing, following approved procedures.

c. Consent Upon the passage of these drug testing policies and procedures, all current employees of the City of Mesquite will be requested to execute a consent agreement stating that they have been informed of the City's policies and procedures as they apply to them and they consent to drug testing as required by such policy and procedures

Before a drug and/or alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting the release of the information to those City officials with a need to know. The consent form shall provide space for the employees and applicants to acknowledge that they have been informed of the City's drug testing policy and to indicate the current or recent use of prescription or over the counter medication.

d. Confirmation of test results An employee or applicant whose drug test yields a positive result shall be given a second test using a GS/MS test. The second test shall use a portion of the same test sample withdrawn from the employee or applicant for use in the first test.

If the second test confirms the positive test result, the applicant or employee shall be notified of such result and in the case of an applicant he/she shall not be eligible for employment with the City and may not re-apply for a period of one (1) year. An employee shall be subject to disciplinary action.

If the re-test yields a negative result, the employee or applicant will be deemed to have passed the drug test.

All review, verification, and reporting of drug test results shall be performed by the medical review officer.

e. Security of Data The results of all drug or alcohol tests shall be treated in a highly confidential manner, and only those management and supervisory persons with a need to know shall be advised of test results. All written test results shall be mailed by the medical review officer to the personnel Director in an envelope marked personal and confidential and only the Personnel Director shall examine this mail.

Management and supervisory personnel with a need to know shall include the City Manager, City Attorney, Personnel Director, Department Head, Superintendent, and the employees immediate supervisor.

5. JOB APPLICANT TESTING AND NOTIFICATION

a. Jobs Requiring Testing Applicants for all positions with the City of Mesquite will be required to pass a drug test as a condition of employment.

b. Notification Applicants will be notified of the drug testing component of the examination at the time of application and will be given the opportunity to withdraw their applications at that time or after receipt of the test results.

Applicants will be notified that if hired, they will be subject to drug testing as employees as set forth in Section 6.

c. Consent An applicant will be requested to sign a consent form authorizing the testing and the use of the test results in employment decisions.

d. Refusal A job applicant refusing to take a drug test and/or sign a consent form will not be considered for employment, and such refusal will be a bar to employment with the City for a period of one (1) year.

e. Medical Prescriptions and Over the Counter Drugs If an applicant is taking a medical prescription, the applicant must furnish a statement from a physician specifying the drug being taken. Applicants will also be required to list all over the counter medicines they are taking. If the physician statement and/or the list of over the counter medicines is submitted in advance of the drug test, the City of Mesquite may choose not to reject an applicant having a positive drug test result because of the medical prescription or the over the counter medicines.

f. Promotions or Transfers Employees who seek transfers or promotions into other positions will not be required to submit to drug testing unless they are transferring or promoting to a position where duties include a sensitive safety function. All employees seeking to promote or transfer from a non-safety or security sensitive position or non-sensitive safety function to such a position will be notified that they will be subject to the applicable provisions of Sections 6.

6. CURRENT EMPLOYEE TESTING

a. Notice All employees of the City of Mesquite will be notified of the Substance abuse policy and drug testing procedures of the City, and that violation of these policies will subject the employ to discipline which could include dismissal.

b. Reasonable Cause Testing Based upon reasonable cause, employees will be required to submit to testing for drug or alcohol use. Prior to such testing, employees will be required to sign a form consenting to testing. Failure or refusal to sign the consent form or to submit to testing will be cause for a charge of insubordination, will result in disciplinary action, which could include dismissal.

A supervisor who has reasonable cause to believe that an employee has ingested, inhaled or injected a drug or has ingested an alcoholic beverage when reporting for or while on duty must:

- i. Prohibit the employee from working or continuing to work
- ii. Notify a department executive or division head and request a personal observation and review of specific objective instances of employee conduct to confirm that reasonable cause exists. The employee may not be subject to testing without the confirmation of reasonable cause by an executive or a division head.
- iii. Transport the employee to the designated medical facility identified by the City of Mesquite for drug testing. After testing, arrangements should be made for the safe transportation to the employee's residence or a place selected by a relative or friend of the employee. The supervisor must not allow the employee to drive himself at any time herein.
- iv. Prepare appropriate documentation and take appropriate disciplinary action.
- v. If facts and circumstances warrant, the employee may be encouraged to consult with their private physician concerning rehabilitation in addition to disciplinary action.

c. Post Accident Testing An employee who contributes to an accident or can not be completely discounted as a contributing factor to an accident will be subject to the procedure set out in Section 6.b. above. A decision not to administer a drug test under this section shall be made by a director, division head, or supervisor who was not involved in the accident. That persons decision shall be based on the best information available at the time. If a post-accident drug test is required, the urine sample for such test shall be collected as soon as possible but not later than thirty-two (32) hours after the accident.

d. Random Testing for Safety and Security Sensitive Positions An employee in a safety sensitive position or a security sensitive position will be subject to drug testing on an unannounced random basis. An employee will be selected for testing on a random basis by using a scientifically valid random number generation method.

e. Random Testing of an Employee who Performs a Sensitive Safety Function An employee who performs a sensitive safety function shall be subject to drug testing on an unannounced random basis. During the first twelve (12) months following the institution of random testing on January 1, 1990, the testing shall be spaced reasonably through the twelve (12) Month period with the total number of tests administered being equal to at least twenty-five percent (25%) of all employees who perform sensitive safety functions. The last test collection during the first twelve (12) months and all subsequent test collections shall be at an annualized rate of fifty percent (50%) of all employees who perform sensitive safety functions. An employee shall be selected for testing on a random basis by using a scientifically valid random number generation method.

f. Current Employees Applying For Transfer or Promotion into a Sensitive Safety Function A current employee of the City of Mesquite applying for transfer or promotion into a sensitive safety function shall be required to pass a drug test. All notice and consent requirements set out in Section 4 and 5 above shall be met.

g. Return to Duty Testing An employee who has refused to take or did not pass a drug test may not return to a safety or security sensitive position or safety sensitive function until the employee passes a subsequent drug test and the medical review officer has determined that the employ may return to his or her safety or security sensitive position or safety sensitive function. An employee who must be tested under this Section 5.g. may be administered an unannounced drug test for up to sixty (60) months after the employee returns to a safety or security sensitive position or sensitive safety function.

h. Testing Procedures for Safety Sensitive Functions The laboratory conducting drug tests from employees or applicants for safety sensitive functions shall follow the chain of custody and testing procedures set out in 49 CFR Part 40. A copy of 49 CFR Part 40 is on file in the office of the City Secretary and in the City Personnel Department.

SECTION 3. That Section 8.1 of the City of Mesquite Civil Service Rules and Regulations be amended by adding a subsection N. to read as follows said section and rules in all other respects to remain in full force and effect:

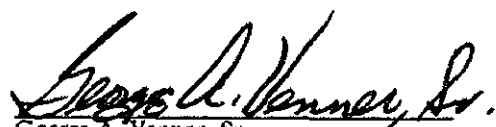
8.1 Grounds for Disciplinary Action Any employee who has completed the probationary period may be demoted, suspended, reduced in pay or class or dismissed from his employment by the department head with the approval of the City Manager. The following are declared to be grounds for demotion, suspension, reduction in pay or class, and dismissal from the classified service of the City of Mesquite.

N. Any violation of the City of Mesquite Substance Abuse Policy or failure to pass a drug test required under the Substance Abuse Testing Procedures set forth in Section 5.5 of the City of Mesquite Civil Service Rules and Regulations.

SECTION 4. That should any word, sentence, clause, paragraph, or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.


SECTION 5. The fact that the present ordinances of the City of Mesquite do not provide for a policy and adequate procedures concerning substance abuse among City employees creates an urgency and an emergency for the preservation of the public health, safety and welfare and requires that this ordinance shall take effect immediately from and after its passage and publication, as the law in such cases provides.

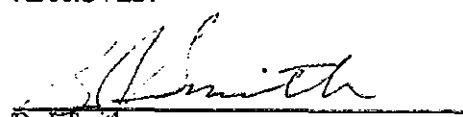
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas on the 18th day of December, A.D., 1989.


George A. Vanner, Sr.
Mayor

ATTEST:

APPROVED:


Lynn Prugel
City Secretary


B. J. Smith
City Attorney

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M E M O R A N D U M

December 18, 1989

TO: All Employees

FROM: James A. Prugel, Jr., City Manager

SUBJECT: Official Substance Abuse Policy

In January of 1987, the City of Mesquite, in furtherance of its commitment and obligation to provide a safe work environment for all employees, and to protect the safety and welfare of all citizens of Mesquite and provide them with the best possible City services, implemented a substance abuse policy. This policy has served us well, however, as an organization relying on federal grants for the implementation of programs and services provided by the City, and to protect the City's status as a recipient of federal grants, the following is now policy:

Effective immediately, any place the work and services of the City of Mesquite are done is declared a drug-free work place. This means:

The unlawful use, possession, distribution, dispensation, sale, or manufacture of any controlled substance while at work for the City of Mesquite is strictly prohibited. Controlled substances include illegal drugs, illicit drugs (including substances manufactured to look like controlled substances) and/or controlled substances and over the counter drugs including but not limited to narcotics (heroin, morphine, etc.), central nervous system stimulants (cocaine, diet pills, etc.) or depressants (tranquilizers), sedatives, anti-anxiety agents, hallucinogens (PCP, LSD, "designer drugs", etc.) marijuana, hashish and all other controlled, habit forming or performance altering substances and yet to be invented drugs. Reporting for work under the influence of any controlled substance is also prohibited. Any employee violating the above policy is subject to disciplinary action, up to and including termination for the first offence.

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Employees have a right to know about the dangers of drug abuse in the work place, the City's policy about them, and what help is available to combat drug problems. This document spells out the City's policy, and all employees will receive a copy of this document and be asked to acknowledge that they have read it and agree to abide by it in all respects. The City will be conducting an educational program on the dangers of drugs in the work place. Most important it is the City's objective to encourage and motivate employees with substance abuse problems to recognize and voluntarily seek professional assistance for these problems. The following help may be available for combating drug and alcohol abuse problems: Medical benefits for substance abuse treatment.

In addition, the City will provide supervisory training to assist in identifying and addressing illegal drug use by employees.

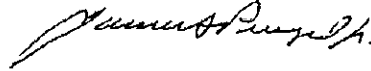
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The City believes that rehabilitation is the preferred solution to any substance abuse problem from all standpoints, as it both protects our investment in a trained employee, and treats the individual concerned with dignity for what is in fact an illness. The City will therefore extend the rehabilitation option whenever possible. If an employee fails to avail him or herself of such help and violations of this policy do occur, the City will have little choice but to act severely against such violators in the interests of protecting all of our employees and the citizens of the City of Mesquite.

Please refer any questions on the above policy to the personnel department.



James A. Prugel, Jr.
City Manager