

ORDINANCE NO. 3012

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, REPEALING ORDINANCE NOS. 2652 AND 2681; AND ADOPTING THE ATTACHED CONTROLLED SUBSTANCE AND ALCOHOL ABUSE POLICY; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That City of Mesquite Ordinance Nos. 2652 and 2681 are hereby repealed in their entirety. That the attached Controlled Substance and Alcohol Abuse Policy is hereby adopted as the official Controlled Substance and Alcohol Abuse and Testing Policy of the City of Mesquite, Texas.

CONTROLLED SUBSTANCE AND ALCOHOL ABUSE AND TESTING POLICY

I. Scope

This policy applies to all applicants for employment in all City departments. All current employees are covered under this policy, including:

Employees in a safety sensitive position, which includes, but is not limited to, duties involving the operation and/or maintenance of vehicles or equipment which could cause injury or harm to the employee or others;

Employees in a security sensitive position, which includes, but is not limited to, duties involving the handling of money, material, supply or assets readily convertible to cash;

Employees who, in the judgment of the Department Director are involved in a fleet accident without justifiable cause or cannot be discounted as a contributing factor to an accident;

Employees who exhibit behavior to support reasonable suspicion of controlled substance or alcohol use, or who are found to possess, distribute or sell a controlled substance or alcohol at any place where work or service of the City is done;

Fire Department and Police Department employees; and

Executive, administrative and professional employees.

II. Purpose

1. It is the policy of the City to provide a work environment which is free from the use, consumption, sale, distribution or possession of controlled substances or alcohol in the work place. (In this policy, use of the term "drugs" also includes alcohol.) The specific purpose of the policy is to outline the methods for maintaining a work environment free from the effects of controlled substances and alcohol.
2. While at work, each City employee has a responsibility to deliver service in a safe, efficient and conscientious manner. Therefore, the use, sale, distribution, possession or being under the influence of alcohol, or any controlled substances, including prescription medication (when use of such prescribed medication is likely to affect the employee's ability to perform assigned duties) during working hours, as outlined in the provisions of this policy, is strictly prohibited and may result in disciplinary action up to, and including, termination.
3. Employees in need of assistance, in relation to controlled substance or alcohol abuse, are encouraged to explore the use of leave time and medical benefits in obtaining assistance through public and private referral agencies specializing in chemical dependency before the problem affects their job.
4. In order to meet the objectives of this policy, the City has established a drug and alcohol free awareness program for the purpose of informing employees about the dangers of alcohol and substance abuse, the City's Controlled Substance and Alcohol Abuse Policy, the availability of substance abuse counseling, rehabilitation programs and disciplinary actions that may be imposed on an employee for violations of the City's controlled substance and alcohol abuse policy.
5. Supervisory personnel will be provided with training necessary to identify work-related performance problems; to identify potential symptoms of substance abuse; to understand the methods of drug and alcohol testing; to document reasonable suspicion instances; and to understand and implement guidelines for disciplinary action.
6. The Director of Human Resources has the sole authority to develop and adopt procedures for drug and alcohol testing.

III. Alcohol/Controlled Substance Use

1. The use, sale or personal possession (such as on the person or in a tool box, desk or vehicle) of controlled substances or alcohol while on duty or on City property at any time is a dischargeable offense.
2. Employees taking prescription or non-prescription drugs must report this use to the Department Director, or his designee when absent, when the use of such drugs is likely to affect the workers ability to perform assigned duties. It is the employee's responsibility to ascertain from his or her physician whether the prescription drug can or is likely to have adverse impact on the employee's performance of his or her duties. This provision is intended to protect the safety of each employee, and his or her co-workers, property and the public. Employees failing to follow this instruction may be subject to disciplinary action up to, and including, termination. Any information received from an employee under this provision will be kept confidential except to the extent it may be shared with individuals who are in a "need to know" position, such as the immediate supervisor, or as required by state or federal law.
3. Any use of controlled substances and alcohol abuse that has an adverse affect on the employee's performance or that could jeopardize the safety of others, City equipment or the City's relations with the public, will be a violation of this policy and the employee may be subject to disciplinary action up to, and including, termination.
4. No employee shall report to work with the odor of alcohol on his or her breath.

IV. Employee Responsibilities

1. Employees scheduled to be on call are expected to be fit for duty upon reporting to work. An employee scheduled to be on call who is called out is subject to the provisions in this policy.
2. An employee not scheduled to be on call who is called out and is under the influence of legally prescribed drugs, or alcohol or who is impaired by alcohol must so advise his or her supervisor and will not be required to report to work. An employee, who is called out and who reports to work, but fails to notify his or her supervisor that he or she is under the influence or impaired, may be subject to disciplinary action up to, and including, termination.
3. All department heads and supervisors are responsible for recognizing and documenting the reasonable suspicion of controlled substance or alcohol use by employees, which may be indicated by poor performance, and for carrying out the provisions of this policy. Failure of a department head to carry out

the requirements of this policy may lead to disciplinary action, up to and including discharge.

V. Conditions Whereby Drug or Alcohol Testing is to be Conducted

A. Conditions Applicable to all Testing

1. The Personnel Department will arrange for drug screenings with a certified laboratory. All drug testing will be conducted under the supervision of the Medical Review Officer.
2. A urine sample will normally be given to test for the presence of controlled substances or alcohol. However, other acceptable testing methods determined by the Director of Human Resources may be ordered.
3. Any person who tampers with, or attempts to tamper with, a urine specimen in any manner shall be disqualified from employment with the City and shall be barred from any future consideration for employment with the City or, if currently employed by the City, shall be subject to disciplinary action, up to and including discharge or indefinite suspension.
4. Prescription or over-the-counter drugs validated by the MRO as being prescribed for or taken by the person to be tested will not be considered if the drug affects the testing, unless the use of such drugs, in the judgment of the Medical Review Officer, would be potentially harmful to the safety of the person being tested, or others.
5. All positive urine samples will be confirmed by the use of the gas chromatography/mass spectrometry (GC/MS) method. The additional testing (GC/MS) will be at the City's expense.
6. Any question relating to drug testing will be referred to the Personnel Department.

B. Pre-Employment Drug Testing

All persons offered positions with the City shall be required to submit to a routine physical examination, including a drug and/or alcohol test.

1. Prior to reporting to the office of the Medical Review Officer for a medical exam, all applicants shall be required to sign a written consent form authorizing a urine test for the presence of controlled substances and alcohol. A job applicant refusing to sign a requested consent form will not be considered for employment.

2. Test results shall be sent marked "Personal and Confidential" from the Medical Review Officer to the Director of Human Resources or his designee, and shall be treated in a highly confidential manner. An applicant shall not be placed on the City payroll or otherwise allowed to report for work until negative test results have been received by the Director of Human Resources.
3. If test results are positive, the department head shall be contacted by the Director of Human Resources or his designee and told nothing more than that the applicant did not successfully pass the physical examination. If negative test results are returned, and the applicant otherwise passes the physical examination, the Personnel Department shall notify the hiring supervisor and authorize appointment of the applicant.
4. In the case of positive test results, disclosure of the results shall be made to the applicant by the Director of Human Resources or his designee. The applicant shall be told by the Director of Human Resources or his designee that he or she is disqualified for employment with the City for a one-year period, and to be reconsidered, must submit evidence of successful completion of a rehabilitation program.

C. Post Accident Testing

Drug/Alcohol testing will be required of employees following motor vehicle or motorized equipment accidents in any of the following circumstances:

1. A bodily injury which requires medical treatment;
2. A City vehicle or other City property is involved;
3. A third party (non-employee) is involved;
4. Any damage to City vehicle or equipment occurs;
5. When an employee who, in the judgment of the Department Director, is involved in a Fleet accident without justifiable cause or cannot be discounted as a contributing factor to an accident; and
6. When an employee who, in the judgment of the Department Director, could have prevented the accident by being more alert.

Employees who drive City vehicles or equipment on or off duty will be subjected to testing for motor vehicle accidents as described above.

D. Procedures for Post Vehicle or Motorized Equipment Accident Testing

1. The employee(s) involved in the accident and the employee(s) from the department, whose employee and vehicle are involved in the accident, first arriving at the accident site are required to inform the Department Director of the accident site are required to inform the Department Director of the accident immediately, but not longer than two (2) hours following the accident. If the Department Director or his designee is not available in that period of time, the employee(s) shall notify the Risk Manager of the accident. If the Department Director and the Risk Manager are unavailable, the Director of Human Resources or his designee shall be notified. In the event none of the above individuals are available, an Assistant City Manager shall be notified of the accident.
2. The employee(s) involved in the accident or who cannot be discounted as a contributing factor to the accident shall be prohibited from working or continuing to work until reporting to the office of the Medical Review Officer or, if the accident occurs where the MRO office is closed, to the City-approved testing facility.
3. The urine/blood sample for drug or alcohol testing shall be collected as soon as possible, but no later than four (4) hours after the accident.
4. The supervisor or a designated person not involved in the accident shall take the employee off the worksite and drive him or her to the Medical Review Officer or, if the accident occurs after working hours, a City-approved laboratory for the drug test. Under no circumstances will the employee be allowed to drive to the MRO's office or testing facility. (If an employee is seriously injured or unconscious he or she will be taken to a hospital for treatment. The first consideration will be the health and welfare of the employee. In such case, a urine test will be given at the hospital laboratory, if possible.)
5. After a finding of reasonable suspicion, the supervisor or a designated person shall stay with the employee being tested and will drive him or her home or make arrangements to have the employee transported if the employee is released by the treating physician.
6. If the employee, in the judgment of the Medical Review Officer, exhibits physical and/or emotional impairments such that his or her safety or the safety of others could be in jeopardy if the employee returned to work, or if a supervisor who has received drug awareness training, and the Department Director has confirmed, there is reasonable suspicion that the employee was using controlled substances or alcohol at the time of the accident, the employee shall not be

allowed to return to work. In that situation, after being tested, the employee will be driven home by the supervisor or a designated person. The employee shall not be allowed to drive home.

7. Refusal to submit to a post-accident drug or alcohol test will be grounds for termination.
8. After a finding of reasonable suspicion, an employee tested for controlled substances or alcohol under the post accident testing provision may be placed on leave with pay until the results of the test are received.
9. An investigation surrounding the circumstances of the accident leading to a drug or alcohol test will automatically be conducted by the Director of Human Resources or his designee.

E. Random Drug Testing

1. All current employees may be selected for testing on an unannounced, random basis using a scientifically valid random number generation method.
2. The Director of Human Resources or his designee shall be the only individual to produce a list of names for random drug testing. This shall be done by means of a scientifically valid random number generation method at time periods to be determined by the Director of Human Resources or his designee. Employees will be selected by lottery to ensure that each employee has an equal chance at being selected.
3. The names produced from each random selection shall be forwarded to the employees' Department Director marked "Personal and Confidential." The employee's name will be reentered into the random data file following selection.
4. Upon receiving the names of employees in his or her department who are to be tested for controlled substances and alcohol, the Department Director shall ensure that the employees report to the lab as soon as possible but not later than 8 hours after the employee is notified to appear, unless extenuating circumstances exist. If such circumstances exist beyond the employee's control, where it is not possible for him or her to appear for testing within the time allowed, the Department Director shall immediately advise the Director of Human Resources or his designee of the circumstances and the employee's inability to appear.

5. If the name of an employee who is not on duty, or who is unable to report for testing is forwarded to the Department Director, the Director shall retain the name in a confidential manner and ensure the employee is notified immediately upon his or her return to duty and that the employee reports to the lab as soon as possible, but not later than eight hours after return to duty.

F. Reasonable Suspicion Drug Testing

All employees suspected of controlled substance use or alcohol abuse will be required to provide a urine same or a blood sample for testing.

1. A written record of specific, observable facts will be required before a drug or alcohol test can be ordered based on reasonable suspicion.
2. Only supervisors who have received supervisory drug awareness training may refer for testing an employee who has been observed in conduct or behavior which would create reasonable suspicion of controlled substances use or alcohol abuse. The Supervisor will document the exact reasons why he or she suspects that a certain employee has violated the controlled substances and alcohol abuse policy, including the symptoms exhibited by the employee, the actions of the employee, statements from other employees or third parties, and other evidence which tends to establish a reasonable suspicion of controlled substances or alcohol abuse.
3. When it has been determined that reasonable suspicion exists and the employee should be tested, that decision must be approved by either the Director of Human Resources, his designee, or the Risk Manager. In the event that these individuals are inaccessible within a reasonable period of time, the Department Head is authorized to require the employee to submit urine and/or blood samples to the testing facility.
4. The supervisor or a designated person will drive the employee to the testing facility (i.e., either the office of the Medical Review Officer or when the MRO's office is closed, a City-approved laboratory). Under no circumstance will the employee be allowed to drive.
5. The supervisor or a designated person shall stay with the employee being tested and shall drive him or her back to work. If the Medical Review Officer, after observation and examination of the employee, determines the supervisors' suspicion is well founded, the supervisor or a designated person shall arrange for the employee to be driven home.
6. An employee tested for controlled substances or alcohol under the reasonable suspicion standard will be placed on leave of absence with

pay until the results of the test are received.

- 7. All responsible supervisors will prepare statements to be filed with the Director of Human Resources describing the circumstances and conditions used as a basis for the required testing.

VI. DOT REQUIRED TESTING [SAVE FOR FUTURE]

[POLICY TO BE PREPARED]

VII. TESTING PROCEDURES

The Director of Human Resources or his designee is authorized to develop, administer and modify testing procedures as required.

VIII. ACKNOWLEDGEMENT OF POLICY AND FAILURE TO COMPLY

All persons taking a drug or alcohol test will be required to sign an acknowledgement form which indicates that he or she has received a copy of the controlled substance and alcohol abuse policy. Failure or refusal to provide a required sample shall be grounds for disciplinary action, up to and including discharge or indefinite suspension.

IX. CITY APPROVED LABORATORY

- 1. The City will select a laboratory certified by the United States Department of Health and Human Services which follows chain of custody procedures in conducting and preserving the tests required under this policy.
- 2. The laboratory will report each test result to the Medical Review Officer who will notify the Director of Human Resources or his designee of the results.
- 3. An employee who does not pass the drug or alcohol test may request that the original urine or blood sample be analyzed again. An employee requesting a retest must submit a written request within two days of the employee's notification of the test result.
- 4. An employee making a request for a retest will be required to pay the cost of the additional analysis and all costs associated with the transfer of the specimen to another certified, qualified laboratory, including shipping and handling. If the request results in the employee passing the drug or alcohol test, the City will reimburse the employee for laboratory expenses.

X. CONFIDENTIALITY OF INFORMATION

The following procedures will be used to assure that records relating to the drug and

alcohol testing process are kept confidential.

1. Test results and other written materials concerning a particular drug test will not be kept in the employee's official personnel file or the individual's departmental file.
2. No test results may be released except to the employee's Department Head and Supervisor, any other individuals involved in a disciplinary action, in an appeal process and to state or federal agencies, as necessary or required.
3. Personnel staff who are authorized to have access to drug test results will maintain complete confidentiality. Breach of confidentiality relating to drug test results, or any other personnel related matter, will subject the employee to disciplinary action up to, and including, termination.

XI. CONSEQUENCES OF A POSITIVE TEST

Except for employees covered under Chapter 143 of the Local government Code, all other employees who test positive for drugs or alcohol may be permitted an opportunity to enter a rehabilitation program, at the sole discretion of the City. Employees covered by §143 shall be dealt with by the appropriate Department Director, as required by Chapter 143, Local Civil Service Rules and applicable General Government Policies and Procedures.

XII. ASSISTANCE TO EMPLOYEES

1. When it is determined that a non-probationary employee has engaged in controlled substance use or is abusing alcohol or prescribed drugs, and the City decides to continue the employment of the employee, the City may require the employee to participate in a rehabilitation program, including the City's EAP, as a condition of continued employment.
2. Treatment for chemical dependency, both in-patient and out-patient, is covered under the City's medical plan. Employees may contact the Personnel Department for information.
3. Any employee who has completed a rehabilitation program must remain alcohol and drug free. Any relapse by an employee will be a violation of this policy and the employee may be subject to disciplinary action up to, and including, discharge or indefinite suspension.
4. An employee's decision to seek assistance by entering a rehabilitation program before work performance or behavior difficulties occur will be kept confidential. Once work performance or behavior difficulties affecting the job or the City do occur, however, the subsequent voluntary entrance into a rehabilitation will not necessarily prevent disciplinary action up to, and

including, discharge or indefinite suspension. Any employee who tests positive and who refuses to enter a rehabilitation program, who fails to complete the rehabilitation program, or who refuses to cease using or abusing controlled substances or alcohol will be discharged or indefinitely suspended.

5. Employees who seek controlled substance or alcohol abuse assistance and rehabilitation and cannot report for work while undergoing such rehabilitation may request sick leave, vacation leave in the amount accrued, or leave without pay. All sick and vacation leave shall be exhausted prior to granting the use of approved leave without pay, including leave under the Family and Medical Leave Act. Requests for, and approval of, leave without pay are governed by the City's Personnel Policies and Procedures, Section 10.11, Leave of Absence Without Pay. Firefighters and police officers shall be granted leave as allowed under Chapter 143 and the FMLA.
6. Employees who are involved in rehabilitation and are able to report for work may do so under the following conditions:
 - a. An employee may resume regular duties only after the employee tests negative for a drug test administered by the Medical Review Officer or a City-approved laboratory and can provide a release to return to work from an appropriate substance abuse treatment facility or confirmation of continued and on-going participation in a recognized substance abuse assistance program.
 - b. Prior to being allowed to return to work, the employee shall be required to meet with a Personnel Department representative to receive an explanation of the terms of continued employment.
 - c. An employee may, at the City's request, be required at any time to submit to interviews and physical examinations by the Medical Review Officer and/or evaluation by the professional staff at an appropriate chemical dependency treatment facility.
 - d. An employee will be required to submit to unannounced drug and alcohol testing up to sixty (60) months after resuming duties.

XIII. SPECIAL PROVISIONS

Any Police personnel or fire investigator who is required to be in possession of alcohol and/or drugs in the course and scope of their employment, will be exempt from the provisions of this policy pertaining to possession of alcohol and/or drugs. Specific guidelines will be established by Police and Fire internal operating procedures.

XIV. EMPLOYEE DRUG CONVICTIONS

Any employee convicted of a violation of a criminal drug statute for conduct occurring while on duty or on City property must notify the City of such conviction within five (5) days of the conviction occurring.

If an employee fails to report such conviction, the employee will be subject to disciplinary action up to, and including, discharge or indefinite suspension for the first offense.

XV. EMPLOYEE SEARCH POLICY

The City reserves the right to search for illegal drugs and alcohol any employee, City vehicles and equipment, the employee's personal effects, and the employee's other property located on City premises or worksites, including but not limited to, private vehicles located on City premises or worksites, City or personal lockers, desks, file cabinets, lunch boxes, purses, or other containers brought on City premises or worksites.

XVI. RESERVATION OF RIGHTS

The City reserves the right to interpret, change, rescind or depart from this policy in whole or in part without notice. Nothing contained in this policy shall be construed as creating or constituting a contract with any employee, whether expressed or implied.

XVII. DEFINITIONS

1. "Alcohol" means alcohol, or any beverage, containing more than one-half of one percent of alcohol by volume which is capable of use for beverage purposes, either alone or when diluted.
2. "Alcohol abuse" means use of alcohol in any quantity during working time or reporting for work under the influence of alcohol.
3. "Alcohol testing" means testing for alcohol contents by a breathalyzer instrument device, urinalysis, or a blood sample analysis.
4. "City property" means all City buildings and adjacent land, parking lots, all other City-owned land and City vehicles.
5. "Department Director" shall also include any person designated by the Department Director to take any action necessary under this policy in the absence of the Director.

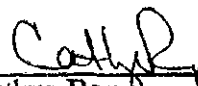
6. "Controlled substance" includes, but is not limited to, marijuana, hashish, cocaine, heroin, morphine, codeine, opiates, phencyclidine, amphetamines, inhalants, barbiturates and hallucinates.
7. "Drug testing" means the collection of a urine sample by medical personnel and a laboratory analysis of that sample or testing by other accepted methods.
8. "Employee" means an individual as defined by the City's General Government Policies and Procedures and applicable portions of Section 143 of the Local Government Code.
9. "Medical Review Officer" is the City's designated physician.
10. "Motorized Equipment" means equipment powered by a motor, including tools.
11. "Proper medical authorization" means a prescription, or other written approval from a physician, for the use of a drug in the course of medical treatment.
12. "Reasonable suspicion" means a conclusion based on personal observation of a specific objective instance, or instances, of employee conduct on or off duty, which shall be confirmed in a sworn (notarized) statement. On duty observation must be corroborated and documented in writing, that an employee is unable to satisfactorily perform his/her job duties due to the use of controlled substances or alcohol. Such inability to perform may include, but is not limited to, a drop in the employee's performance level or an indication of impaired judgment, reasoning, level of attention or behavioral change or decreased ability of the senses.
13. "Safety sensitive position" means jobs where employees use of drugs or alcohol could render the employee unfit to perform assigned duties and could create a safety hazard to the employee, other employees, citizens or damage to property.
14. "Substance abuse" is exemplified by, but not limited to, the following:
 - a. Ingestion, inhalation or injection of a controlled substance during work hours, in a City vehicle or on City property.
 - b. Ingestion of alcohol in a City vehicle or on City property.
 - c. Ingestion, inhalation or injection of a controlled substance or alcohol during non-working hours which causes an employee to be unable to work in a safety sensitive manner during working hours.

- d. Use of prescription or over-the-counter medication in a manner in which it was not intended.
15. "Tampering" with a urine specimen includes, but is not limited to, diluting the specimen with water, adding any other substance to the specimen, or substituting urine. Possession of a urine sample when an employee or applicant reports to the laboratory shall constitute tampering.
16. "Testing" includes testing by urinalysis, hair testing, intoxilyzer or blood testing, or any other recognized testing method.
17. "Under the influence" or "impaired" is defined as abnormal behavior during working hours which results from indulging, in any degree, in alcohol or in any controlled substance or other drug including prescription or over-the-counter medication which, to any degree, may limit an employee's ability to safely and efficiently perform his or her duties or poses a threat to the safety of the employee, other employees, citizens or property.

SECTION 2. 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 3. The fact that the present ordinances of the City of Mesquite do not provide an adequate policy concerning substance and alcohol abuse 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 of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 5th day of December, 1994.



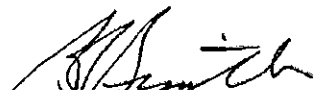
Cathye Ray
Mayor

ATTEST:



Lynn Prugel
City Secretary

APPROVED:



B.J. Smith
City Attorney