

ORDINANCE NO. 3013

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING ORDINANCE NO. 3012, SECTION VI; TO ALLOW COMPLIANCE WITH THE FEDERAL OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991; 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 No. 3012, Section VI is hereby amended as follows, in all other respects said ordinance to remain in full force and effect:

A. *That Section VI is hereby amended to read as follows:*

VI. DOT REQUIRED TESTING

1. The policies and procedures adopted by the City are intended to assist with the administration of the Omnibus Transportation Employee Testing Act of 1991. Likewise, this policy is designed to comply with 49 CFR Part 382 and 49 CFR Part 40. However, the City reserves the right to go above and beyond the Department of Transportation's drug and alcohol testing regulations.
2. The policies and procedures cover safety-sensitive employees in transportation who drive commercial motor vehicles requiring a commercial drivers license to operate. Public safety personnel, including all Fire personnel, are excluded from the Department of Transportation's drug and alcohol testing regulations.
3. Alcohol Prohibitions - The rule prohibits any alcohol misuse that could affect performance of a safety-sensitive function, including:
 - a. Use while performing safety-sensitive functions;
 - b. Use during the four (4) hours before performing safety-sensitive functions;
 - c. Reporting for duty or remaining on duty to perform safety-sensitive functions with an alcohol concentration of 0.02 or greater;

- d. Possession of alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol (prescription or over-the-counter), unless the packaging seal is unbroken;
 - e. Use during eight (8) hours following an accident, or until he/she undergoes a post-accident test;
 - f. **Refusing to take a required test.**
4. **Drug Prohibitions - The regulations prohibit any drug use that could affect performance of safety-sensitive functions, including:**
 - a. Use of any drug, except by doctor's prescription, and then only if the doctor has advised the driver that the drug will not adversely affect the driver's ability to safely operate the Commercial Motor Vehicle;
 - b. Testing positive for drugs;
 - c. **Refusing to take a required test.**
 5. **Disciplinary Action - The consequences for engaging in prohibited conduct are as follows:**
 - a. Any employee whose breath alcohol test results in a Breath Alcohol Content of 0.02 or greater subjects the employee to disciplinary action up to and including termination for the first offense;
 - b. Any employee who tests positive for a controlled substance is subject to disciplinary action up to and including termination for the first offense;
 - c. Any employee who refuses to take either a drug or alcohol test will be subject to disciplinary action up to and including termination.
 6. **Pre-Employment/Pre-Duty Testing:**
 - a. Before a covered employee performs any safety-sensitive function, he/she must submit to testing for alcohol and drugs. An alcohol test result must indicate an alcohol concentration

less than 0.02. For drug testing, the City must have received a result from the Medical Review Officer indicating a verified negative test result.

- b. Employees who seek transfers or promotions into other positions will not be required to submit to drug and alcohol testing unless they are transferring or promoting to a position where duties include operating a commercial motor vehicle.
 - c. An applicant will be requested to sign a consent form authorizing the testing and the use of the test results in employment decisions.
 - d. A job applicant refusing to take a drug test and/or sign a consent form will not be considered for employment.
7. Post-Accident - Drug/Alcohol testing will be required of employees following motor vehicle or motorized equipment accidents in the following circumstances:
- a. When any vehicle involved in the accident must be towed away from the scene of the accident;
 - b. A fatality occurs;
 - c. The City driver receives a citation under State or local law for a moving traffic violation arising from the accident.
8. The final decision whether to administer a drug or alcohol test will be made by the Director of Human Resources or his designee. In the event that the Director of Human Resources or his designee is unavailable, the Division Head is authorized to require the employee to submit to a drug and/or alcohol test. That persons decision will be based on the best information available at the time.
9. Time Frame for Alcohol and Drug Testing:
- a. Alcohol Testing - If a post-accident alcohol test is required the employee involved in an accident will be tested as soon as possible but not later than eight (8) hours after the accident.
 - b. Drug Testing:

- i. If a post-accident drug test is required, the urine sample for such a test will be collected as soon as possible but not later than thirty-two (32) hours after the accident.
- ii. A driver who is subject to post-accident testing must remain available for testing, or the City will consider the driver to have refused to submit to testing and may be subject to disciplinary action up to termination.

10. Random Testing:

- a. An employee will be selected for testing on a random basis by using a scientifically valid random number generation method.
- b. Both drug and alcohol tests will be unannounced and will be spread reasonably throughout the year. Prior to such testing, employees will be required to sign a form consenting to testing.
- c. The Director of Human Resources or his designee will be the only individual to produce a list of names for random drug and alcohol testing. Employees will be selected by lottery to ensure that each employee has an equal chance at being selected. The names produced from each random selection will be forwarded to the employees' Department Director marked "Personal and Confidential." The Director of Human Resources or his designee will provide the Medical Review Officer with a list of names of employees to be tested. The employee's name will be reentered into the random data file following selection.
- d. Upon receiving the names of employees in his/her department who are to be tested for drugs and alcohol, the Department Director will ensure that the employees report to the lab as soon as possible but not later than eight (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/her to appear for testing within the time allowed, the Department Director will immediately advise the Director of Human Resources or his designee of the circumstances and the employee's inability to appear.
- e. 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 will retain the name in a confidential manner and ensure the employee is notified immediately upon his/her return to duty and that the employee reports to the lab as soon as possible, but not later than eight (8) hours after return to duty.

11. Reasonable Suspicion:

- a. Based upon reasonable suspicion, 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 considered prohibitive behavior. Refusal to submit to testing may result in disciplinary action, up to and including termination.
- b. 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 Director or Division Head and request a personal observation review and complete an "Observed Behavior Reasonable Cause Record" detailing specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.
 - iii. 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 or his designee. In the event that these individuals are unavailable, the Department Head is authorized to require the employee to submit to a drug and alcohol test.
 - iv. The supervisor or a designated person will drive the employee to the designated facility identified by the City

of Mesquite for drug testing (i.e., either the office of the Medical Review Officer or if the incident occurs after working hours, a City approved collection site). Under no circumstances will the employee be allowed to drive.

- v. The supervisor or a designated person will stay with the employee being tested and will drive him/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 will arrange for the employee to be driven home.
 - vi. An employee tested for drugs or alcohol under the reasonable suspicion standard will be placed on leave of absence with pay until the results of the test are received.
 - vii. 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.
- c. Alcohol - Testing is authorized **only** if the observations are made during, just before, or just after the employee performs safety-sensitive functions.
 - d. Drug - Documentation of the driver's conduct must be prepared and signed by the witness within **twenty-four (24)** hours of the observed behavior or before the results of the drug tests are released, *whichever is earlier*.

12. Return-to-Duty:

- a. Alcohol - The City will ensure that before a driver returns to duty requiring performance of a safety-sensitive function after engaging in prohibited conduct concerning alcohol, the employee must take a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
- b. Drug - The City will ensure that before a driver returns to duty requiring performance of a safety-sensitive function after engaging in prohibited conduct concerning drugs, the employee

must take a return-to-duty drug test with a result indicating a verified negative result for drug. Prior to such testing, employees will be required to sign a form consenting to testing.

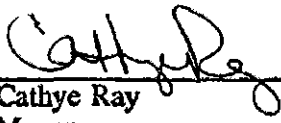
13. Follow-Up:
 - a. Following a determination that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of drugs, the City will ensure that the employee is subject to unannounced follow-up alcohol and/or drug testing as directed by a Substance Abuse Professional.
 - b. The City may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and drugs, if the Substance Abuse Professional determines that return-to-duty and follow-up testing for both alcohol and drugs is necessary for that particular driver.
14. Disclosure of Information:
 - a. Test results and other written materials concerning a particular drug and/or alcohol test will not be kept in the employee's official personnel file or the individual's departmental file.
 - b. The Medical Review Officer may disclose information to the City, a Department of Transportation agency or other Federal safety agency, or physician responsible for determining the medical qualification of the employee under an applicable Department of Transportation agency regulation.
 - c. Human Resources 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.
15. Release of Test Information by Previous Employers:
 - a. The City must attempt to obtain, pursuant to a driver's written consent, information on the driver's alcohol tests with a concentration result of 0.04 or greater, positive drug test results, and refusals to be tested, within the preceding two years, which are maintained by the driver's previous employers.

- b. The City may not permit a driver to perform safety-sensitive functions without obtaining the information.
 - c. The City will provide to each of the driver's employers within the two preceding years the driver's specific, written authorization for release of information.
 - d. The release of any drug and alcohol testing information may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures confidentiality.
 - e. The City may not use a driver to perform safety-sensitive functions if the employer obtains information on the driver's test with a concentration of 0.04 or greater, verified positive drug test result, or refusal to be tested, by the driver, without obtaining written information from a subsequent Substance Abuse Professional evaluation.
16. An applicant who refuses to sign an information release form will not be considered for employment.
17. Employee Education and Training:
- a. The City will provide educational materials that explain the requirements of this policy with respect to meeting its requirements.
 - b. The City will provide a copy of this policy prior to each driver subsequently hired or transferred into a position requiring a commercial drivers license.
 - c. Each driver will be required to sign a statement certifying receipt of the above materials.
18. Supervisory Training - The City will provide training to all supervisors with the authority to determine whether reasonable suspicion exists requiring a driver to undergo testing. The supervisors will receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on drug use. The training will cover the physical, behavior, speech, and performance indicators of probable alcohol misuse and use of drugs.

SECTION 2. That it is the intent of the City Council that the provisions hereof be deemed severable and in the event any such provision shall be declared unconstitutional or invalid for any reason such unconstitutionality or invalidity shall not affect those provisions left standing.


SECTION 3. Due to recent changes in federal legislation and to ensure compliance with recent court decisions, creates an urgency and emergency in the interest of the public health, safety, and welfare, and makes necessary that this ordinance take effect immediately from and after its date of passage.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 30th day of January, 1995.



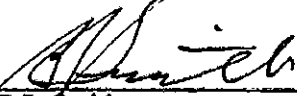
Cathye Ray
Mayor

ATTEST:



Lynn Prugel
City Secretary

APPROVED:



B.J. Smith
City Attorney

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