

BEFORE THE CITY COUNCIL OF THE CITY OF TURLOCK

IN THE MATTER OF AMENDING THE DRUG-FREE WORKPLACE POLICY ATTACHED TO THE MEMORANDUM OF UNDERSTANDING WITH THE TURLOCK CITY EMPLOYEES ASSOCIATION (TCEA)

RESOLUTION NO. 2007-030

WHEREAS, the City's Drug-Free Workplace Policy was found to be out of compliance with the Federal Drug-Free Workplace Act of 1988; and

WHEREAS, the consequence of not correcting the City's policy would be the potential loss of federal grants; and

WHEREAS, this policy has been adopted as an attachment to the City's Memorandum of Understanding (MOU) with the Turlock City Employees Association (TCEA); and

WHEREAS, TCEA was notified of the policy amendment and did not request to meet and confer on the change.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Turlock does hereby approve the TCEA Drug-Free Workplace Policy, attached as Exhibit "A" as an amended attachment to the City's MOU with TCEA.

PASSED AND ADOPTED at a special meeting of the City Council of the City of Turlock this 30th day of January, 2006, by the following vote:

- AYES: Councilmembers Hatcher, Howze, Spycher, Vander Weide and Mayor Lazar
NOES: None
ABSTAIN: None
NOT PARTICIPATING: None
ABSENT: None

ATTEST:

Rhonda Greenlee, CMC
City Clerk, City of Turlock, County of Stanislaus, State of California

City Of Turlock
Drug Free Work Place Policy
T.C.E.A.

I. PURPOSE

It is the intention of this policy to eliminate and prevent substance abuse and its effects in the work place. While the City of Turlock has no intention of intruding into private lives of its employees, involvement with drugs and alcohol off the job can take its toll on job performance and employee safety. Our concern is that employees are in a condition to perform their duties safely and efficiently, in the interests of their fellow workers and the public as well as themselves. The presence and influence of drugs and alcohol on the job, and the influence of these substances on employees during working hours are inconsistent with this objective. For definition purposes throughout this policy, impair or impairment shall be considered use by an employee of alcohol and/or all substances, drugs or medication, legal or illegal, which impairs an employee's ability, physically and/or mentally to perform safely and effectively the functions and duties of his or her position.

Employees who think they may have an alcohol or drug usage problem are urged to seek on their own volition confidential assistance from the Employee Assistance Program. Although not legally required as a public employer, the City of Turlock will be supportive in accordance with Labor Code 1025 et seq. of those who seek help voluntarily, the City cannot and will not tolerate performance problems caused by substance abuse. This policy provides guidelines for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of City managers and employees. To that end the City will act to prevent and/or eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which impair an employee's ability safely and effectively to perform the functions of the particular job), which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or damage to the City's reputation. All employees covered by this policy should be aware that violations of this policy may result in discipline, which includes but is not limited to termination.

In recognition of the public service responsibilities entrusted to the employees of the City, and that drug and alcohol usage can impair an employee's ability both mentally and physically to perform the duties and functions safely and effectively, the following policy is agreed upon.

II. POLICY

It is City policy that employees shall not be impaired by alcohol or drugs; nor possess alcohol or illegal drugs at the assigned work sites. Employees shall not have their ability to work impaired as a result of the use of alcohol or drugs.

It is City policy that no alcoholic beverages are permitted at the assigned work site unless expressly authorized by the City Manager.

In accordance with the Drug-Free Workplace Act of 1988, the City's policy is that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and that specific actions shall be taken with employees for violations of such prohibitions.

It is the duty of the employee to notify his/her supervisor before beginning work, after taking prescribed medications or drugs which the employee has knowledge or has been medically advised that the prescribed medication could interfere with the safe and effective performance of duties or operation of equipment. Failure to notify the supervisor may result in the employee being disciplined, up to and including termination. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified medical practitioner may be required by the department head or his/her designee. Such clearance may be obtained by the employee on City time and at City expense if the employee is directed to obtain the verification prior to commencing or resuming his/her assigned duties. Use of City time must be reasonable and no overtime liability shall be incurred. In the event such clearance cannot be obtained, a good faith effort shall be made to find modified duty. Modified duty in this case is not subject to the Grievance Procedure.

The City reserves the right to search, without consent or warrant, all areas and property in which the city maintains control or joint control with the employee. Controlled and jointly controlled areas include City vehicles, offices, desks, file cabinets, lockers, etc. Notwithstanding the above, no employee shall have his/her personal locker or other personal storage space for storage that may be assigned exclusively to him/her searched except in his/her presence, or with his/her consent, or unless a valid search warrant has been obtained. This section shall apply only to lockers or other space for storage that are owned or leased by the City. All such searches shall be based on probable cause. "Probable cause" as used in this policy shall have the same meanings when applied in California criminal law. Probable cause is defined as suspicion based on specific personal observations that the observer can describe with regard to appearance, behavior, speech or breath odor, where the odor is detected in addition to behavior, appearance, or speech. Third party observation will not be sufficient grounds to order a drug test. It must be confirmed by a department head or mid-manager. The City may notify the appropriate law enforcement agency that an employee may have illegal drugs in his/her possession or in an area not jointly or fully controlled by the City.

Refusal to submit immediately to a medical examination, subject to Section VI of this policy, based on probable cause for suspicion of drug or alcohol impairment while on duty when ordered by the department heads or his/her designee may constitute insubordination and may be grounds for discipline which includes but is not limited to termination. For the purpose of this policy, designee shall be defined as the assistant department head or other mid-manager who is assigned the authority to act for the department head in his/her absence.

Employees displaying objective symptoms of alcohol or drug impairment shall be prevented from engaging in further work and shall remain at the work site for a reasonable time until he/she can be safely transported from the work site.

The City is committed to providing reasonable accommodation as provided under Labor Code 1025 et seq. to any employee who enters a drug rehabilitation program.

The City has established a Voluntary Employee Assistance Program (EAP) to assist those employees who seek help for alcohol or drug problems. Employees should contact their supervisor or personnel for additional information.

III. APPLICATION

This policy applies to all employees of the city in the classifications covered by this Memorandum of Understanding. This policy applies to alcohol and to all substances, drug or medication, legal or illegal, which impair an employee's ability to perform his/her assigned functions and duties.

IV. EMPLOYEE RESPONSIBILITIES

An employee must:

- A. Not report to work or be subject to duty (on call) while his/her physical and/or mental ability to perform job duties is impaired from on or off duty alcohol or drug use;
- B. Not possess impairing drugs (illegal drugs and prescription drugs without a prescription) during working hours or while subject to duty, on breaks, or at anytime while at the assigned work site;
- C. Not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either or both employees are on duty;
- D. Submit immediately to a medical examination when ordered, in writing by a Department Head or designee when probable cause exists that the employee is either physically or mentally unable to perform the duties of his/her position;
- E. Notify his/her supervisor before beginning work or prior to taking any medically prescribed medication or drugs at work which the employee has knowledge or has been medically advised that the prescribed medication could interfere with the safe and effective performance of duties or operation of City equipment;
- F. Provide within two (2) workdays of request bona fide verification of a current, valid prescription for any potentially impairing drug or medication identified when a medical examination reveals the presence of such drugs or medications. Extensions of time beyond the two workdays may be granted upon the showing of good cause. The prescription must be in the employee's name;
- G. Must abide by the regulation of the Drug-Free Work Place Act of 1988. Thus, such employees who are convicted of any criminal drug statute for a violation occurring in the work place must notify Personnel no later than five (5) days after the conviction. Once the city is notified of the conviction, it must then notify the appropriate federal agency of the conviction. With respect to any employee so convicted, the City will take appropriate action up to and including termination. As a condition of continued employment, the City may require the convicted employee to participate satisfactorily in a generally recognized drug abuse rehabilitation program. A felony conviction for possession or sale of illicit drugs will be cause for termination.

V. MANAGEMENT RESPONSIBILITIES AND GUIDELINES

- A. Department Heads or their designee are responsible for reasonable enforcement of this policy;
- B. Department Heads or their designee may order in writing an employee to submit to a medical examination when the Department Head or his/her designee has probable cause to believe that an employee is intoxicated or otherwise impaired by drugs or alcohol while on the job or receiving compensation for on-call duty and thereby subject to being called, and is not physically and or mentally able to perform the duties of his/her position. The medical examination may include sampling of urine for purposes of testing for alcohol or drugs. The employee will be informed of the reasons why he/she is being asked to submit to the test.

The employee will be furnished a form by the employer on which to note any prescription or non-prescription medication that he/she may have used.

- C. A department head or his/her designee ordering an employee to undergo a medical examination, shall document in writing the facts constituting probable cause that the employee in question is intoxicated or impaired by alcohol or drugs prior to the request for the medical exam.
- D. A department head or his/her designee encountering an employee who refuses an order to submit to a medical examination shall remind the employee of the requirements and disciplinary consequences of this policy. When there is probable cause to believe that the employee is, at that time, impaired by alcohol or drugs, the employee will remain at the work site for a reasonable time until he/she can be safely transported home or removed to another appropriate location.
- E. A department head or designee shall not physically search the employee, nor shall they search their personal possessions without being given freely and voluntarily written consent by the employee.
- F. Management employees and non-management supervisors shall notify their department head or designee when they have probable cause to believe that an employee may have illegal drugs in his or her possession, or in an area not jointly or fully controlled by the City. If the department head or designee concurs that there is probable cause to suspect illegal drug possession, the department head or designee shall notify the appropriate parties, including the personal officer or designee.
- G. The department head or designee may give due consideration what, if any, disciplinary action to impose on an employee for violations related to alcohol abuse.

VI. MEDICAL EXAMINATION AND PROCEDURE

The medical examination may test for any substance which could physically and/or mentally impair an employee's ability to perform safely and effectively the functions and duties of the job, including, but not limited to prescription medications, heroin, cocaine, morphine and its derivatives, P.C.P., methadone, barbiturate, amphetamines, marijuana, other cannabinoids and other illegal substances defined by state law.

An employee shall have the right of representation and the employee shall be informed of the right of representation prior to any meeting that is to be held for the primary purpose to investigate allegations of drug or alcohol impairment, and/or illegal sales or possession; and if the allegations were subsequently found to be true, formal disciplinary action would result. (Employees have the right to waive representation must be available and present within fifteen minutes from the time of the request.)

VII. RESULTS OF MEDICAL EXAMINATION

- A. Alcohol/ Drug Tests
 - 1. A positive result from a drug and/or alcohol test obtained during a medical examination may result in disciplinary action up to and including termination.
 - 2. If a drug screen is positive, the employee must provide, within two (2) workdays of the request, bona fide verification of a valid, current prescription for the drug identified in

the drug screen. Extension of the time beyond the two workdays may be granted upon the showing of good cause. The prescription must be in the employee's name. If the employee does not provide acceptable verification of a valid prescription, if the prescription is not under the employee's name, or the employee has not previously notified his/her supervisor that he/she has taken impairing prescription medication, the employee will be subject to disciplinary action up to and including termination

3. If an alcohol or drug test is administered during the medical examination and is positive for alcohol or drugs, the City shall conduct an investigation to gather all relevant facts. The decision to impose discipline of less than termination or to discharge will be carried out in conformance with the Appeals Procedure provided in the memorandum of Understanding between the Turlock City Employees Association and the City of Turlock.
4. Testing and reporting of test results will follow the guidelines as established by the Department of Health and Human Services, as promulgated in Volume 53, No. 69 of the Federal Register as incorporated herein and made a part of this policy by reference.
5. For the purposes of administering drug tests in accordance with this policy, N.I.D.A. (National Institute on Drug Abuse) collection procedures shall be used and testing shall be processed in an N.I.D.A. certified laboratory.
6. For the purpose of alcohol testing; an employee is presumed to be under the influence if he/she tests at a level above .05.

VIII. CONFIDENTIALITY

Medical or laboratory reports or tests results shall not appear in an employee's personnel file. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of the Personnel Department. The reports or test results may be disclosed to City management on a strictly need-to-know basis and to the employee on written request. Disclosures, without employee consent may also occur when:

1. The information is compelled by law or by judicial or administrative process;
2. The information has been placed at issue in a formal dispute between the City and the employee;
3. The information is to be used in administering and employee benefit plan;
4. The information is needed by medical personnel for the diagnosis or treatment of the employee who is unable to authorize to disclosure.