

# ORDINANCE # ~~46~~ 45

## CITY OF ZAVALLA DRUG AND ALCOHOL POLICY

### PURPOSE

The objective of this policy is to develop a drug and alcohol-free workplace which will help insure a safe and productive workplace and to provide education and treatment to our employees. In order to further this objective, the following rules regarding alcohol and illegal drugs in the workplace have been established.

### POLICY

1. The CITY shall implement a comprehensive drug and alcohol abuse education program. As part of that program, information will be provided on the availability of employee assistance program services.

2. Alcoholism and other drug addiction are recognized as diseases responsive to proper treatment, and this will be an option as long as the employee cooperates. Employee assistance program (EAP) will be made available to assist employees.

3. The manufacture, distribution, dispensing, possession, sale, purchase, or use of a controlled substance on CITY property is prohibited.

4. Being under the influence of alcohol or illegal drugs on CITY property is prohibited. The unauthorized use or possession of prescription drugs on CITY property is prohibited.

5. Employees who violate this policy are subject to appropriate disciplinary action including termination.

6. The policy applies to all employees of the CITY regardless of rank or position and includes temporary and part-time employees.

### DEFINITIONS

A. CITY Premises - All CITY property including vehicles, lockers, and parking lots.

B. CITY Property - All CITY owned or leased property used by employees such as vehicles, lockers, desks, closets, etc.

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C. Controlled Substance - Any substance listed in Schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. S 812), as amended.

D. Drug - A drug is any chemical substance that produces physical, mental, emotional or behavioral change in the user.

E. Drug Paraphernalia - Equipment, a product or material that is used or intended for use in concealing an illegal drug or for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal drug or controlled substance.

F. Fitness for Duty - To work in a manner suitable for the job. To determine "fitness", a medical evaluation may include drug and/or alcohol testing.

G. Illegal Drug - An illegal drug is any drug or derivative thereof which the use, possession, sale, transfer, attempted sale or transfer, manufacture or storage of is illegal or regulated under any federal, state, or local law or regulation and any other drug, including (but not limited to) a prescription drug, used for any reason other than a legitimate medical reason and inhalants used illegally. Included is marijuana or cannabis in all forms.

H. Negative Test Results - "Negative Test" results are results that indicate no alcohol or drugs in the employee's system other than properly used prescription medication.

I. Reasonable Cause/Reasonable Suspicion - Supported by evidence strong enough to establish that a policy violation has occurred.

J. Testing - Is generally defined as a urine, blood, or breath test to determine chemical or drug content. Testing can occur in the following instances:

- (1) Pre-employment process
- (2) Routine physical examination as required by the County
- (3) Reasonable cause to suspect use
- (4) Injury involving employee(s) causing or contributing to the injury
- (5) On-the-job accident

Testing results will remain confidential.

K. Under the Influence - A state of having a blood alcohol concentration of 0.10 or more, where "alcohol concentration" has the meaning assigned to it in Article 67011-1, Revised Statutes; or the state of not having the

normal use of mental or physical faculties resulting from the voluntary introduction into the body of an alcoholic beverage, a controlled substance.

## GENERAL POLICY PROVISIONS

Any of the following actions constitutes a violation of the Policy and may subject an employee to disciplinary action including immediate termination:

A. Using, selling, purchasing, transferring, possessing, manufacturing, or storing an illegal drug or drug paraphernalia, or attempting or assisting another to do so, while in the course of employment or engaged in a County sponsored activity, on premises, in County owned, leased or rented vehicles, or on business.

B. Working or reporting to work, conducting CITY business or being on CITY premises or in a CITY -owned, leased or rented vehicle while under the influence of an illegal drug, alcohol or in an impaired condition.

C. Switching, adulterating or attempting to tamper with any sample submitted for medical testing, or otherwise interfering or attempting to interfere with the testing process.

## PREVENTIVE ACTS

A. Employees taking drugs prescribed by an attending physician must advise their direct Supervisor in writing of the probable adverse effects, if known, of such medication regarding their job performance and physical/mental capabilities. (For example: If taking medication which makes you drowsy, report to supervisor.) This written information must be kept confidential and communicated to the direct supervisor prior to the employee commencing work. All medical information will be kept confidential.

B. Any employee involved in a work related accident where alcohol or drugs are believed to be a contributing factor may be referred to an employee assistance counselor in addition to any other accident investigation activities.

## CORRECTIVE ACT

Although employees will not be subjected to random fitness for duty examinations as a result of the Policy, any employee involved in a work related accident may be subject to urine and breath testing.

## SEARCHES

The CITY reserves the right to conduct searches or inspections of an employee's person or personal effects including (without limitation) purses, briefcases, and motor vehicles located on CITY property based on reasonable cause, as well as CITY property used by an employee, including (without limitation) lockers, desks, and offices whether secured, unsecured or secured by a lock or locking device provided by the employee based on reasonable suspicion.

Searches of the person shall include the emptying of pockets and the production of other items concealed in clothing. Any further searches will be conducted by law enforcement personnel.

The CITY may, with the aid of trained drug-detection dogs, conduct random unannounced searches of CITY property and employee personal property located on CITY premises, to include (but not limited to) lockers, desks, personal vehicles, purses, and briefcases.

Any item found during a search believed to be an illegal drug or drug paraphernalia will be confiscated by security. The individual from whom the item or substance has been confiscated will be given a written receipt listing the items or substances seized.

In the administration of these search provisions, personal privacy will be considered to the maximum extent practicable.

## APPLICANT TESTING

Refusal to give written consent for a drug screening test will disqualify the candidate from consideration for employment.

### A. Objectives

To maintain the high professional standards of the CITY workforce, it is imperative that individuals who use illegal drugs be screened out during the initial employment process before they are placed on the employment rolls of the CITY. This procedure will have a positive effect by reducing instances of illegal drug use by employees working within the CITY, and will provide for a safer work environment. For these reasons, drug testing shall be required of all applicants.

B. Vacancy Announcements

Every vacancy announcement for positions designated for applicant testing shall state:

"Any applicant tentatively selected for this position will be required to submit to testing to screen for illegal drug use prior to employment."

In addition, each applicant will be notified that employment in the position will be contingent upon a negative drug test result. Failure of the vacancy announcement to contain this statement notice will not preclude applicant testing if advance written notice is provided to applicants in some other manner.

C. Consequences

The CITY will decline to extend a final offer of employment to any applicant with a verified positive test result, and such applicant will not be considered for employment by the CITY for a period of one year. The Officer working on the applicant's file shall be directed to object to the applicant on the basis of failure to pass the physical, a lack of personal characteristics necessary to relate to public employment or failure to support the goals of the CITY. The CITY shall inform such applicant that a confirmed presence of an illegal drug in the applicant's urine precludes the CITY from hiring the applicant.

## EMPLOYEE TESTING

Refusal by an employee to submit to screen testing will be considered cause for discharge.

A. Objective

The CITY objective is to provide a safe, drug-free environment for employees and to provide rehabilitative assistance for employees who have substance abuse problems.

B. When

1. Testing may be required during routine physical examinations such as annual physicals or return to work physicals.
2. Any employee suspected of having caused or contributed to an on-the-job accident may be tested.

3. Individual testing shall be required when there is reasonable suspicion that drugs or alcohol is affecting job performance and conduct in the work place.

C. Immediate Fitness Examination

When, as determined by the immediate supervisor and the next higher level of management, reasonable grounds exist to believe that an employee is impaired or an employee's unsatisfactory behavior or job performance reasonably suggest to management that substance abuse may be a contributing factor, the CITY reserves the right to require an immediate fitness for duty examination such as a medical evaluation which may include drug and/or alcohol testing. Refusal to participate in such an evaluation shall be considered equivalent to a positive result and shall result in immediate dismissal.

D. Consequences

1. A positive test shall mean either the presence of a drug and/or alcohol. Sample testing procedures shall conform to scientifically accepted analytical methods and procedures and shall include confirmation of any positive test result by gas chromatography, mass spectroscopy, or other comparably reliable analytical method, before the results of any test may be used as a basis for any action. Both screening and confirmatory urine testing will follow the guidelines adopted by the United States Department of Health and Human Services.

- (a) If there is evidence of drug or alcohol use on the job, the employee may be disciplined, suspended or discharged and not be eligible for reinstatement.

- (b) If an employee is suspended, prior to reinstatement the employee must have a signed release from a medical doctor stating that he/she is fit for work. The employee must submit to another screen test and have a negative result within six weeks from the date he/she was suspended, otherwise the employee will be discharged. The City will decide when the test shall be administered. Before the employee returns to work, he/she will be required to sign a reinstatement agreement that states under what conditions the employee will be reinstated and that random drug testing may be conducted for one year.

2. An Employee who has been suspended for a positive drug test and allowed to return to work will be discharged for a positive result on any confirmatory drug test conducted within one year.

#### F. Policy Parameters

1. For confidentiality, only CITY managers who have a need to know will be informed of positive results of fitness for duty examinations. Employee's privacy will be protected and the employer, without exception, will punish any breach of the workers' privacy and confidentiality.

2. The CITY will use only laboratories that are certified under appropriate federal and/or state regulations. The laboratories should follow the guidelines adopted by the United States Department of Health and Human Services for workplace urinalysis.

3. Only conclusive results are to be reported to the CITY. A positive urinalysis test will be confirmed by a second test using gas chromatography or mass spectroscopy. Both tests must be positive or the results are considered inconclusive thereby causing a negative presence of substances to be reported to the CITY.

#### **SUPERVISORY AND EMPLOYEE TRAINING**

Supervisors will receive training regarding the Drug and Alcohol Policy and the use of the Employee Assistance Program. All employees will receive copies of the Drug and Alcohol Policy and information about the Employee Assistance Program.

#### **DISCIPLINARY ACTION**

Any employee suspected of violating this Policy may be immediately suspended without pay pending completion of an investigation. During the course of an investigation, the suspected employee shall have the opportunity to provide an explanation. In the event that a determination is made by the County that the employee violated this Policy, the employee may be terminated. Should the determination be made that no violation occurred, the employee will be reinstated without penalty and will be paid any lost wages.

Any employee convicted of violating a criminal drug statute in this workplace must inform the CITY of such conviction (including pleas of guilty and nolo contendere) within five days of the conviction occurring. Failure to so inform the CITY subjects the employee to disciplinary action, up to and including termination for the first offense.

## EMPLOYEE ASSISTANCE PROGRAM

The CITY will provide employees and their families with confidential, professional assessment and referral for assistance in resolving or accessing treatment for addiction to, dependence on, or problems with alcohol, drugs, or other personal problems adversely affecting their job performance. Confidential assessment and referral services will be provided without cost to the employee or family member. The cost of treatment, counseling or rehabilitation resulting from EAP referral will be the responsibility of the employee.

When documented job impairment has been observed and identified, a supervisor may recommend participation in the EAP. Any action taken by the supervisor, however, will be based on job performance.

Supervisor referrals to the EAP will include employee's release of information consent form to be returned to the CITY supervisor by the EAP. Refusal to participate in, or failure to complete the EAP-directed program will be documented. Should job performance not improve after a reasonable amount of time, the employee is subject to progressive corrective action up to and including termination of employment.

Self-referral by employees or family members is strongly encouraged. The earlier a problem is addressed, the easier it is to deal with and the higher the success rate. While self-referral in itself, does not preclude CITY use of corrective actions, participation in an EAP-directed program may enable the supervisor to allow time for completion of such program before initiating or determining additional corrective actions.

EAP-related activities, such as referral appointments, will be treated on the same basis as other personal business or health matters with regards to use of sick or compensation leave. Sick leave may be taken as needed, while compensation time must be pre-approved.

## COORDINATION WITH LAW ENFORCEMENT AGENCIES

The sale, use, purchase, transfer or possession of an illegal drug or drug paraphernalia is a violation of the law. The CITY will report information concerning possession, distribution, or use of any illegal drugs to law enforcement officials and will turn over to the custody of law enforcement officials any such substances found during a search of an individual or property. Searches will only be conducted of individuals based on reasonable cause; and only of their vehicles, lockers, desks, closets when based on



reasonable suspicion. The CITY will cooperate fully in the prosecution and/or conviction of any violation of the law.

**RESERVATION OF RIGHTS**

The CITY reserves the right to interpret, change, suspend, cancel or dispute, with or without notice, all or any part of this Policy, or procedures or benefits discussed herein. Employees will be notified before implementation of any change. This policy and all future revisions will be effective thirty days after adoption by the Commissioners Court.


Although adherence to this Policy is considered a condition of continued employment, nothing in this Policy alters an employee's status and shall not constitute nor be deemed a contract or promise of employment. Employees remain free to resign their employment at any time for any or no reason, without notice, and the CITY retains the right to terminate any employee at any time, for any or no reason, without notice.

**OTHER LAWS AND REGULATIONS**

The provisions of this Policy shall apply in addition to, and shall be subordinated to, any requirements imposed by applicable federal, state or local laws, regulations or judicial decisions. Unenforceable provisions of this policy shall be deemed to be deleted.

ADOPTED BY ZAVALLA CITY COUNCIL OF THE 10 DAY OF AUGUST, 1992.

  
OPAL GANT, MAYOR

  
JOHN O. POE, MAYOR PRO TEM

  
CLYDE MOTT, COUNCILMAN

  
CLAUDE MARSHALL, JR., COUNCILMAN

  
NANCY BRYAN, COUNCILMAN

  
J.B. POLAND, COUNCILMAN