

ORDINANCE NO. 928

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF STAFFORD, TEXAS, AMENDING SUBSECTION K "DRUG AND ALCOHOL FREE WORKPLACE" OF SECTION VIII "EMPLOYEE BEHAVIOR, ETHICS AND REGULATIONS" OF THE CITY OF STAFFORD'S DRUG-FREE WORKPLACE POLICY; PROVIDING FOR THE DETECTION AND DETERRENCE OF BOTH THE ILLEGAL USE OF CONTROLLED SUBSTANCES AND THE USE OF ALCOHOLIC BEVERAGES IN THE CITY'S WORK ENVIRONMENT; PROVIDING FOR RANDOM DRUG TESTING OF EMPLOYEES THAT ARE REQUIRED TO HAVE COMMERCIAL DRIVER'S LICENSES FOR THE PERFORMANCE OF THEIR JOB; REPEALING ALL ORDINANCES OR PARTS THEREOF INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERANCE.

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WHEREAS, it is the policy of the City of Stafford, Texas, (the "City"), to foster a work environment free from the effects of both the illegal use of controlled substances and the use of alcoholic beverages; and

WHEREAS, the use of drugs and alcohol impairs employee judgment which may result in increased safety risks, hazards to the public and environment, employee injuries, faulty decision-making, and reduced productivity; and

WHEREAS, the use of illegal drugs, on or off duty, by City employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust placed in such employees as servants of the public; and

WHEREAS, employees who are under the influence of alcohol or use illegal drugs pose a serious health and safety threat to members of the public, City operations, and to other City employees; and

WHEREAS, in recognition of the serious and essential duties and responsibilities entrusted to the employees of the City and with the knowledge that drugs and alcohol can hinder a person's ability to perform and fulfill those duties and responsibilities as assigned, this Policy will provide guidelines for the detection and deterrence of alcohol

and/or drug abuse; now, therefore,

BE IT ORDANIED BY THE CITY COUNCIL OF THE CITY OF STAFFORD, TEXAS:

Section 1. Subsection K "DRUG AND ALCOHOL FREE WORKPLACE" OF SECTION VIII "EMPLOYEE BEHAVIOR, ETHICS AND REGULATIONS" of the City of Stafford's Drug-Free Workplace Policy is hereby amended as follows:

1. Purpose. No changes.

2. All employees of the City are required to refrain from the use of illegal drugs. Persons who use illegal drugs, on or off duty, are not suitable for employment with the City. The use, possession, or sale of illegal drugs by any employee, on or off duty, is strictly prohibited. Possession or use of alcoholic beverages on City premises is prohibited except at City sponsored social or recreational functions approved by the City Council. Further, it is the policy of the City that employees shall not be under the influence of alcohol while on duty or on call. All employees shall be aware that violation of this Policy can result in disciplinary action up to and including dismissal.

3. An employee who is under the influence of alcohol or uses or possesses illegal drugs during working hours or on City property is subject to immediate disciplinary action, including dismissal. Further, employees reasonably suspected to be under the influence of alcohol or drugs shall be prevented from engaging in further work of any sort and will give the City cause to subject them to immediate testing in accordance with the procedures set forth in this Policy.

4. When drug testing is required under the provisions of this Policy, a urinalysis test will be given to detect the presence of the following drug groups:

- (a) Amphetamines/Methamphetamine (e.g., Speed, Crystal)
- (b) Benzodiazepines (e.g., Valium, Librium, Oxazepam, Serax, Dalmane, Ativan)
- (c) Barbiturates (e.g., Amobarbital, Butobarbital, Pentobarbital, Phenobarbital,

Secobarbital)

- (d) Cocaine
- (e) Methodone
- (f) Methaqualone (e.g., Quaalude)
- (g) Opiates (e.g., Codeine, Heroin, Morphine, Hydromorphone, Hydrocodone)
- (h) Phencyclidine (PCP)
- (i) THC (Marijuana)
- (j) Alcohol
- (k) Other substances which may be deemed controlled substances in the future.

The test threshold level for each drug group will be based on testing laboratory standards that ensure a drug is genuinely present when a positive result occurs and that rule out inadvertent exposure to a drug group where that is a possibility.

5. General Standards for Drug Testing.

Pre-Employment Drug Screening. All applicants for employment by the City shall be required, as part of their preemployment physical, to undergo drug testing for the presence of the drug groups set forth in this Policy. Applicants who refuse to consent to drug screening will not be considered for employment.

An applicant who has a positive test result after an initial drug testing by the enzyme-multiplied immunoassay techniques (EMIT) test and a confirmatory test using the gas chromatography/mass spectrometry (GC/MS) test shall not be eligible for hire by the City until the expiration of one (1) year from the date of their testing. An applicant who has tested positive shall be eligible to reapply for City employment upon the expiration of such one (1) year period; provided however, that the applicant shall be subject to retesting prior to employment.

Reasonable Suspicion Drug Screening. The City may require an employee to undergo drug testing if there is a reasonable suspicion that the employee is under the

influence of drugs or alcohol during work hours. "Reasonable suspicion" means an articulable belief based on specific facts, and reasonable inferences drawn from those facts, that an employee is under the influence of drugs or alcohol. Circumstances which constitute a basis for determining "reasonable suspicion" may include, but are not limited to:

- (a) a pattern of abnormal, unusual, or erratic behavior;
- (b) information provided by a reliable and credible source;
- (c) possession of drugs or direct observation of drug use; or
- (d) presence of the physical symptoms of drug use (i.e., glassy or bloodshot eyes, slurred speech, poor coordination or reflexes).

An employee who refuses to consent to a drug test when "reasonable suspicion" of alcohol or drug use has been identified is subject to disciplinary action up to and including dismissal. The reasons for the refusal shall be considered in determining the appropriate disciplinary action.

Post Accident Drug and Alcohol Testing. An employee involved in a work-related accident is subject to post-accident testing for alcohol and controlled substance use which shall be conducted as soon as practicable on each surviving employee. An accident is defined as "an incident involving a vehicle in which there is either a fatality, an injury to the employee or to another, or causes damage to the property of another or involves other unusual circumstances. The employee subject to post-accident testing must refrain from consuming alcohol for eight (8) hours following the accident or until he/she submits to an alcohol test, whichever comes first. The employee must remain available for testing, and if he/she is not, his/her lack of availability will be considered as a refusal to take the test. When an alcohol or controlled substance test has not been administered within a reasonable time frame following the accident, the following actions shall be taken: If the employee has not submitted to an alcohol test within two (2) hours, The City shall prepare and maintain on file a record stating the reason a test was not promptly administered. If the employee has not submitted to an alcohol test after eight (8) hours, attempts to administer the alcohol test shall cease, and the City

will document attempts to administer the test and maintain that documentation. If the employee has not submitted to a controlled substance test within 32 hours the City will document attempts to administer the test and maintain that documentation.

This policy should not be construed so as to require the delay of necessary medical attention for injured people following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. An employee who refuses to consent to a post accident drug test for alcohol or drug use is subject to disciplinary action up to and including dismissal. The reasons for the refusal shall be considered in determining the appropriate disciplinary action.

Post Accident Alcohol and Drug Testing for Employees Performing Jobs That Require a Commercial Driver's License. All employees who are required to have a commercial driver's license (CDL) are subject to this provision of the policy in addition to the other provisions contained in this policy. An employee that is not required to take a post accident drug test under this provision is still subject to the post accident and other drug testing requirements of this policy. Each employee who performs duties as a commercial driver for the City shall be subject to alcohol and drug testing described in 49 Code of Federal Regulations Part 382. The following activities are prohibited:

- (a) Being on duty and/or operating a commercial motor vehicle while possessing alcohol.
- (b) When required to take a post-accident alcohol test, using alcohol within eight (8) hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- (c) Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion, or follow-up testing requirements.
- (d) Reporting for duty or remaining on duty, if the employee tests positive for controlled substances.
- (e) Reporting for duty or remaining on duty when the employee's general appearance or conduct or some other substantiating evidence indicated

he/she has used alcohol within the preceding four (4) hours.

- (f) No employee shall report for duty, remain or permit another employee to remain on duty, while having a blood alcohol concentration of 0.04 or greater.
- (g) No employee shall knowingly permit an employee to use alcohol while performing safety sensitive functions, including operating a commercial vehicle.
- (h) No employee shall perform, and no employee shall knowingly permit an employee to perform, safety sensitive functions within four hours after using alcohol.
- (i) No employee shall report for duty, and no employee shall remain or permit another employee to remain on duty when the person's performance may be impaired by the use of a controlled substance.

All employees who are required to have a commercial driver's license (CDL) are subject to post-accident testing for alcohol and controlled substances shall be conducted as soon as practicable on each surviving employee when there is either:

- (a) A loss of human life; or
- (b) the employee receives a citation under state or local law for a moving traffic violation and
 1. the accident involved a bodily injury to the employee or to another that requires immediate medical attention away from the scene of the accident; or
 2. damage was caused to one or more vehicles requiring a vehicle to be towed away from the scene by either a tow truck or another vehicle.

The employee subject to post-accident testing must refrain from consuming alcohol for eight (8) hours following the accident or until he/she submits to an alcohol test, whichever comes first. The employee must remain available for testing, and if he/she is not, his/her lack of availability will be considered as a refusal to take the test. When an alcohol or controlled substance test has not been administered within a reasonable time frame following the accident, the following actions shall be taken: If the employee has

not submitted to an alcohol test within two (2) hours, The City shall prepare and maintain on file a record stating the reason a test was not promptly administered. If the employee has not submitted to an alcohol test after eight (8) hours, attempts to administer the alcohol test shall cease, and the City will document attempts to administer the test and maintain that documentation. If the employee has not submitted to a controlled substance test within 32 hours the City will document attempts to administer the test and maintain that documentation.

This policy should not be construed so as to require the delay of necessary medical attention for injured people following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. Before an employee who has engaged in prohibited conduct regarding alcohol misuse returns to duty in a position requiring the performance of a commercial driver's license, the employee shall undergo a return-to-duty alcohol testing indicating a breath alcohol concentration of less than 0.02. The employee shall be subject to a minimum of six (6) follow-up controlled substance and/or alcohol tests in the following twelve (12) months.

Random Drug Test Screening for Employees Performing Jobs That Require a Commercial Driver's License. All employees performing jobs that require a Commercial Driver's License are eligible for random drug test screening. Employees selected for a random test shall be notified by the Department Head to submit to an alcohol and/or drug test. Employees selected for a random test but absent due to vacation, sick leave, other leave or on urgent City business approved by their Department Head will not be notified to take the alcohol and/or drug test until the first day they return to work after random selections even if the first day back occurs in a later month.

6. Management Responsibilities and Guidelines. Department Heads and supervisors are responsible for consistent enforcement of this Policy. Any Department Head or supervisor who knowingly permits a violation of this Policy by an employee under his/her direct supervision shall be subject to disciplinary action.

Any Department Head or supervisor requesting an employee under his/her supervision to submit to a drug and/or alcohol test based on reasonable suspicion should immediately notify the Mayor. Should the Mayor concur that there is a reasonable suspicion that the employee is under the influence of drugs or alcohol; the following procedure shall immediately be applied:

- (a) the Department Head or supervisor should document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs;
- (b) the Department Head or supervisor requesting an employee to submit to a drug and/or alcohol test shall be responsible for the employee's transport to the drug testing laboratory where the drug and/or alcohol test will be performed; and
- (c) any Department Head or supervisor encountering an employee who refuses to submit to a drug and/or alcohol test upon request shall remind the employee of the requirements and consequences of the Policy. Any employee refusing to submit to a drug and/or alcohol test shall not be forced to submit to such testing. The Department Head or supervisor should provide transport for the employee to his/her home.

7. Employee Responsibility. All employees of the City must:

- (a) not report to work or be subject to duty while his/her ability to perform job duties is impaired due to alcohol or drug use, on or off duty;
- (b) not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty or "on-call";
- (c) submit immediately to reasonable requests for alcohol and/or drug testing when requested by a responsible City representative;
- (d) notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment; and
- (e) provide within twenty-four (24) hours of request a current valid prescription for any drug or medication identified when a drug test is positive. The prescription

must be in the employee's name.

8. Consent to Drug Testing. Before a drug test is administered, employees or applicants will be asked to sign a consent form authorizing the test and permitting release of test results to City officials. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the City's drug testing policy.

The consent form shall also set forth the following information:

- (a) the procedure for confirming an initial positive test result;
- (b) the consequences of a confirmed positive test result; and
- (c) the consequences of refusing to undergo a drug test.

9. Drug Testing Procedure. The initial drug screening shall be by the enzyme-multiplied immunoassay techniques (EMIT) test which shall be administered at City expense. An employee or job applicant whose drug test yields a positive result shall be given a second test, at City expense, using a gas chromatography/ mass spectrometry (GC/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 employee or applicant shall be notified of the results in writing by the appropriate department head or designee, using a standard form. The letter of notification shall identify the particular substance found and its concentration level. An employee or applicant whose second test confirms the original positive test result may, at the employee's or applicant's own expense, have a third test conducted on the same sample at a laboratory to be selected by the City and which meets minimum criteria for drug testing.

Procedure. All drug testing of employees and applicants shall be conducted at medical facilities or laboratories selected by the City. A medical facility or lab must maintain written procedures approved by the City that will be used to maintain test samples. These procedures shall, at a minimum, include:

- (a) testing procedures which ensure privacy to employees and applicants consistent with the prevention of tampering;
- (b) methods of analysis which ensure reliable test results, including the use of

gas chromatography/mass spectrometry to confirm positive test results;

(c) chain-of-custody procedures which ensure proper identification, labeling, and handling of test samples; and

(d) retention and storage procedures which ensure reliable results on confirmatory tests of original samples.

At the test site, the employee or applicant will be given a form on which he/she may list any medications he/she has taken, or any other legitimate reasons for his/her having been exposed to drugs, within the last thirty (30) days. The form will be sealed in an envelope that will not be opened unless the test is positive.

Processing of Samples. Upon receipt of the sample from the employee, the individual supervising the testing will test the temperature of the urine and initiate the processing of the sample. The sample shall be sealed by the employee and the individual supervising the testing will sign the sealed sample. The sample will be labeled with a control number and the date and time the specimen was obtained and kept in a secured refrigerated atmosphere until tested. The seal will only be broken by the individual performing the analysis. In order to protect the chain of custody, any person handling the sample must sign for it.

Privacy in Drug Testing. Urine samples shall be provided in a private restroom stall or similar enclosure so that employees and applicants may not be viewed while providing the sample. Street clothes, bags, briefcases, purses, and other containers may not be carried into the test area. The water in the commode may be colored with blue dye to protect against dilution of test samples.

10. Confidentiality of Test Results. All information from an employee's or applicant's drug test is confidential and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from employee. All records relating to the taking of a drug test, or the order to take a drug test, shall be deemed confidential unless written authorization has been obtained from the employee or the records become the subject of a judicial proceeding. All records relating to the taking or ordering of a drug test shall be kept by the Human Resources Officer in a separate file. The Human

Resources Officer shall implement procedures to prevent the unauthorized distribution of the results of or the order to take a drug test. The results of a positive drug test shall not be released until the results are confirmed. The records of unconfirmed positive test results and negative test results shall be handled in accordance with all applicable laws and regulations.

11. The City shall provide a program of training to assist supervisory personnel in identifying drug and alcohol use among employees. Such training will be directed towards helping supervisors recognize the conduct and behavior that gives rise to a reasonable suspicion of use.

12. Prior Notice of Testing Policy. The City shall provide written notice of its drug testing policy to all employees. A standard notice shall be prominently displayed in the City Hall Administration Office and field offices and shall contain the following information:

- (a) the need for drug testing;
- (b) the circumstances under which testing may be required;
- (c) the procedure for confirming an initial positive drug test result;
- (d) the consequences of a confirmed positive test result; and
- (e) the consequences of refusing to undergo a drug test.

13. Consequences of a Confirmed Positive Test Result. If an employee's positive test result has been confirmed, the employee is subject to disciplinary action up to and including dismissal. Factors to be considered in determining the appropriate disciplinary response include the employee's work history, length of employment, current job performance, and the existence of past disciplinary actions. No disciplinary action will be taken against an employee solely for voluntarily identifying himself/herself as a drug user, if (1) such voluntary identification is made prior to an incident giving rise to a circumstance which would constitute a basis for administration of a drug test, (2) the employee obtains counseling and rehabilitation through a Substance Abuse Rehabilitation Program (SARP) approved by the City Council, and (3) after such voluntary identification the employee

refrains from violating the City's Policy on drug abuse. Disciplinary action may, however, be taken against such employee for other reasons.

14. SARP Referral. Upon the first confirmed positive drug test, the employee may request referral to the SARP for assessment, counseling, and rehabilitation. Participation in the SARP is voluntary and no disciplinary action may be taken against an employee for failure to begin or complete the SARP program. Disciplinary action based on a violation of the City's drug policy is not automatically suspended by an employee's participation in the SARP and may be imposed when warranted by this Policy or other appropriate authority. The City will participate in the cost of the SARP to the extent of coverage under the City's then current group health care benefits plan available to employees.

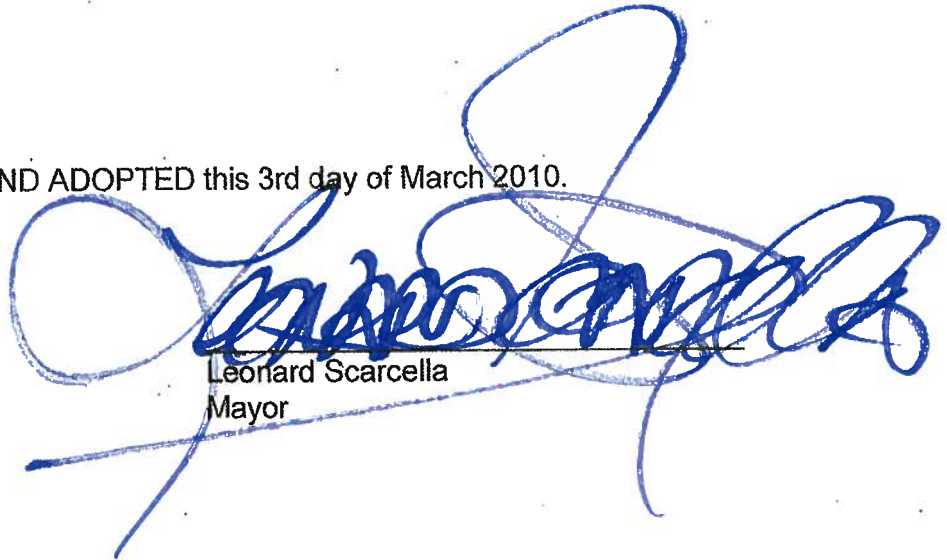
15. Exception. Nothing contained herein shall be construed to prohibit the possession, sale or purchase of illegal drugs, drug paraphernalia, alcoholic beverage, or any other substance prohibited hereby when such possession, sale, or purchase is conducted by the City's Police Department personnel during legitimate Police Department activities.

16. Effective Date. This Policy shall be effective immediately upon its adoption by the City Council of the City.

Section 2. Repealer. All ordinances or parts of ordinances inconsistent or in conflict herewith, are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. Severance. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Stafford, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED this 3rd day of March 2010.



Leonard Scarcella
Mayor

ATTEST:



Bonnie Baiamonte
City Secretary