

**CITY OF PACIFIC GROVE
CITY COUNCIL POLICY**

Policy Governing	Policy No.	Effective Date	Page No.
Drug Free Workplace	300-6	June 15, 2005	1 of 7

I. POLICY OF THE CITY

Employees of the City of Pacific Grove shall not be under the influence of alcohol, illegal drugs or controlled substances while at work. Employees shall not use, possess, or manufacture alcohol, illegal drugs or controlled substances while at work. Employees shall not manufacture, sell or provide alcohol, illegal drugs or controlled substances to any person at work. The illegal use, sale, consumption or manufacture of alcohol, illegal drugs or controlled substances while at work constitutes grounds for discipline. This policy applies to all City employees.

II. INTRODUCTION

The City and the Employee Associations recognize that behavior resulting from the use of alcohol and/or illegal drugs and/or other controlled substances detrimentally affects work performance, safety, security, public confidence in the City’s work force, and presents a risk to City employees and the health and welfare of the citizens of Pacific Grove.

In recognition of the City’s responsibility to maintain a safe, healthy and productive work environment, and each employee’s responsibility to perform work for the public safely, effectively and efficiently, the City will act to eliminate any substance abuse, which increases the risk for accidents, absenteeism, substandard performance, or damage to the City’s reputation. Substance abuse includes the use, possession or manufacture of illegal drugs, alcohol or controlled substances, which could impair an employee’s ability to perform his or her job safely, effectively and efficiently.

The City of Pacific Grove believes that its employees are its most important asset and that the successful treatment of substance abuse will enable the affected employee to return to a satisfactory job performance level.

III. EMPLOYEE ASSISTANCE PROGRAM

The thrust of this policy shall be directed toward the voluntary utilization of the Employee Assistance Program (EAP) established by the City as a primary method for dealing with substance abuse. All potential problems will be handled on a case-by-case basis. Overall consideration is directed towards the health and safety of the employee, co-workers, and members of the general public.

The EAP is available for assessment, referral to treatment, treatment, and follow-up. Any employee wishing confidential assistance can call the Community Hospital Recovery

Center for Chemical Dependency at 831/373-0924 and arrange an appointment with a counselor.

Employees who are concerned about their alcohol and/or drug use are strongly encouraged to voluntarily seek assistance through the EAP. In addition, employees who are concerned about alcohol and/or drug use among their co-workers should strongly encourage those individuals to seek assistance through the EAP. Voluntary use of the EAP by the employee may consist of counseling, outpatient rehabilitation, inpatient rehabilitation, or any other treatment recommended by the EAP Counselor, provided the employee and public safety are not compromised. EAP usage is not considered voluntary in the case of a management referral or if the employee decides to use the EAP services after their substance abuse problems have been discovered by City officials.

All voluntary or self-referral contacts are held in confidence by the EAP unless the employee requests, through specific written release of information, that the personnel director, supervisor, employee association, or other parties be notified.

The employee's compliance with the EAP is voluntary. The employee's job security and/or promotional opportunities will not be jeopardized by voluntary utilization of the EAP or any other treatment service. Use of the program does not replace normal disciplinary procedures for unsatisfactory job performance.

The employee can schedule an appointment on his/her own time (days off, before or after the work shift, lunch break) without letting anyone know of this. Vacation and sick leave may be used for self-referral appointments during regular work hours. If an employee requires additional leave time for substance abuse treatment, he/she should contact the City Manager directly; such contact shall remain confidential.

Employees and/or their dependents are responsible for all expenses, deductibles, and co-payment costs associated with inpatient or outpatient counseling services and substance abuse treatment. The City will only bear any expenses necessary to keep the EAP in effect and available.

IV. SIGNIFICANT THREAT TO EMPLOYEE OR PUBLIC SAFETY

As outlined in the policy statement of this policy, "The illegal use, sale, consumption or manufacture of alcohol, illegal drugs or controlled substances while on City time constitutes grounds for discipline." The City can and will discipline (up to and including dismissal) an employee for substance abuse when the specific situation is one, which poses an *immediate and substantial threat* to employee or public safety or risk to damage of public property. It is hoped that such cases will be rare and the City will not be forced to use this provision.

Absent such an immediate or substantial risk, the employee may be allowed to participate in an alcohol, drug, and/or controlled substance abuse rehabilitation program in accordance with all other procedures as outlined in this policy. The City would rather

work with the employee toward rehabilitation than be forced to discipline an employee, but will if the City feels the specific events leave no other recourse.

V. DRUG TESTING OF APPLICANTS

All applicants for City employment shall be informed in writing on the job announcement that a condition of employment includes passing a drug-screening test as part of the pre-employment physical examination. The applicant shall also be informed verbally at the time of said physical. The drug test shall be by means of urine drug screen. Applicants are required to notify the doctor at the time of their physical of any prescription drug or other medication they are taking which may affect the drug test results.

Should the applicant test positive in one of the screens, the applicant will be given the opportunity to explain a positive result and a second test of the original sample may be requested. The applicant will bear the costs of the second test payable in advance. If the second test is negative, the City will refund the applicant for the costs the applicant incurred. Such information shall be kept sealed in the City Personnel Department for one year.

Failure to successfully complete the drug screen will result in the applicant not being hired. Applicants who refuse to take the drug test or who test positive in both the initial test and the retest shall be ineligible for City employment for one year.

VI. DRUG TESTING OF EMPLOYEES

With the exception of the Department of Transportation (DOT) alcohol and drug testing regulations, there shall be no across-the-board or random testing. Testing will only be conducted for individual employees when a reasonable suspicion or probable cause to suspect that the employee may be under the influence of alcohol or drugs while on duty. Probable cause is defined later in this policy.

A. If probable cause exists, the employee shall have four (4) options:

- (1) Submit to urine/blood testing for the presence of a controlled substance and release the results to the City Manager;
- (2) Submit to urine/blood testing for the presence of a controlled substance and decline to release the results to the employer;
- (3) Decline testing; or
- (4) Submit to voluntary rehabilitation in lieu of testing.

B. If the drug test results (Option 1) for a controlled substance are positive, the employee shall be placed on extended leave, using any available employee sick or vacation leave. Once available vacation and sick leave are used, the employee shall be on leave without pay status. Health coverage would be continued, at employee expense, during leave without pay. Within two weeks from notice of the positive test result, the employee shall be required to schedule participation in a drug rehabilitation program. If

the employee refuses or fails to participate in the rehabilitation program, the City may initiate disciplinary action pursuant to the City Personnel Rules and Regulations.

C. If the employee declines to release the results (Option 2) or declines testing (Option 3), the employee must within twenty-four (24) hours contact and make an appointment with an Assessment Therapist, selected from a list agreed upon by City and Associations, for diagnosis to determine whether he/she can perform the job. The employee must sign a waiver to have the therapist release any pertinent information to the City Manager. The employee is responsible for the costs of the diagnosis.

(1) In the event the exam concludes that the employee cannot reasonably perform his/her job due to substance abuse, the employee shall be required to, within two weeks from notice of the exam results, schedule participation in an alcohol, drug, and/or controlled substance rehabilitation program. If the employee refuses or fails to participate in the rehabilitation program, the City may initiate disciplinary action pursuant to the City Personnel Rules and Regulations.

(2) If the exam finds no reason or need for a rehabilitation program or if the drug test results are negative, the City will amend all documentation in the employee's personnel file to show no record of the drug test or exam. The "probable cause" items relating to work performance, safety, attitude, etc., which triggered the initial personnel investigation shall remain a part of the personnel file only if such items could form the basis for counseling or discipline independent of the suspected involvement of alcohol or drugs. If the drug or alcohol screening is negative, the City shall furnish the employee with a letter of explanation and clearance.

D. If the employee elects for immediate participation in lieu of testing (Option 4) or elects rehabilitation under any of the subsections listed above, he/she will do so at their own expense. The employee will have the right to use any accumulated leave to participate in a rehabilitation program.

E. If the employee begins a rehabilitation program, disciplinary action will be held in abeyance until the employee has successfully completed the rehabilitation program.

F. Should the employee elect to undergo a urine/blood test (Option 1), the following provisions shall apply:

(1) The initial screening shall be performed by the immunoassay (EMIT method). If the initial test is positive, the results shall be confirmed by the thin layer chromatography method. If the results are still positive, the results will be confirmed by the gas chromatography/mass spectrometer (GC/MS method).

(2) To insure a proper chain of custody, all urine/blood specimens shall be collected as follows:

(a) The specimens shall be provided in circumstances, which maintain the integrity of the sample.

(b) The specimen shall be sealed, labeled, and initialed without the container leaving the employee's presence.

(c) Any specimen deemed positive shall be retained and preserved by the laboratory for a minimum of six (6) months or until legal proceedings relative to the test have been concluded.

(d) Every employee shall be advised of his/her right to retain a urine/blood specimen and to submit said specimen(s) for independent testing. Samples retained by the employee shall be handled in the same manner as provided in (a) and (b) and (c) above.

(3) If the employee tests positive only for a substance(s) with a medically recognized usage either as a prescription or as an over the counter drug, the employee shall be given the opportunity to produce a prescription for the drug or a physician's (or dentist's) statement relative to the need for such a drug. The said prescription must be dated before the date of the drug screen. If such evidence is produced and no other factors exist prohibiting continued employment, the employee shall immediately be returned to normal status. All associated leave with this absence shall be returned.

(4) If the employee tests negative, the City shall reimburse employee for the cost of the test.

G. Demands for drug and alcohol analysis by supervisors or managers which are determined to be malicious or vexatious, will not be tolerated and will subject the directing individual to disciplinary action.

VII. PROBABLE CAUSE

Probable cause shall mean that a clear indication exists based upon objective suspicion that an employee is under the influence of a controlled substance or alcohol during working hours and has impaired performance or judgment in his/her job. Such objective suspicion shall be based on specific facts and personal observation of at least two employees, one of which must be a supervisor. Suspicion shall not be based on third party reports. However, third party reports may be cause for a supervisor to begin observations of the employee to verify or refute whether or not the allegations have any merit.

Whether reasonable suspicion exists to warrant the testing of a particular employee must of necessity be determined on a case by case basis. Any one or combination of the following may constitute reasonable suspicion of substance abuse or other health related problems that require attention:

- (1) slurred or thick speech;
- (2) alcohol on breath;
- (3) inability to perform work properly;
- (4) physical altercation where blows are involved;
- (5) work related accidents of a suspicious nature;
- (6) problems walking or other physical activity impairment;
- (7) unusual, anti-social behavior which is so unusual that it warrants summoning a supervisor or anyone else with authority;
- (8) possession of alcohol or drugs while on duty;
- (9) eyes that stare blankly or appear glassy;
- (10) wide and severe mood swings.

It is recognized that some medical problems may cause similar symptoms as those identified above. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol analysis shall, prior to or within twenty-four (24) hours of such request, document in writing the facts constituting the reasonable suspicion surrounding the employee in question. The manager or supervisor must contact the City Manager before a drug or alcohol test is requested of the employee.

VIII. EMPLOYEE RESPONSIBILITIES

An employee must:

- (1) demonstrate satisfactory job performance;
- (2) not be at work while his/her ability to perform job duties is impaired due to alcohol or drug use;
- (3) not possess, use, manufacture, or be under the influence of alcohol, illegal drugs or controlled substances while on duty;
- (4) not directly or through a third party sell or provide illegal drugs to any person or to any other employee while either employee or both employees are on duty.

IX. GENERAL PROVISIONS

1. Use of medically prescribed drugs is not a violation of this policy. Employees must notify their supervisor before beginning work when taking prescription drugs which may interfere with the safe and effective performance of their duties. Employees unaware that such drugs may interfere with work performance, who become so affected on the job, shall notify their supervisor immediately upon becoming affected. If use of the prescribed drug is such as to substantially limit the employee's ability to perform his/her job, the employee will be directed to go home on sick leave until such time as they can report back to work free from any ill effects.

2. Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work which could harm themselves, harm others, cause damage to City property, or in any way put the City at risk.
3. This policy is applicable to any employee who is convicted for use of a controlled substance. Employees falling under such a situation must immediately notify the City Manager. In such a case, the employee may be required to receive treatment as a condition of continued employment. Failure on the part of the employee to notify the City Manager of such a situation shall be subject to discipline.
4. If the City terminates an employee for an immediate and substantial threat situation, the City will notify the employee of their opportunity for Employee Association representation. If the City has probable cause to suspect an employee and the City confronts the employee with said cause, the City will at that time notify the employee in writing of their opportunity for Employee Association representation if such representation exists. All applicable provisions of City's personnel rules shall apply in any disciplinary matter.
5. Supervisors and all other employees involved with suspended offenders of this policy will deal with these employees and these issues as discreetly and confidentially as possible.
6. Nothing contained within this policy shall be construed to deny or limit employee rights under the Americans with Disabilities Act.
7. **HOLD HARMLESS CLAUSE.** The City agrees to indemnify, defend and hold the various Employee Associations harmless in the event of a lawsuit by an employee alleging that his/her civil or constitutional rights have been violated by implementation of this substance abuse policy. In the event an association chooses to allow the City to defend the association under the terms of this clause, City shall have the exclusive right to determine whether any such claim or suit shall or shall not be compromised, resisted, defended, tried or appealed. If an association chooses to defend itself against such charges, this hold harmless clause shall be of no force and effect.

Adopted: December 15, 1993--Resolution #6380
Amended: June 15, 2005--Resolution #5-017