

ATTACHMENT E

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS/LOCAL #2434 DRUG FREE WORKPLACE POLICY

ARTICLE 1

PURPOSE

It is the purpose of this policy to maintain a Drug Free work environment, to eliminate substance abuse and its effects in the workplace and to ensure that employees are able to perform their duties safely and efficiently in the interests of the public, the city their fellow employees and their own interests as well.

POLICY

Local 2434 and the City recognize that drug or alcohol use in the workplace is a serious problem, which can jeopardize employee safety, morale and productivity, and/or service to the public. The parties further recognize the importance of a safe, healthy and productive work environment and the need to eliminate any substance abuse in the workplace. The City and the Local 2434 agree that employees who use or possess illicit drugs or alcohol on the job have committed a violation of this policy.

The City and Local 2434 recognize that employees have a right to personal privacy and confidentiality as long as their conduct does not affect their ability to fulfill their duties to the employer. The goals of this policy are to prevent drug and alcohol use and impairment on the job and to encourage voluntary treatment and rehabilitation of those employees who acknowledge having a drug or alcohol problem that affects their ability to fulfill their employment duties. The City is supportive of those who seek help voluntarily and may authorize the use of earned sick leave, vacation, or leave of absence. The City will be equally committed in identifying and disciplining those who continue to be substance abusers and do not seek help. The City and Local 2434 acknowledge, in accordance with the Drug-Free Workplace Act of 1988 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 prohibition.

APPLICATION

This policy agreement applies to all employees holding classifications represented by Local 2434 and pertains to alcohol, and to all substances, drugs or medications, legal and illegal, that could impair an employee's ability to effectively and safely perform the functions of the job. All testing pursuant to this agreement will be based solely upon "Reasonable Suspicion".

ARTICLE 2

NOTICE AND EDUCATION

All bargaining unit employees shall be provided with a copy of this agreement. Newly hired employees represented by this association shall be given a copy of this agreement upon hire. Supervisors shall be familiar with the provisions of the agreement and shall be available to respond to questions. The City shall periodically disseminate educational materials regarding drug and alcohol use and abuse to all management as well as represented employees.

All employees including management and supervisory personnel shall be trained, with periodic updating, to correctly identify symptoms of being under the influence of drugs and alcohol. Training shall include observation, documentation and reporting procedures and methods to identify workplace substance abuse. Any supervisor who has not received appropriate training shall be deemed incapable of having "Reasonable Suspicion" under this agreement unless such reasonable suspicion is consistent with the criteria outlined in Article 4-C.

ARTICLE 3

PROHIBITED CONDUCT AND MEMBER RESPONSIBILITIES

1. No employee shall possess or use any illegal substance or drugs while on duty.
2. While on duty, no employee shall bring onto city property or have in his or her possession or ingest any alcoholic beverage, controlled substance or drug, illicit or illegal, unless such employee has lawfully been prescribed the controlled substance by his or her physician.
3. Members shall not present themselves for duty while under the influence of drugs or alcohol.
4. Determination of "Being under the Influence of" must be made on a case by case basis as described in Article 4-C.
5. The employee shall notify their supervisor of the effects or possible effects of medication or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of equipment. The employee is not required to disclose the name of the drug or the reason for which the drug was prescribed.
6. Employees must provide, within a reasonable period of time, bona fide verification of a valid prescription for any potentially impairing drug or medication identified when a drug screen and confirming (gas chromatography-mass spectrophotometry) test is positive.

ARTICLE 4

REASONABLE SUSPICION DRUG TESTING

- A. The City may require an employee to submit to a medical evaluation or a drug screen only where the employer has a reasonable suspicion that the employee is under the influence of drugs and alcohol while on duty, and where the specific procedures provided below are followed.
- B. Random, Mass or individually scheduled testing of employees for drugs or alcohol, which is not based on reasonable suspicion and not performed pursuant to the specific procedures described below, is prohibited by this article of the collective bargaining agreement.
- C. Reports of drug use or aberrant behavior which are not confirmed by specific observations as provided below shall not constitute reasonable suspicion.

"Reasonable Suspicion" exists only when all of the following elements are present:

1. An employee observes another employee exhibiting aberrant or bizarre behavior, inability to do their job, using an illegal substance at the work-site, possessing drugs or alcohol at the work-site or other signs or symptoms of being under the influence;

2. The employees behavior or symptoms are observed and confirmed by a supervisor;
 3. The symptoms and/or behavior are of the type recognized and accepted by medical science is being under the influence caused by alcohol or controlled substances; and
 4. In determining if reasonable suspicion exists the supervisor shall consider other factors (such as, but not limited to, fatigue, lack of sleep, side effects of prescription and/or over the counter medications, reactions to noxious fumes or smoke, etc.) Which may explain the behavior of the employee.
- D. The involvement of an employee in an accident or on-the-job injury shall not, standing alone, constitute the reasonable suspicion required by this agreement.
- E. Each supervisor, employee or other witness who observes on duty conduct tending to establish reasonable suspicion will document in writing the specific symptoms or behaviors observed at the time of the observation. The supervisor will record the date, time and location of their observations.
- F. When a bargaining unit employee has reasonable suspicion that a management or other non-bargaining unit employee may be under the influence or impaired while on duty, the bargaining unit employee or employees may report that suspicion to the next level supervisor (up to and including the department head) who is then under an obligation to investigate.

ARTICLE 5

PRE-TESTING PROCEDURE

- A. No drug testing or medical evaluation of the employee may be ordered without the written consent of the City Manager, Fire Chief or designee. When a manager has reasonable suspicion that an employee is under the influence or impaired by alcohol or a controlled substance, he or she shall notify the fire chief or designee and provide the information of reasonable suspicion required by Article 4. Upon such notification the Chief or designee shall, if possible, observe the employee exhibiting the suspicious conduct and/or symptoms and shall interview the employee. The suspected employee shall have the right to union representation during such interview if he or she so request, and the employee shall be advised of that right by the Chief or his/her designee prior to the interview. The employee and, if applicable, the union representative shall upon request be given copies of all available documentation of reasonable suspicion and have sufficient time to review these documents before the interview commences. During the interview the Chief or designee shall give the employee the opportunity to explain his or her condition, and the Chief or designee shall keep a record of the interview.
- B. If, after observing and conversing with the employee, reviewing the reporting managers documentation and fairly considering the employee explanation, the Chief of designee believes reasonable suspicion exists that the employee is under the influence of alcohol or controlled substance, he/she may order the employees to undergo drug screening pursuant to the following procedures. Such order shall be in writing, signed by the Chief or designee and provided upon request to the employee and/or the union.

- C. If reasonable suspicion exists, the employee shall have two options if ordered to submit a drug test:
 - 1. Submit urine/blood testing for the presence of a controlled substance and release the results to the director of Human Resources and the Department Head;
 - 2. Decline Testing
- D. If the drug test results for a controlled substance are positive, the employee will be subject to disciplinary action which may result in discharge.
- E. The employee may elect to enter a drug rehabilitation program after careful review of the employee's record with the approval of the Fire Chief. If the employee completes the program the employee may be returned to his or her former position and will be subject to random testing.
- F. If the employee meets the criteria for reasonable suspicion and refuses to comply with an appropriate order to submit to drug testing the employee must be advised that such refusal constitutes insubordination and that serious disciplinary action up to and including discharge may result.

ARTICLE 6

- A. Employees ordered to submit a medical evaluation or drug test shall be referred to a designated medical facility. The employee shall be driven to the clinic by a person designated by the city and may be accompanied by the union or other representative if the employee chooses.
- B. The employee shall produce and submit a urine sample or blood specimen or other appropriate specimen for analysis.
- C. The employee can be required to submit urine samples in accordance with appropriate chain of custody procedures. The employee shall, upon request provide a blood sample or other specimen in lieu of a urine sample.
- D. The employee may request that the union representative be allowed to accompany the employee to the testing site and observe the process consistent with the chain of custody procedures.
- E. The collection of the specimen shall be in accordance with standard protocol procedures. All specimen containers shall be sealed with tamper-proof evidence tape and labeled with the employee's identification number in the presence of the employee and the union representative, if applicable.
- F. All the testing shall be done by a laboratory certified and licensed by the state of California. Such laboratory shall perform such quality assurance measures as will ensure the accuracy of the results it reports.
- G. All samples shall be tested using a screening test such as thin layer chromatography, high-pressure liquid chromatography or antibody/immunological testing. Following the screening test all positive samples must be subject to a confirming test using gas chromatography-mass spectrophotometry (GC-MS) both samples must be determined to be "positive" on the screening and confirmatory tests to be deemed positive.

- H. The standard for finding of “positive” shall be in accordance with the standards established by in the U.S. Department of Health and Human Services.
- I. Using Scientifically accepted protocol a sample of the urine shall be set aside for independent testing if the employees request for 180 days.

ARTICLE 7

INTERPRETING TEST RESULTS

- A. The result of the urine or blood test shall be reported to the fire chief/personnel director.
- B. If the results are negative, the physician or health care practitioner shall immediately report that fact to the Fire Chief/Personnel Director shall notify the affected employee. When the results are negative the employee shall be entirely vindicated of any wrongdoing related to substance abuse.
- C. If the sample is positive, it may be concluded that the employee was recently exposed to the drug. Neither the city nor the physician may conclude that the individual was under the influence on the job on the basis of the test results alone. The City may consider the positive result together with the symptoms observed pursuant to Article 6 above, and form a judgment as to whether or not the employee was under the influence of alcohol or a controlled substance at the time of the test. Such conclusions shall be reported, in writing with the reasons therefore, to the employee.
- D. The City shall, if requested, present the employee with a copy of all the laboratory reports including, but not limited to all test results, computer printouts, interpretations, graphs, reports and chain of custody forms and a copy of all materials upon which a disciplinary action is based. If the union and/or the employee elects not have a split sample test within 120 hours the City can proceed with appropriate action.
- E. After considering the results of the split test performed for the employee, if presented, the City may impose discipline on the employee in accordance with the Article 8, below.
- F. The City may discipline employees in accordance with the discipline section of the MOU.
- G. Except as provided in the item (above), the test results and other related lab test reports if any shall be transmitted directly to the Fire Chief/Director of Personnel and shall appear in an employees general personnel folder only as a sealed document. The reports or tests results may be disclosed to City Management on a strictly need-to-know basis and to the tested employee upon request. Disclosure, without patient 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 employer and the employee; (3) The information is to be used in administering an employee benefit plan; (4) The information is needed by medical personnel for diagnosis or treatment of the patient who is unable to authorize disclosure.

ARTICLE 8

VOLUNTARY TREATMENT OR REHABILITATION

- A. Employees on their own volition may seek voluntary assistance for alcohol or substance abuse problems without prejudice. Voluntary assistance does not include situations where the substance abuse problem has been discovered by the City. An employee who seek voluntary assistance shall not be disciplined or illegally discriminated against for

seeking such assistance. Requests for such assistance shall remain confidential and shall not be revealed to other employees or management personnel without the employee's consent.

- B. Treatment in such programs may be covered by the employee or by the medical plan.
- C. Any drug or alcohol testing performed pursuant to a voluntary treatment or rehabilitation program shall remain confidential.

ARTICLE 9

MISCELLANEOUS PROVISIONS

- A. Confidentiality. Results of all urine and/or blood tests performed pursuant to this agreement will be considered medical records and will be held in confidentiality to the extent permitted by law.
- B. Notwithstanding any provision in this policy, the parties understand that the City may pursue administrative action based on internal investigation of off duty misconduct.
- C. Interpretation of Policy. Any disputes over the meaning or application of this agreement shall be resolved pursuant to grievance arbitration procedure of the collective bargaining agreement.
- D. No Union liability or City liability. The City and Local 2434 agree to indemnify, defend each other harmless in the event of a lawsuit by an employee alleging that his/her civil or constitutional rights have been violated by agreement to this substance abuse policy. The city shall have the exclusive right to determine whether any such claim of suit shall or shall not be compromised, resisted, defended, tried or appealed.
- E. Conflict with other laws. This agreement is in no way intended to supersede or waive an employee's federal or state constitutional rights and/or protections.

ARTICLE 10

EMPLOYEE ASSISTANCE PROGRAM

The City and Local 2434 encourages the voluntary utilization of employee assistance programs (EAP). All EAP contracts are held in strict confidence by the EAP unless the employee request, through specific written release of information that the Personnel Director, Supervisor Bargaining Unit or other parties be notified.

The employee's compliance with the EAP program is voluntary. Absent just cause, the employee's job security and/or promotional opportunities will not be jeopardized by voluntary participation in the EAP or any other treatment service. Use of the program does not represent absolution for unsatisfactory job performance or conduct.

Sick leave can be made utilized for self-referral appointments during regular work hours if the employee is unable to schedule them during off work hours. Any earned leave time may be utilized for EAP participation. If an employee requires additional leave time he/she may request a medical leave of absence subject to approval by the Fire Chief.

The EAP is available for assessment, diagnosis and referral to treatment. Any employee wishing confidential assistance can call the EAP provider and arrange an appointment with a counselor.

