

# City of Mission Viejo Personnel Policy

**Subject:** DRUG FREE WORKPLACE

**Statement of Intent:**

The purpose of this policy is to maintain a workplace that is free of drugs and alcohol and to discourage drug and alcohol abuse by employees. There is a vital interest in maintaining safe and efficient working conditions for employees. Substance abuse is incompatible with health, safety, efficiency, and success. Employees who are under the influence of alcohol or who have any illegal drugs in their system, or who abuse legal drugs while conducting or performing business endanger their own health and safety and the health and safety of others, and can cause a number of other work-related problems, including absenteeism and tardiness, substandard job performance, increased workloads for coworkers, behavior that disrupts other employees, delays in the completion of work, inferior quality in service and disruption of resident relations.

This policy governs not only the abuse of alcohol and illegal drugs, but also the use and abuse of legal drugs in the workplace. Employees who find the need to use legal drugs, including prescription and over-the counter drugs, should consult with and must comply with those provisions set forth in this policy that address such use.

**Policy:**

1. To further its interest in avoiding accidents, to promote and maintain safe and efficient working conditions for its employees, to protect its business, property, equipment and operations, and to comply with all federal and state requirements, including, but not limited to the Drug Free Workplace Act of 1988 (41 U.S.C. § 8103) and the California Drug Free Workplace Act of 1990 (Gov. Code § 8355), this policy has been established concerning employee use of alcohol and drugs in the workplace. As a condition of continued employment, each employee must abide by this policy.
2. The City has developed specific guidelines regarding when and how drug-alcohol testing will occur, as well as provisions on rehabilitative services available to all covered employees.
3. Nothing in this policy is intended to diminish the City's commitment to employ qualified disabled individuals or to provide reasonable accommodation to such individuals consistent with all federal, state, and local laws.

**Definitions:**

1. **Controlled Substances:** Any drug or substance that is classified by the federal Drug Enforcement Administration into the five schedules or classes on the basis of their potential for abuse, accepted use, and accepted safety under medical supervision. Examples of controlled substances include, but are not limited to, cannabis, cocaine, opiate, amphetamines, and phencyclidine (PCP).

2. **Illegal Drugs or Other Controlled Substances:** Illegal drugs or other controlled substance means any drug or substance that (i) is not legally obtainable under federal or state law; or (ii) is legally obtainable but has not been legally obtained; or (iii) has been legally obtained but is being sold or distributed unlawfully.

3. **Legal Drugs:** Legal drugs means any drug, including prescription drugs and over-the-counter drugs, that has been legally obtained under federal and state law and that is not unlawfully sold or distributed.

4. **Abuse of any Legal Drug:** Abuse of any legal drug means the use of any legal drug (i) for any purpose other than the purpose for which it was prescribed or manufactured; or (ii) in a quantity, frequency, or manner that is contrary to the instructions or recommendations of the prescribing physician or manufacturer.

5. **Drug Paraphernalia:** Drug paraphernalia means any device or instrument used for injecting, smoking, consuming, or otherwise administering a controlled substance or legal and/or illegal drug, which includes, but is not limited to the items set forth in California Health and Safety Code section 11364.

6. **Reasonable Suspicion:** Reasonable suspicion means a belief based upon objective facts, evidence, or other indicators sufficient to lead a reasonably prudent person to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform their job is reduced. For example, any of the following, alone or in combination, may constitute reasonable suspicion:

- Slurred speech;
- Alcohol odor on breath;
- Cannabis odor on breath/person;
- Unsteady walking and movement;
- Physical impairment (e.g., glassy eyes, eye dilation, shaking, or erratic movement);
- An accident involving agency property that provides a reasonable basis to believe that the accident was likely to have been caused by impairment from drugs or alcohol;
- Physical altercation;
- Verbal altercation;
- Unusual behavior;
- Job impairment;
- Possession of alcohol or drugs; or
- Information obtained from a reliable source with personal knowledge.

7. **Possession:** Possession means that an employee has the substance on their person or otherwise under their control.

8. **Under the Influence:** Under the influence means having drugs and/or alcohol in the employee's system as evidenced by applicable testing procedures, and/or exhibiting conduct or behavior demonstrating that the employee is impaired by drugs or alcohol, including legal drugs.

9. **Safety-Sensitive Employees:** Safety-sensitive positions include those positions where performance of job functions may pose a danger or health or safety threat to themselves or others when performed under the influence of alcohol or drugs and where even a momentary lapse of attention can have disastrous health or safety consequences, including, but not limited to the following:

- Positions that include interaction with children are those in which employees are directly responsible for protecting children or have continuous interaction or supervision that puts them in a position of influence over children.
- Positions that include operation of heavy equipment or machinery, or the enforcement of drug or alcohol laws.
- The positions referenced in Appendix A.

#### **The City's Consent for Use of Legal Drugs:**

1. **Use of Legal Drugs:** The City recognizes that it may be necessary for employees to use legal drugs from time to time. The City also recognizes that an employee who is using legal drugs might become impaired by the drug such that the employee's ability to adequately or safely perform is compromised. In order to accommodate employees who might be required to use legal drugs, and to help assure that no serious adverse consequences in the workplace result from such drug use, employees are required to obtain the City's consent and comply with certain disclosure and work-restriction requirements under the following circumstances.

2. **When Consent is Required:** Employees who know or should know that their use of legal drugs might endanger their own safety or the safety of another person, or might pose a risk of significant damage to the City's property, or might substantially interfere with their job performance or the efficient operation of the City's business, are obligated to report such drug use to either their Department Director or the Human Resources Manager and to obtain the City's consent to continue working. The City reserves the right to have either a City physician or the employee's own physician determine whether it is advisable for the employee to continue working while taking such drugs.

3. **Duty to Disclose:** Employees who operate or who are responsible in any way for the operation, custody or care of the City's property, or for the safety of other employees or other persons, have a duty to disclose the nature of their job duties to any prescribing physician or pharmacist and/or to a City physician or pharmacist and to inquire of the physician(s) or pharmacist whether their use of the drugs prescribed might result in the dangers, risks, or impairment that this policy is intended to prevent.

4. **Restrictions on Work:** The City reserves the right to restrict the work activities of any employee who is using legal drugs or prohibit any employee from working entirely while the employee is using legal drugs.

5. **Duty to Refrain from Working:** Each employee using legal drugs has a duty to not report for work while impaired by the drug if such impairment might result in serious harm or damage or might interfere with the employee's job performance. Accordingly, even if an employee has obtained the City's consent to continue working while taking legal drugs, the employee will not be authorized to work while impaired by the use of such drug if the employee knows or has reason to know that working while impaired might endanger the safety of the employee or some other person, pose a risk of significant damage to the City's property, or substantially interfere with the employee's job performance or the efficient operation of the City's business.

### **Prohibited Conduct**

1. **Scope:** The prohibitions of this section apply whenever the interests of the City may be adversely affected, including, but not limited to any time the employee is:

- On City premises, in the workplace, or in uniform;
- Conducting or performing City business, regardless of location;
- Operating or responsible for the operation, custody, or care of City vehicles, equipment, or other property, or
- Responsible in any way for the safety of other individuals associated with the City, including, but not limited to, co-employees, management, visitors, residents, contractors, and vendors.

2. **No Right of Privacy:** The City respects the individual privacy of its employees. However, employee privacy does not extend to the employee's use of City provided equipment, supplies, or property. Employees should be aware that the terms of this policy limit their privacy in the workplace. Furthermore, employees should have no reasonable expectation of privacy with respect to City property, which may be searched at any time.

3. **Alcohol:** The following acts are prohibited and subject an employee to discipline, including, but not limited to termination:

- The unauthorized use, possession, purchase, sale, manufacture, distribution, transportation or dispensation of alcohol; or
- Being under the influence of alcohol as defined by applicable state law.

4. **Illegal Drugs:** The following acts are prohibited and subject an employee to discipline, including, but not limited to termination:

- The use, possession, purchase, sale, manufacture, distribution, transportation, or dispensation of any illegal drug or other controlled substance or drug paraphernalia; or

- Having any illegal drug or other controlled substance in the employee's system while working.

5. **Legal Drugs:** The following acts are prohibited and subject an employee to discipline, including, but not limited to termination:

- The abuse of any legal drug; or
- The purchase, sale, manufacture, distribution, transportation, dispensation, or possession of any legal prescription or over-the-counter drug in a manner inconsistent with law; or
- Working while impaired by the use of a legal drug whenever such impairment might endanger the safety of the employee or some other person, pose a risk of significant damage to City property, or substantially interfere with the employee's job performance or the efficient operation of the City's business in violation of Section III above; or
- Working without obtaining the required consent in violation of Section III, above; or
- Failure to make proper disclosure in violation of Section III, above.

**Non-Discrimination Provision Regarding the Use of Cannabis in Certain Circumstances:** For City employees or applicants for City employment who are not part of one or more of the groups described below, the City will not take any discriminatory employment action based on either the employee or applicant's off-duty use of cannabis away from the workplace or a drug test result which indicates the presence of non-psychoactive cannabis metabolites in the employee or applicant's hair, blood, urine, or other bodily fluids. This section does not apply to the following categories of employees:

- a) Employees or applicants for employment who are in the building and construction trades;
- b) Employees or applicants for employment who are subject to either state or federal law or regulation that requires drug testing (e.g., DOT rule, 49 CFR Part 40);
- c) Employees or applicants for employment who are hired for positions that require a federal government background investigation or security clearance in accordance with regulations issued by the United States Department of Defense pursuant to Part 117 of Title 32 of the Code of Federal Regulations, or equivalent regulations applicable to other agencies.

This section does not limit the City's ability to take an employment action against an applicant for employment that is based on a scientifically valid pre-employment drug screening conducted through methods that do not screen for non-psychoactive cannabis metabolites, and as otherwise provided in this Policy.

**Substance Screening:**

**Job Applicants:** The City has discretion to test job applicants for alcohol and drug use under the following circumstances. The City will use an outside laboratory to perform all testing. External applicants who apply for certain jobs where a special need for pre-

employment drug and alcohol testing exists must take and pass a drug and alcohol test following a conditional offer of employment. No drug and/or alcohol test shall be administered prior to the applicant receiving a conditional offer of employment. For purposes of pre-employment drug and/or alcohol testing, special need includes safety-sensitive positions and positions that have, or are reasonably foreseen to have in the near future, direct supervision and/or influence over a minor(s).

1. **Employees:** Current employees will be subject to drug or alcohol testing if they:

- Report to work or, while conducting or performing City business regardless of location, are directly observed and/or reasonably suspected of being under the influence of drugs or alcohol or exhibiting abnormal behavior or performance difficulties reasonably associated with substance abuse;
- Are involved in a work-related accident or injury that provides a reasonable basis to believe that the accident or injury was likely to have been caused by impairment from drugs or alcohol;
- Are subject to return to duty and/or follow-up testing following an employee's return from drug and/or alcohol rehabilitation and/or treatment.

Exhibit B of this Policy contains a Reasonable Suspicion Report form for supervisors and/or managers to complete to document observations leading to a reasonable suspicion.

2. **Testing:** The City may utilize each or all of the following testing methods via urinalysis, blood test, or any other screening available:

- Pre-employment testing;
- Reasonable suspicion testing;
- Post-accident testing; and
- Testing authorized or required by federal or state regulations, including Department of Transportation regulations.

4. **Testing Protocol:** If the documentation and analysis show that there is a reasonable suspicion of drug or alcohol abuse at work, and the Department Director has approved testing, the employee will be relieved from duty, transported to the testing facility, and to their home after the test. The employee will be placed on administrative leave or other paid leave until the test results are received.

### **Disciplinary Action:**

1. Violation of this policy by any employee may result in discipline, up to and including discharge, depending on the circumstances and at the discretion of the agency. At a minimum, disciplinary mandates for safety-sensitive positions, as required under Title 13 of the California Code of Regulations and Title 49 of the Code of Federal Regulations, will be followed for those individuals in safety-sensitive positions. Employees may also be required to participate in a drug and/or alcohol rehabilitation or counseling programs. In certain instances, and solely at the City's discretion, the City may enter into an agreement with an employee who would otherwise be disciplined to permit the employee the keep

their job upon fulfilling certain requirements pertaining to drug and/or alcohol rehabilitation, including, but not limited to return to duty and/or follow-up testing.

2. **Effect of Criminal Conviction:** An employee who is convicted under a criminal drug statute for a violation occurring in the workplace, while conducting or performing City business regardless of location, or during any City-related activity or event will be deemed to have violated this policy.

3. **Effect of a Positive Test:** An employee who receives a positive test for drugs or alcohol will be in violation of this policy and will be subject to discipline, up to and including termination. An applicant who receives a positive test result for drugs or alcohol may have their conditional offer of employment rescinded and may not be hired.

4. **Refusal to Test:** Includes, but is not limited to circumstances or behaviors such as:

- Failure to appear at the collection site in the time allotted;
- Leaving the collection site before the testing process is completed;
- Failure to provide a urine, breath, or saliva specimen;
- Failure to permit the observation or monitoring of specimen collection when it is required;
- Failure to provide a sufficient amount of urine or breath specimen without a valid medical explanation;
- Adulterating or diluting a urine, breath, or saliva specimen;
- Failure or refusal to take a second test when required;
- Failure to cooperate with any part of the testing process. (Example: refusal to sign the testing form when required);

*[Note: A refusal to test shall be treated as a positive test result for the purposes of administration of this policy and any resulting disciplinary action.]*

5. **Return to Duty/Follow-up Testing:** An employee who has tested positive for drugs and alcohol or has successfully completed drug or alcohol rehabilitation may be required to comply with any required follow-up procedures or subsequent testing when directed to do so by the City in accordance with this policy.

### **Criminal Convictions:**

1. Employees are required by this policy to notify the City of any conviction under a criminal drug statute for a violation occurring in the workplace, while conducting or performing City business regardless of location, or during any City-related activity or event, not later than five (5) days after any such conviction. For purposes of this policy, a conviction includes a finding of guilt, a plea or no contest, and/or an imposition of sentence by any judicial body charged with responsibility to determine violations of federal or state criminal drug and alcohol statutes. When required by applicable law, the City will notify agencies under contract of any employee who has been convicted under a criminal drug statute for a violation occurring while conducting or performing City business, regardless of location.

### **Confidentiality:**

1. Disclosures made by employees to the Human Resources Manager or Department Director concerning their use of legal drugs will be treated confidentially and will not be revealed to managers or supervisors unless there is an important work-related reason to do so or disclosure is required by law. Disclosures made by employees to the Human Resources Manager or Department Director concerning their participation in any drug or alcohol rehabilitation program will be treated confidentially. Laboratory reports and/or test results shall not appear in an employee's general personnel file and information of this nature will be contained in a separate confidential medical folder.

2. Managers and supervisors should restrict communications concerning possible violations of this policy to persons who have an important work-related reason to know. In addition, managers and supervisors should not disclose the fact of an employee's participation in any drug or alcohol counseling or rehabilitation program.

### **Counseling:**

1. Employees who suspect they may have alcohol or drug problems, even in the early stages, are encouraged to voluntarily seek diagnosis and to follow through with the treatment as prescribed by qualified professionals. Employees who wish to voluntarily enter and participate in an approved alcohol or drug rehabilitation program are encouraged to contact the Human Resources Manager or Department Director, who will determine whether the City can accommodate the employee by providing unpaid leave for the time necessary to complete participation in the program.

2. However, the City reserves the right to discipline employees, up to and including termination, who are discovered to have a problem with drugs and/or alcohol, and do not come forward for help prior to the City's discovery or the City's demand that the employee submit to a drug and/or alcohol test.

### **Administration:**

In accordance with City of Mission Viejo Municipal Code chapter 2.60 "Personnel System", this Personnel Policy is deemed not to have a direct financial impact on the City. The City Manager may implement and amend this policy subject to prior City Attorney legal review and approval, and City Council review.

Adopted: By City Council -September 11, 1989 -Res. No. 89-92.

Amended: By City Council – July 10, 2018 - Res. No. 18-34.

Amended: By City Manager June 27, 2023, and effective July 1, 2023. (Reviewed by City Council on June 27, 2023 – Resolution No. 23-28)



**EMPLOYEE ACKNOWLEDGMENT OF  
RECEIPT OF DRUG FREE WORKPLACE POLICY**

This will acknowledge that I have received my copy of the City of Mission Viejo Drug Free Workplace Policy ("Policy") and that I have read the Policy and understand my rights and obligations under the Policy.

I understand that this Policy represents only current policies, procedures, rights and obligations. Regardless of what the Policy states or provides, the City retains the right to add, change or delete provisions of the Policy and all other working terms and conditions without obtaining another person's consent or agreement.

My signature below further signifies that I have read this Policy and that I accept and will abide by all of its provisions. I understand that failure to fully comply with all terms set forth in this Policy may lead to disciplinary action, up to and including termination.

PRINT FULL NAME \_\_\_\_\_

SIGNED \_\_\_\_\_

DATE \_\_\_\_\_

[RETAIN IN EMPLOYEE PERSONNEL FILE]

## APPENDIX A

### SAFETY-SENSITIVE POSITIONS

1. Animal Control Officer
2. Animal Control Officer Trainee
3. Community Services Coordinator
4. Community Services Facility Leader
5. Community Services Leader
6. Community Services Program Assistant
7. Community Services Specialist
8. Community Services Supervisor
9. Facilities Maintenance Technician
10. Facilities Maintenance Specialist
11. Librarian I/II
12. Library & Cultural Services Administrator
13. Library & Cultural Services Coordinator
14. Library & Cultural Services Volunteer Coordinator
15. Lifeguard
16. On-Call Librarian
17. Programs & Outreach Librarian
18. Public Services Contracts Administrator
19. Public Services Supervisor
20. Public Works Inspector I/II
21. Reserve Animal Control Officer
22. Reserve Animal Control Officer Trainee
23. Senior Animal Services Officer
24. Senior Community Services Leader
25. Senior Librarian
26. Senior Lifeguard
27. Senior Public Services Contracts Administrator
28. Senior Public Services Supervisor
29. Senior Public Works Inspector

## APPENDIX B

### REASONABLE SUSPICION REPORT

INSTRUCTIONS		
Complete this form to document the objective facts, evidence, or other indicators that you observed which leads you to believe an employee is/was under the influence of drugs or alcohol in the workplace. Completed forms shall be submitted to the Human Resources Manager. For any questions, please contact the Human Resources Division at (949) 470-3060 or via email at <a href="mailto:hrnotifications@cityofmissionviejo.org">hrnotifications@cityofmissionviejo.org</a> .		
INFORMATION OF PERSON COMPLETING THIS FORM		
FIRST NAME:	LAST NAME:	
JOB TITLE:	DEPARTMENT/DIVISION:	
INFORMATION OF PERSON REASONABLY SUSPECTED OF BEING UNDER THE INFLUENCE		
FIRST NAME:	LAST NAME:	
JOB TITLE:	DEPARTMENT/DIVISION:	
DATE/TIME/LOCATION INFORMATION		
DATE OBSERVED:	TIME FROM:	TIME TO:
LOCATION/BUILDING:		
CAUSE FOR SUSPICION ( <i>Answer all that apply</i> ):		
<b>Presence of Drugs, Alcohol, and/or Paraphernalia (<i>specify</i>):</b>		
Other: _____		
<b>Appearance:</b> <input type="checkbox"/> Normal <input type="checkbox"/> Flushed <input type="checkbox"/> Puncture Marks <input type="checkbox"/> Disheveled <input type="checkbox"/> Bloodshot Eyes <input type="checkbox"/> Tremors <input type="checkbox"/> Body Odor <input type="checkbox"/> Profuse Sweating <input type="checkbox"/> Runny Nose <input type="checkbox"/> Dry-mouth Symptoms <input type="checkbox"/> Inappropriate wearing of sunglasses <input type="checkbox"/> Dilated/Constricted Pupils		
Other: _____		
<b>Speech Behavior:</b> <input type="checkbox"/> Normal <input type="checkbox"/> Incoherent <input type="checkbox"/> Slurred <input type="checkbox"/> Silent <input type="checkbox"/> Confused <input type="checkbox"/> Slowed <input type="checkbox"/> Whispering <input type="checkbox"/> Loud <input type="checkbox"/> Extremely Fast		
Other: _____		
<b>Awareness Behavior:</b> <input type="checkbox"/> Normal <input type="checkbox"/> Confused <input type="checkbox"/> Mood Swings <input type="checkbox"/> Euphoria <input type="checkbox"/> Lethargic <input type="checkbox"/> Paranoid <input type="checkbox"/> Disoriented <input type="checkbox"/> Lack of Coordination		
Other: _____		
<b>Balance Standing:</b> <input type="checkbox"/> Normal <input type="checkbox"/> Swaying <input type="checkbox"/> Falling <input type="checkbox"/> Staggering <input type="checkbox"/> Reaching for Support		
Other: _____		
<b>Walking &amp; Turning:</b> <input type="checkbox"/> Normal <input type="checkbox"/> Swaying <input type="checkbox"/> Stumbling <input type="checkbox"/> Falling <input type="checkbox"/> Arms Raised for Balance <input type="checkbox"/> Reaching for Support		
Other: _____		

Other Observed Action or Behavior (specify, add other sheets as needed):

**WITNESS INFORMATION**

1. FIRST NAME:	LAST NAME:	
JOB TITLE:	DEPARTMENT/DIVISION:	
2. FIRST NAME:	LAST NAME:	
JOB TITLE:	DEPARTMENT/DIVISION:	
3. FIRST NAME:	LAST NAME:	
JOB TITLE:	DEPARTMENT/DIVISION:	
Employee Signature:	Date Completed:	Time Completed:

**Form Distribution:**  
Original Submitted to Human Resources