



staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Leo L. Mingle, Jr., Assistant City Manager

SUBJECT: Consideration and possible action to adopt Resolution No. 16-XX - A Resolution establishing a policy for pre-employment drug testing.

DATE: June 13, 2016

EXECUTIVE SUMMARY

This Resolution establishes a pre-employment drug testing policy applicable to all City employees.

RECOMMENDATION TO CITY COUNCIL

- 1) Adopt Resolution No. 16-XX; or
- 2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

There is no fiscal impact at this time.

DISCUSSION

The City Manager will implement the policy.

The proposed policy requires all offers of employment be conditioned on the prospective employee's successful completion of a pre-employment drug test. If a prospective employee fails a pre-employment drug test the conditional offer of employment will be withdrawn.

If a prospective employee fails a pre-employment drug test, he or she will be given an opportunity to explain whether the test result was due to testing positive for a properly prescribed prescription drug which was not disclosed at the time of the test. If so, the prospective employee will be required to provide documentation from his or her health care provider describing what work restrictions, if any, apply to the prospective employee, and the City Manager will determine if the work restrictions can be reasonably accommodated.

ATTACHMENT

Resolution No. 16-XX.....2

CITY OF BELLFLOWER

RESOLUTION NO. 16-XX

A RESOLUTION ESTABLISHING A POLICY FOR PRE-EMPLOYMENT DRUG TESTING

THE CITY COUNCIL RESOLVES AS FOLLOWS:

SECTION 1. The City Council finds and declares as follows:

A. **Purpose.** It is the City's policy to maintain a safe, healthful and productive work environment for all employees. Toward that end, the City will act to eliminate any substance abuse that increases the potential for accidents, absenteeism, substandard performance, and poor employee morale. All Applicants must be made aware that, in order to ensure a workplace environment free of substance abuse, employment with the City is contingent on successful completion of a pre-employment Drug test and physical examination. Use of a Prescribed Medication or Over-the-Counter Medication is permitted if directions are followed properly and no abuse is present, and if the Applicant's ability to perform his or her job is not impaired. It is the responsibility of the Applicant to understand this policy and ask for an explanation of this policy from the City, if necessary.

B. **Definitions.** Where used herein:

1. "Applicant" means any person applying for employment with the City who has been extended a conditional offer of employment.
2. "City" means the City of Bellflower and its duly authorized supervisors and managers.
3. "Controlled Substance" or "Drug" means any drug that is classified by the Drug Enforcement Administration into the five schedules or classes on the basis of their potential for abuse, accepted use, and accepted safety under medication supervision. The presence of a drug on any of these schedules identifies that it is "controlled" and determines the nature of the supervisory control that must be exercised. "Controlled substance" includes, without limitation, narcotics, depressants, stimulants, hallucinogens, and cannabis.
4. "Licensed Medical Practitioner" means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, and Local laws and regulations, to prescribe controlled substances or other drugs.
5. A "Negative Result" is a test result that is reported to the City and indicates that there were insufficient or not enough Drugs present in a sample to generate a Positive Result, or the City determines that there was a legitimate medical use for any Drug that is present in the sample in sufficient quantity to generate a Positive Result.
6. "Over-the-Counter Medication" means any medication that is available without a prescription.

7. A "Positive Result" is a confirmed Screening Test result that is at or above the positive test threshold for Controlled Substances pursuant to the Department of Health and Human Services guidelines, which are incorporated by reference. See *Federal Register*, 73 FR 71858, 71880 (November 25, 2008).
8. "Prescribed Medication" means any medication prescribed by a Licensed Medical Practitioner for a medical condition.
9. "Screening Test" means an immuno-assay screen to eliminate "negative" urine specimens from further consideration. Urine specimens will be analyzed for Controlled Substances.

C. **General.** Offers of employment will be conditioned on the Applicant's successful completion of a pre-employment Screening Test and physical examination.

1. All job announcements and promotional material will specify that a Screening Test will be part of the physical examination.
2. Each Applicant will, as a prerequisite to employment, sign a consent form or forms authorizing the Screening Test and permitting release of test results to City representatives with a need to know, and must submit to a Screening test. Applicants who refuse to submit to a Screening Test will not be considered for employment. Actions constituting refusal to submit include, but are not limited to, the following:
 - a. A refusal to sign the consent form or forms;
 - b. A refusal to provide a urine sample, or an inability to provide a sample without a valid medical explanation;
 - c. Tampering with or attempting to adulterate a urine specimen;
 - d. Interfering with or tampering with collection procedures; or
 - e. Not reporting to the location of the Screening Test at the time allotted.
3. Once the consent form or forms are signed, a pre-employment physical examination and Screening Test will be conducted and a urine specimen will be collected. Drug testing will be performed using the standards approved by the United States Department of Transportation ("DOT"). Unless otherwise specified in an applicable MOU, urine collection will be conducted in accordance with the DOT's Urine Specimen Collection Guidelines, and these Guidelines will be available for review by an Applicant upon request.
4. The results of an Applicant's Screening Test will be delivered to and reviewed by the City Manager or designee.
5. An Applicant whose Screening Test does not indicate a Negative Result will be

contacted by the City and given the opportunity to have a split specimen reanalysis performed. If the reanalysis does not indicate a Negative Result, the Applicant will be given the opportunity to withdraw his or her application for employment. If he or she has not voluntarily withdrawn his or her application for employment, the Applicant will be deemed as physically unfit for employment. The City Manager or designee will disqualify the Applicant from employment, and the conditional offer of employment will be withdrawn.

6. An Applicant who receives a Positive Result on his or her Screening Test will be informed by the City that he or she has not passed the pre-employment physical examination. The City will not provide further test results information unless required by law.
7. Except as set forth below, no Applicant may commence work until passing the Screening test and physical examination. No Applicant will be allowed to begin work at all if the City discovers that the Applicant uses Controlled Substance other than a Prescribed Medication or Over-the-Counter Medication, or that he or she abuses a Prescribed Medication or Over-the-Counter Medication.
8. Any Applicant disqualified for employment pursuant to this policy may reapply after one year from the date of disqualification.

D. Discretionary Delay of Test. In cases of urgent necessity, the City Manager or designee may, in his or her discretion, provide that a Screening Test be administered after the Applicant commences work.

1. If an Applicant is permitted to commence work before undergoing a Screening Test, the test must be administered, and available for review by the City Manager or designee, before the Applicant goes on the City payroll.
2. Employment will remain contingent on the Applicant's successful completion of a pre-employment Screening Test and physical examination.
3. If the Applicant fails a pre-employment Screening Test, the conditional offer of employment will be withdrawn and the Applicant will discontinue his or her work.

E. Accommodation of Medical Condition. If an Applicant fails a Drug screening test, he or she will be given an opportunity to explain whether the test result was due to testing positive for a Prescribed Medication or Over-the-Counter Medication which was not disclosed at the time of the test. If so, the Applicant will be required to provide documentation from his or her health care provider describing what work restrictions, if any, apply to the Applicant. The City Manager will, in his or her sole discretion, determine whether or not the Applicant can be reasonably accommodated in light of the applicable work restrictions. If the City Manager determines that the employee cannot be reasonably accommodated, the conditional offer of employment will be withdrawn

F. Confidentiality. Confidentiality is essential to the City's policy. Any employee who violates confidentiality is subject to discipline, and may be held civilly or criminally liable.

1. The results of Screening Tests will only be used for employment purposes, and will not be released for use in the criminal justice system.
2. Any records related to an Applicant's Screening Test will be contained in a separate confidential medical file which will be securely kept, and which will remain separate from any other personnel records.
3. Unless the Applicant consents in writing, results of the Screening Test may only be disclosed to City management, and may only be disclosed on a need-to-know basis.
4. The City may disclose test results without an Applicant's consent only when:
 - a. The information is compelled by law, or by judicial or administrative process;
 - b. The information has been placed at issue by the Applicant in a formal dispute between the Applicant and the City;
 - c. The information is necessary to administer an employee benefit plan; or
 - d. The information is needed by medical personnel for the diagnosis or treatment of the Applicant, and the Applicant is unable to authorize disclosure.
5. Any documents demonstrating a Positive Result which is later refuted must be removed from the Applicant's file, and not used for any purpose, unless required by law.

G. Record-Keeping. Records documenting the collection process for pre-employment Screening Tests and training of personnel in connection with the collection process will be retained for a minimum of two years. Records related to the education and training of screening test technicians and supervisors in connection with analyzing urine specimens will be retained indefinitely.

SECTION 2. This Resolution does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before, this Resolution's effective date. Any such amended part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Resolution.

SECTION 3. If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Resolution are severable.

SECTION 4. To the extent that any other resolution pertaining to pre-employment Drug testing is incorporated into this Resolution, it is superseded in its entirety.

SECTION 5. This Resolution is exempt from review under the California Environmental Quality Act (Public Resources Code §§ 21000, et seq., “CEQA”) and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, et seq., the “CEQA Guidelines”) because it constitutes an organizational or administrative activity of the City that will not result in direct or indirect physical changes in the environment. Accordingly, it is not a “project” that has the potential to cause significant physical effects on the environment and is not subject to CEQA pursuant to CEQA Guidelines §§ 15061 and 15378.

SECTION 6. The City Manager will establish policies and procedures as necessary to carry out this policy.

SECTION 7. The Mayor, or presiding officer, is hereby authorized to affix his signature to this Resolution signifying its adoption and the City Clerk, or her duly appointed deputy, is directed to attest thereto.

SECTION 8. This Resolution will become effective immediately upon adoption.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER THIS ____ DAY OF ____ 2016.

Dan Koops, Mayor

ATTEST:

Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, City Attorney