



# staff report

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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 Fitness for Duty and Substance Abuse Prevention Policy.

DATE: July 11, 2016

## **EXECUTIVE SUMMARY**

This Resolution establishes a fitness for duty and substance abuse prevention 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 City has an absolute right and responsibility to ensure the fitness for duty of each of its employees and to prevent substance abuse in the workplace.

The proposed policy defines certain terms as they apply to fitness for duty and substance abuse, including definitions of major misconduct and other misconduct. The policy also describes action to be taken by managers and supervisors when an employee is unable to perform his or her duties as a result of illness, injury, the influence of legal or illegal substances, or emotional or psychological distress.

## **ATTACHMENT**

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

**CITY OF BELLFLOWER**

**RESOLUTION NO. 16-XX**

**A RESOLUTION ESTABLISHING A FITNESS FOR DUTY AND  
SUBSTANCE ABUSE PREVENTION POLICY**

**THE CITY COUNCIL RESOLVES AS FOLLOWS:**

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

A. **Introduction.** The City has an absolute right and responsibility to ensure the fitness for duty of each of its employees and to prevent substance abuse in the workplace. Employees working with significantly diminished capacity can be a threat to themselves, their co-workers and the community we serve. This policy provides guidance and procedures to be used in resolving questions of fitness for duty.

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

1. "Blood Alcohol Content" or "BAC" means percent, by weight, of alcohol in a person's blood based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

2. "City" means the City of Bellflower and its duly authorized supervisors and managers.

3. "Diminished capacity" means an employee is significantly diminished in his or her capacity to perform the essential functions or skills of his or her job.

4. "Doctor's note" or "health care provider's note" means a document from an employee's health care provider (and including when appropriate a chiropractor, psychologist, or other mental health care provider) stating whether an employee's absence is excused for a medical reason and/or whether the employee can perform the essential functions and skills contained in his or her respective job description with or without restrictions and/or excusing the employee's absence for health reasons. A doctor's note may be required by the City in its sole discretion. An employee required to get a doctor's note will be in an off-duty status until a doctor's note acceptable to the City in its sole discretion is provided. An employee may use accumulated sick leave while in an off-duty status to obtain a doctor's note.

5. "Employee Assistance Program" or "EAP" means the third-party, City-paid program, offering support, guidance, and resources to employees to help them resolve personal issues, including alcohol and drug abuse, stress and anxiety, depression, emotional well-being, financial and legal concerns, grief and loss, and other issues. Employees can refer themselves or be referred through Human Resources. These services are provided on a confidential basis.

6. "Fitness for duty determination" means a determination be made by a medical professional at a medical facility designated by the City as to an employee's ability to perform the essential functions and skills of his or her job, including but not limited to any safety sensitive function, and may include appropriate testing for drug and/or alcohol use based on probable cause. Fitness for duty determinations will be made at the City's expense and on the City's time.

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A supervisor will have the authority to order an employee to immediately undergo a fitness for duty determination. Except in cases of reasonable suspicion testing, the employee may or may not be accompanied by a supervisor.

7. "Intoxicated" means any employee with a BAC of 0.08 or greater, or as to any employee required to be licensed to perform a safety sensitive function with a BAC of 0.04 or greater.

8. "Over-the-counter medication" means any non-prescription medication which may result in a diminished capacity. The use of any such medication must be immediately disclosed to the employee's supervisor and a doctor's note may be required by the City in its sole discretion. The City may in its sole discretion also require a fitness for duty determination.

9. "Performing a safety sensitive function" means a driver is considered to be performing a safety sensitive function during any period in which he/she is actually performing, ready to perform, or immediately available to perform a safety sensitive function. Any employee who is required to possess a Class B California Driver License as a condition of his or her employment is deemed to be performing a safety sensitive function. Such drivers are also subject to random drug testing, pursuant to U.S. DOT regulations.

10. "Prescribed medication" means any medication prescribed to an employee by a health care provider and which may result in a diminished capacity. The use of any such medication must be immediately disclosed to the employee's supervisor and a doctor's note may be required by the City in its sole discretion. The City may in its sole discretion also require a fitness for duty determination.

11. "Reasonable suspicion" means that the City believes the actions or appearances or conduct of an employee are indicative of the use of alcohol, a controlled substance, or the abuse of a prescribed or over-the-counter medication.

12. "Safety sensitive function" means any of those on-duty functions set forth in 49 CFR 395.2 and as defined in Staff Manual 3.22.

13. "Supervisor" means an employee's immediate supervisor or any other person higher in the employee's chain of command, other supervisors and managers in the employee's department, and the Human Resources and Risk Manager.

14. "Under the influence" means 1) for alcohol being intoxicated; 2) for any controlled substance, narcotic, amphetamine, barbiturate, or other non-prescribed hallucinogenic substance having the substance present in an employee's blood or urine; and 3) for any prescribed or over-the-counter medication in excess of the prescribed dosage present in an employee's blood or urine.

**C. Major Misconduct.** The following violations are major misconduct, not subject to progressive discipline, and may be grounds for disciplinary action up to and including immediate termination of employment:

1. No employee will consume any alcohol while on duty or during any break or meal period during his or her work day.
2. No employee will use any controlled substance, narcotic, amphetamine, barbiturate, prescribed or over-the-counter medication in excess of the prescribed dosage, or other non-prescribed hallucinogenic substance while on duty.
3. No employee will report to work while intoxicated.
4. No employee will report to work while under the influence of any controlled substance, narcotic, amphetamine, barbiturate, or other non-prescribed hallucinogenic or psychotropic substance.
5. No employee will possess, buy, sell, or trade any controlled substance, narcotic, amphetamine, barbiturate, or other non-prescribed hallucinogenic or psychotropic substance while on duty.
6. No employee will refuse to submit to a fitness for duty determination.

**D. Other Misconduct.** The following violations are misconduct, subject to progressive discipline, and may be grounds for disciplinary action up to and including termination of employment:

1. No employee will report to work while under the influence of any prescribed or over-the-counter medication in excess of the prescribed dosage.
2. Any employee who is in a diminished capacity due to the use of any prescribed or over-the-counter medication must immediately disclose this fact to his or her supervisor.

**E. Action.** An employee may become unable to perform his or her duties as a result of illness, injury, the influence of legal or illegal substances, or emotional or psychological distress.

1. **Diminished Capacity Due to Illness or Injury.** Whenever a supervisor has reasonable suspicion to believe that an employee is ill or injured or taking a prescribed medication, and that this illness or injury or prescribed medication causes diminished capacity, the supervisor will have the authority to order that employee to leave work and prohibit his or her return to duty without a doctor's note to return to work. The supervisor ordering the employee to leave work will immediately notify his or her supervisor and the department head concerned.

2. **Diminished Capacity Due to Being Under the Influence.** Per the current Compensation Plan for Non-Represented Employees and the Memoranda of Understanding for employees represented by AFSCME, when a supervisor has reasonable suspicion to believe that an employee is under the influence of intoxicating liquor, controlled substance, narcotic, amphetamine, barbiturate, prescribed or over-the-counter medication in excess of the prescribed dosage, or other non-prescribed hallucinogenic substance, the supervisor will have the authority to order that employee to undergo a fitness for duty determination.

a. The supervisor ordering the determination of fitness for duty will immediately notify his or her supervisor, the department head concerned, the Human Resources and Risk Manager, and the Assistant City Manager.

b. A supervisor will accompany the employee to the designated medical facility making the fitness for duty determination.

c. The City will bear the expense of the examination, and will provide transportation to and from the medical facility and the employee's work station. If requested by the employee, and if a union representative is available within one (1) hour, the union representative may accompany the employee to the medical testing facility or meet the employee at the medical testing facility.

d. See Section E.4 below for action to be taken if an employee testing negative for drugs and/or alcohol continues to exhibit signs of diminished capacity.

**3. Diminished Capacity Due to Emotional or Psychological Distress.** Whenever a supervisor has reasonable suspicion to believe that an employee is exhibiting abnormal behavior which results in diminished capacity and/or raises sufficient concern as to the safety of the employee, co-workers or the public, the supervisor will have the authority to order that employee to leave work and prohibit his or her return to duty without a doctor's note from a psychologist or other mental health care provider authorizing his or her return to work. An employee so ordered to leave work may not enter City facilities without the specific prior approval of their respective department head.

a. The supervisor making this determination will immediately notify his or her supervisor, the department head concerned, the Human Resources and Risk Manager, and the Assistant City Manager.

b. Any employee believed unfit for duty for reason of emotional or psychological distress will be referred to the City's Employee Assistance Program for evaluation by a psychologist or other mental health care provider. An employee may alternatively decide to be evaluated by a psychologist or other mental health care provider of their own choosing. In either case a psychologist or other mental health care provider must provide a doctor's note authorizing the employee's return to work. If a treating health care provider, psychologist, or other mental health provider has prescribed medication, then the health care provider's note should explicitly state that both the employee's health and medication(s) were taken into consideration in determining ability to perform his or her full duties.

**4. Diminished Capacity Due to Other Cause.** If an employee determined fit for duty by reason of a negative drug and/or alcohol test continues to exhibit behavior which gives a supervisor reasonable suspicion to believe the employee has diminished capacity and/or raises sufficient concern as to the safety of the employee, co-workers or the public, the supervisor will have the authority to order that employee to leave work and prohibit his or her return to duty without a doctor's note to return to work. The supervisor ordering the employee to leave work will immediately notify his or her supervisor and the department head concerned.

**5. Transportation of Employees Ordered to Leave Work Due to Diminished Capacity.** Whenever an employee is ordered to leave work due to diminished capacity the City will provide transportation to the employee's home or health care provider. The supervisor will have the discretion to transport the employee in a City vehicle or private vehicle driven by another employee on the City's time, or in a taxicab paid for by the City. The person paying for the taxicab should obtain a receipt from the driver and submit a request for reimbursement from petty cash.

**6. Reasonable Suspicion.** The City will require an employee to be tested upon reasonable suspicion for the use of drugs or alcohol. Reasonable suspicion or cause means that a trained supervisor believes that the actions, appearance, speech, body odors, and/or conduct of an on-duty employee is indicative of the use of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired, or so that the ability to perform his/her job safely is reduced. Reasonable suspicion may be concluded before, during, or after an employee performs safety-sensitive function. Represented employees may request the presence of an AFSCME steward, if one is available.

a. The determination that a reasonable suspicion exists to require an employee to undergo a drug or alcohol test must be based on specific, objective, and contemporaneous facts concerning the behavior, appearance, speech, or body odors of the employee. The determination must also be based on the supervisor's direct observations of the behavior(s) and not on hearsay. The supervisor(s) witnessing the impairment must document the specific observations upon which the reasonable suspicion is based.

b. The supervisor who requests an employee to submit to an alcohol and/or drug analysis must document in writing on a Performance Impairment Report detailing any reasonable suspicion that the employee in question is intoxicated or under the influence of drugs, and submit the report to the Department Head concerned. The employee will be provided with a copy of the Performance Impairment Report. In the presence of the employee, the supervisor will present the observations contained in the Report establishing the reasonable suspicion within three business days of the reported impaired performance.

c. Where there is a reasonable suspicion that the employee is under the influence of drugs or alcohol, the supervisor will arrange for the employee to be transported to the testing facility and, if appropriate, driven home. The employee will be placed in an off-duty status and may use any accumulated sick leave, or if no sick leave is available any accumulated vacation leave, until such time as the results are confirmed. The employee will not be permitted to transport him or herself.

d. The City Manager or designee will create a Performance Impairment Report form and provide copies as needed to department heads and division heads.

**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.**

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**Dan Koops, Mayor**

**ATTEST:**

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**Mayra Ochiqui, City Clerk**

**APPROVED AS TO FORM:**

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**Karl H. Berger, City Attorney**