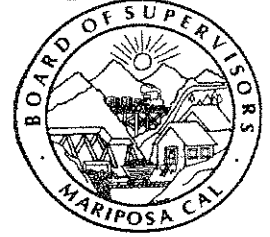


Policy Binder



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222



BOB PICKARD, CHAIR
LEE STETSON, VICE CHAIR
LYLE TURPIN
JANET BIBBY
DIANNE FRITZ

DISTRICT V
DISTRICT I
DISTRICT II
DISTRICT III
DISTRICT IV

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: RICH INMAN, County Administrative Officer
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: DRUG AND ALCOHOL TESTING POLICY FOR POSITIONS IN THE SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) BARGAINING UNIT

Resolution No. 05-176

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on May 3, 2005

ACTION AND VOTE:

Consent Agenda item 7 – Chairman Pickard advised that the Board is working through the meet and confer process to have this drug and alcohol testing policy apply to all employees. Discussion was held. Supervisor Bibby asked about the language in the policy that states that it is for all employees; however, this has only been negotiated with SEIU at this time; and she asked for clarification of whether there would be separate policies for the different bargaining units. Tom Guarino, County Counsel, advised that this is the form of the policy being placed forward for all employees, and he advised of the process for implementing this with the other bargaining units and for employees that are not represented. Bill Flaherty, provided information on his understanding of this matter through the negotiation process, and he reviewed concerns he has with the policy. He stated he does not feel that this policy will keep the tests confidential. He also hoped that a uniform policy would be adopted for everyone. Tom Guarino noted that there was an agreement with the Union and the bargaining team at the end of the negotiation process that there would be no comments made on the negotiations such as Bill made today. He read what was agreed to. Supervisor Bibby stated she feels there was confusion on this matter, and she does not feel that Bill violated anything in asking for clarification. (M)Stetson, (S)Bibby, item 7 was approved/Ayes: Unanimous.

CA-7 Approve a Drug and Alcohol Testing Policy for Positions in the Service Employees International union (SEIU) Bargaining Unit (County Administrative Officer); Res. 05-176

cc: Mary Hodson, Deputy County Administrative Officer
Cathi Boze, Agriculture Commissioner/Sealer
Bob Lowrimore, Assessor/Recorder
Ken Hawkins, Auditor
John Davis, Building Director

Debbie Walton, Child Support Services Director
Mary Williams, Community Services Director
Tom Guarino, County Counsel
Rick Peresan, Technical Services Director
Bob Brown, District Attorney
Karen Robb, Farm Advisor
Blaine Shultz, Fire Chief
Charles Mosher, Health Officer
Cheryle Rutherford-Kelly, Human Services Director
Jacque Meriam, Librarian
Kris Schenk, Planning Director
Gail Neal, Chief Probation Officer
Dana Hertfelder, Interim Public Works Director
Jim Allen, Sheriff
Susan Crain, Tourism Coordinator
Marjorie Wass, Treasurer/Tax Collector/County Clerk
File

DEPARTMENT: Personnel

BY: Rich Inman
PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

Approve a Drug and Alcohol Testing Policy for positions in the Service Employees International Union (SEIU) bargaining unit. During recent negotiations with SEIU, the County and SEIU agreed to adopt a Drug and Alcohol Testing policy for positions represented by SEIU. The County agreed that if a different policy is proposed for non-SEIU positions subsequent to the adoption of this one, the County will notify SEIU. If requested, both parties will meet and confer on the differences between the attached policy and the policy being proposed for non-SEIU positions.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board and the Union tentatively agreed to adopt the attached policy. This action will ratify the tentative agreement.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Financial Impact? () Yes () No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$ _____		List Attachments, number pages consecutively
Additional Funding Needed: \$ _____		_____
Source:		Drug and Alcohol Testing Policy
Internal Transfer _____		_____
Unanticipated Revenue _____ 4/5's vote		_____
Transfer Between Funds _____ 4/5's vote		_____
Contingency _____ 4/5's vote		_____
() General () Other		_____

CLERK'S USE ONLY:

Res. No.: 05-176 Ord. No. _____
Vote - Ayes: 5 Noes: _____
Absent: _____

AW Approved
6 Minute Order Attached () No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: _____
Deputy

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
Comments:

CAO: Rob

COUNTY OF MARIPOSA

DRUG AND ALCOHOL TESTING POLICY

I. GENERAL POLICY

This policy outlines the standards at the County of Mariposa (County) for drug and alcohol use for all employees. The County is committed to providing quality public service and a healthy, safe, satisfying work environment for its employees. Substance abuse can detrimentally affect job performance and employee and public safety. The County has a significant interest in ensuring the health and safety of its employees. It also has an obligation to ensure that its employees do not present a safety risk to the public at large. To achieve these objectives, the County must maintain a drug and alcohol free workplace.

II. SCOPE

This policy applies to all employees when they are on County property or when performing any County-related business. It also applies to employees operating County vehicles or equipment. This policy sets forth the rights and obligations of all County employees.

III. PROHIBITIONS

A. Unlawfully manufacturing, distributing, dispensing, possession, or consuming any controlled substance or alcohol at any time while conducting or performing County business, regardless of location, is prohibited. This includes while operating or being responsible for the operation, custody or care of County equipment or property, on County property, or while subject to duty (i.e., standby duty).

B. Reporting to work or being on call for work while an employee is under the influence of alcohol or an illegal drug is prohibited.

C. Possessing or selling (directly or through a third party) illegal drugs or providing illegal drugs to anyone (including employees), while on duty is prohibited.

D. Using or being under the influence of any legally obtained drug (over the counter or prescription) by an employee while performing County business, while on County property, or while on standby is prohibited to the extent that such use or influence affects the safety of co-workers, members of the public, the employee's job performance, or the safe or efficient operation of County's business is prohibited. An employee may continue to work, even though under the influence of a legal drug, if County management has determined, after consulting with a competent medical authority, that the employee does not pose a threat to their co-workers and that the employee's job performance is not significantly affected by the legal drug. Otherwise, the employee may be reassigned to an alternative position, if available, or be required to take a leave of absence or comply with other appropriate action as determined by County. It is the employee's responsibility to notify his or her supervisor prior to reporting to duty. An employee

will not face disciplinary action for the first time when he or she is found to be under the influence of a legally obtained drug, if the test results obtained under the procedure below and other available evidence establish that the employee took the drug in the proper dosage.

IV. POLICY ENFORCEMENT

A. DRUG AND ALCOHOL TESTING

1. Pre-Placement/Post-Offer Controlled Substance (Drug) Testing.

An applicant for a County position shall be required to undergo a drug screening analysis. Any offer of employment by County will be conditioned upon compliance with this Policy. The applicant will be requested to execute a consent form which includes a waiver and release. The form will be completed by the applicant and by the collection center at the time of collection. A positive test indicating the presence of controlled substances as defined in this Policy will constitute disqualification of the applicant for the position.

2. Reasonable Suspicion Testing.

The County reserves the right to require any existing employee to undergo drug or alcohol testing if there is a reasonable suspicion that the employee has engaged in prohibited conduct as defined in this Policy. Reasonable suspicion shall, whenever possible, be evaluated based on personal observations by the department manager and/or supervisor who is familiar with the employee's typical behavior.

Factors which may constitute grounds for a reasonable suspicion include but are not limited to such factors as:

1. Incoherent or slurred speech
2. Odor of alcohol on the breath
3. Staggering gait, disorientation, or loss of balance
4. Red and watery eyes
5. Paranoid or bizarre behavior
6. Drowsiness

Only a department manager or higher authority with the concurrence of another supervisor or department manager may request a drug or alcohol test based on reasonable suspicion after they have considered the facts and/or evidence in the particular case and agree that they constitute a finding of reasonable suspicion. The department manager requesting an employee to submit to a drug or alcohol test based on reasonable suspicion must document facts constituting reasonable suspicion in writing. Only a trained supervisor will make

this determination. Upon request, the employee may receive a copy of the documented facts within ten (10) days of the test.

Employees reasonably believed to be under the influence of drugs or alcohol shall not be permitted to engage in further work. In addition, such employees shall not be permitted to drive themselves from the worksite. A supervisor will see that the employee is transported to the designated collection center.

A controlled substance test is considered positive when a verified confirmation test indicates specimens have measurable concentrations of a particular class of drug. Controlled substances will be tested under the Department of Health and Human Services ("DHHS") guidelines. The threshold amounts for a verified positive test are those established in the DHHS guidelines.

An alcohol test is considered positive when a verified confirmation test indicates a breath alcohol content greater than 0.04. "Alcohol Concentration Level" as defined in the Definition Section of this Policy. Employees who, on a verified confirmation test, have any reading for alcohol below that level will not be returned to duty during that shift, however they will not be subject to discipline.

3. Searches

County reserves the right to search all County property or equipment and to enlist the assistance of law enforcement personnel in connection with the enforcement of this Policy.

4. Confidentiality

Test results and related documentation shall be considered confidential personnel records to the extent permitted by law and shall be used only for lawful purposes.

B. CONSEQUENCES FOR A POSITIVE ALCOHOL AND/OR DRUG TEST

1. Discipline

A rehabilitation program is available for those employees having a positive controlled substance and/or alcohol test on a one-time basis only. A second verified positive test under any circumstances shall constitute cause for termination. Failure to complete a treatment program provided by the Substance Abuse Professional (SAP) will be treated as a second positive test.

Program costs and subsequent controlled substance and/or alcohol testing costs will be paid by the employee. When recommended by the SAP, participation in and completion of the rehabilitation program is mandatory. Prior to return to duty testing, an employee must following the rehabilitation program recommended by the SAP and agree to sign a return to duty agreement. The duration and frequency of follow-up testing will be determined

by the SAP but will not be shorter than one year or longer than five years. This provision in no way precludes County from taking appropriate disciplinary action for violation of this policy.

2. Rehabilitation.

Within the first five working days after a verified positive test result, a conference will be conducted between the employee and a human resources contact. If warranted, the employee will be requested to participate in a substance abuse rehabilitation program developed by an SAP chosen by the County. After completing a program, the employee may be subject to return-to-duty and unannounced follow up testing for a period of 12 to 60 months, as determined by the SAP. Details will be outlined in a Return-to-Duty Agreement.

Employees may use accumulated sick leave, vacation time, or compensatory time to participate in a rehabilitation program. All program costs and subsequent controlled substance and/or alcohol testing costs will be paid by the employee. Failure to participate in and complete such a program will result in employment termination.

3. Return-to-Duty

Employees who have violated the prohibition set forth in this Policy shall submit to a return-to-duty test before returning to their position. The test result must indicate no presence of alcohol and/or a verified negative result on a controlled substance test.

4. Follow up Testing

After the return-to-duty test, employees will also be subject to unannounced follow up testing. The number and frequency of tests shall be determined by an SAP, but at least six tests shall be performed during the first 12 months following the employee's return to duty. Follow up testing may be done for up to 60 months, but the SAP can terminate the requirement after the first six tests, if he/she determines testing is no longer necessary.

C. REFUSAL TO SUBMIT

Any employee who refuses to submit to a drug and/or alcohol test immediately when requested by a supervisor or law enforcement personnel will be treated in the same manner as an employee who has failed an alcohol or controlled substance test, as defined herein, and will be subject to disciplinary action.

D. VOLUNTARY ADMITTANCE

Employees who believe they may have a substance abuse problem are encouraged to take the initiative in voluntarily seeking assistance. Those voluntarily seeking help can make a confidential request for assistance to their supervisor. The employee will be referred to an SAP for evaluation and rehabilitation recommendations. Employees may use accumulated sick leave, vacation time, or compensatory time to participate in a rehabilitation program, and program costs

will be paid by the employee. After approval from the SAP, the employee may return to work and may be subject to unannounced follow up testing, based on the SAP's recommendations. Any employee failing to complete the program will be subject to termination. The employee's decision to seek assistance will not be used as the basis of discipline. However, seeking help will not be a defense to imposition of discipline if facts indicating a violation of this Policy exist separate from the seeking of assistance.

NOTE: Health insurance plans may provide coverage for rehabilitation costs. Health benefits information can be obtained from the County's benefit information contact.

E. EMPLOYEE CONVICTION REPORTING RESPONSIBILITY

All employees must, as a condition of employment, abide by the terms of this Policy and report any conviction under a criminal drug statute for violations occurring on or off County premises while conducting County business. A report of conviction must be made to the human resources contact within five days after conviction. Failure to report such convictions will subject the employee to discipline, up to and including dismissal, in accordance with the County's rules and regulations.

V. EMPLOYEE RIGHTS

An employee suspected of violating the rules prescribed herein shall be entitled to representation during any interviews which could lead to disciplinary action by the County, regardless of whether these interviews occur before or after the sample is taken.

The sample collection process shall include the opportunity for the employee to provide information about factors other than illegal drug use, such as taking prescribed medication which could cause a positive test result. This information should be submitted in a sealed envelope to be opened only by the Medical Review Office if the test result is positive.

The employee shall receive a full copy of any test results and related documentation of the testing process.

All confirmed positive samples shall be retained by the testing laboratory in secure frozen storage for one year following the test or until the sample is no longer needed for appeal proceedings or litigation, whichever is longer.

VI. CONFIDENTIALITY

The County shall maintain records of the circumstances and results of any employee testing under this Policy. These records, and any other information pertaining to an employee's drug or alcohol test, shall be considered confidential and shall be released only to:

A. The employee who was tested or other individuals designated in writing by that employee;

B. The Medical Review Officer; or

C. Individuals who need the records or information to:

1. Determine or assist in determining, what action County should take in response to positive test results; or

2. Respond to appeals or litigation arising from the drug or alcohol test or related actions.

VII. DEFINITIONS

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol.

Alcohol Concentration means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this regulation. For example, 0.02 means 0.02 grams of alcohol in 210 liters of expired deep lung air. Blood tests shall not be used to determine alcohol concentration, unless administered by on-site police or public safety officials in a post accident situation.

Breath Alcohol Technician (BAT) means a person trained to operate the Evidential Breath Testing (EBT) device that the technician is using in the alcohol testing procedures. BATS are the only qualified personnel to administer the EBT tests.

Chain of Custody means the procedures to account for the integrity of each urine specimen by tracing its handling and storage from point of collection to final disposition.

Collection Site means a place designated by County where individuals present themselves for the purpose of providing a specimen of either urine and/or breath.

Confirmation Test for alcohol testing means a second test, following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration. For controlled substances testing, it means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test, in order to ensure reliability and accuracy. Gas Chromatography/Mass Spectrometry (GC/MS) is the only authorized confirmation method of cocaine, marijuana, opiates, amphetamines, and phencyclidine.

Controlled Substance (Drug) Test is a method of detecting and measuring the presence of controlled substances, whether legal or illegal, in a person's body. A controlled substance test may be either an initial test or a confirmation test. An initial controlled substance test is designed to identify specimens having concentrations of a particular class of drug above a specific concentration level. It eliminates negative specimens from further consideration.

Evidential Breath Testing Device (EBT) means the device to be used for breath alcohol testing.

Medical Review Officer (MRO) means a licensed physician responsible for analyzing laboratory results generated by an employer's controlled substance testing program. The MRO is knowledgeable about substance abuse disorders and has appropriate medical training to interpret and evaluate positive test results.

Pre-Employment Controlled Substance Testing is conducted before applicants begin work, but after an offer to hire.

Reasonable Suspicion Alcohol and/or Controlled Substance Testing is conducted when a trained supervisor has a good faith belief based on specific articulable facts or evidence that an employee may have violated the prohibitions set forth in Part III. A reasonable suspicion could derive from observation of drug or alcohol use or possession, or the physical symptoms of being under the influence of drugs or alcohol (i.e., body odor, slurred speech, or inability to walk or stand).

Refusal to Submit means failing to provide an adequate breath or urine sample for testing without a valid medical explanation or engaging in conduct that clearly obstructs the testing process (i.e., verbal declarations, obstructive behavior or physical absence resulting in the inability to conduct the test.)

Substance Abuse Professional (SAP) means a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker (with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders (the license alone does not authorize this), Certified Employee Assistance Professional (CEAP), or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances related disorders.

Trained Supervisor means a person in authority who has had at least one hour of training on the signs and symptoms of alcohol abuse and at least an additional hour of training on the signs and symptoms of controlled substance abuse.