

ORDINANCE NO. 251A-89

AN ORDINANCE PROVIDING FOR PRE-EMPLOYMENT DRUG SCREENING AND TESTING FOR ALL NEW EMPLOYEES; AND PROVIDING FOR SCIENTIFIC DRUG SCREENING AND TESTING OF PRESENT EMPLOYEES AND PUBLIC OFFICIALS OF THE CITY; PROVIDING FOR LABORATORY AND VERIFICATION OF TESTS; PROVIDING FOR DISCIPLINARY MEASURES; PROVIDING FOR AN EFFECTIVE DATE OF ORDINANCE; PROVIDING FOR A CUMULATIVE CLAUSE, PROVIDING FOR A SEVERABILITY CLAUSE

WHEREAS, the City Council and the citizens of the City of Willow Park, Texas, are concerned with the safety of its employees and elected officials (hereinafter in this Ordinance, the term employees shall include elected officials) and the safety and welfare of its citizens with regard to the services rendered to the citizens by the City's employees; and

WHEREAS, the City Council desires to protect the safety and the welfare of the City's employees and its citizens against employees who may be using illegal or non- prescription drugs or marijuana in such a manner as to endanger fellow employees and/or citizens; and

WHEREAS, the City Council has determined that the needs of safety and the health and welfare of its employees and citizens and the need of the City's employees to project a favorable image to all citizens whom they serve will be best served, if drug testing and screening procedures and policies are established to test and screen the City's employees who may be using such illegal drugs; and

WHEREAS, the City has a legal responsibility and a management obligation to ensure a safe work environment; and

WHEREAS, the City has a paramount interest in protecting the public by ensuring that its employees have the physical stamina and emotional stability to perform their assigned duties in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF Willow Park, TEXAS:

Section 1. Pre-employment Drug Screening and Testing. All applicants for employment with the City of Willow Park, Texas, shall be required to submit voluntarily to scientific drug screening and testing prior to their employment with the City. The City Manager shall arrange such drug screening at a reputable and accredited scientific laboratory as provided herein and the City shall bear the costs of such testing. The results of such testing shall remain confidential. The City Manager shall have the right to accept or reject any applicant for employment notwithstanding the results of any such

test.

A. Any tests conducted shall be for the purpose of legitimate inquiry into the use of drugs in order to ensure a safe workplace, and not for the purpose of criminal prosecution.

Section 2. The City hereby establishes the following drug testing and screening procedure for its employees to determine the use of illegal non-prescription drugs and controlled substances as defined by the laws and statutes of the State of Texas, including but not limited to marijuana.

A. Random Drug Screening and Testing for employees. One or more employee from each department in the City may be selected at random for a drug screen and test periodically. Such policy and procedure shall provide for "blind" selection of one or more employees from each department to be tested. Such procedure shall provide for a system that allows no discretion by the City Manager or Administrator as to who shall be tested or as to how the test shall be administered.

B. In the event that any City employee has reasonable cause to believe that any employee of the City is working on his job with the City while he is under the influence of illegal non-prescription drugs or controlled substances, including but not limited to marijuana, and that such employee may be a danger to his fellow employees or the citizens of the City, he shall report the employee using such drugs to his or her Department Head, or in the event the employee is an elected official such report shall be made to the City Council. Symptoms or circumstances that may provide justification for testing either in and of themselves, or together with other symptoms and circumstances include, but are not limited to:

1. Absenteeism;
2. Aberrant conduct;
3. Money problems;
4. Reliable tips;
5. Citizen complaints;
6. Accidents;
7. Physical symptoms; and
8. Discovery of incriminating evidence

Such report shall be strictly confidential and in writing and shall state what activities or actions of the employee using such drugs gave the reporting person

reasonable cause to believe that the employee may be working under the influence of such illegal drugs.

C. The Department Head shall investigate the report and in the event he reasonably believes and is of the opinion that such employee may be using and working under the influence of illegal non-prescription drugs or controlled substances or marijuana, the Department Head shall notify the City Manager of such written report. The City Manager may, if he or she deems it to be necessary, contact the employee and his or her Department Head for a conference regarding the report.

D. The City Manager, if he or she deems advisable, may request, in writing, that the employee voluntarily submit to a scientific drug test and analysis screening for use of illegal non-prescription drugs or controlled substances including but not limited to marijuana. The City shall pay for such drug testing.

E. In the event the employee refuses to submit voluntarily to drug testing as provided herein, whether it be required as a result of random selection as provided herein or at the request of the City Manager based upon the written report set forth above, the City Manager, or the City Council where the individual involved is an elected official, shall advise the employee that refusal of such drug testing and screening by the employee might result in appropriate disciplinary action, suspension without pay and/or dismissal from the employment of the City, provided however, that dismissal of the employee under these circumstances may be appealed to the City Council. If an appeal is taken to the City Council, the ruling of the City Council shall be final. All appeals to the City Council must be in writing within ten days of the date such employee is suspended without pay or dismissed from employment from the City.

Section 3. Type of Test

A. In the event the employee desires to voluntarily submit to drug testing and screening, the City Manager shall arrange confidential drug screening of the employee at a reputable and accredited scientific laboratory.

B. The laboratory chosen by the City council shall provide the City Manager with a detailed written report describing the testing procedure used which establishes a strict chain of custody of the specimen submitted for testing and a written report of the results of such test. The results of such tests shall also be provided to the employee.

C. The City Manager shall direct the laboratory conducting such drug testing and screening to provide a written report confirming and verifying all positive results by a separate methodology such as Gas Chromatography/Mass Spectrometry.

D. Any test shall be administered in such a manner as to minimize the intrusiveness of the test. Specifically:

1. The tester may not watch the donation of a urine sample;
2. There shall be no strip searches or searches of body cavities;
3. Testing must be scheduled so as not to come as a surprise to the person being tested; and
4. The location of the test shall minimize the invasion of privacy.

Section 4 Positive Testing Results.

A. In the event the laboratory submits a written report describing positive test results of an employee, the City Manager, or the City Council where the positive test result was obtained from a sample taken from an elected official, shall meet with the employee and present the results to the employee and his or her Department Head. The City Manager, or the City Council where the positive test result was obtained from a sample taken from an elected official, shall within fifteen (15) days of the receipt of such laboratory report advise the employee of what disciplinary action, if any, is to be taken regarding reprimand (public or private), other appropriate disciplinary action, suspension without pay and/or dismissal from employment of the City. Such suspension or dismissal may be appealed to the City Council by the employee by written notice to be filed with the City Secretary within ten (10) days of the date of such suspension or dismissal. The action of the City Council shall be final.

B. In the event the City Manager and the Department Head feel that a drug program will benefit the employee and will also benefit the City, the City Manager may direct the employee to participate in a drug rehabilitation program. The City Manager must approve any drug rehabilitation program and shall establish such policies and procedures regarding the participation of the employee in such program. The cost of such rehabilitation program shall be paid by the employee. The City shall not pay for any such program and shall not be responsible in any manner for the failure of such employee to pay such costs, if any.

C. In no event shall the City Manager be required to provide or to offer every employee the option to participate in a drug rehabilitation program. Such decision is solely within his or her discretion and subject to the approval of the department head of such employee.

D. Any disciplinary action taken against an elected official shall be decided upon by the City Council, and not the City Manager, and shall be in accordance with any and all applicable statutes, ordinances, charter provisions (if any) and other rules of law including any and all constitutional provisions applicable thereto.

Section 5. Notice to Employees. The City Manager shall upon final passage hereof notify every city employee of this ordinance by delivering a copy of the same to each employee and by posting the ordinance on various bulletin boards

commonly used by the employees. Further, upon drafting the written policies and procedures for the random drug testing the City Manager is also directed to distribute such policies and procedures to each employee of the City.

Section 6. The provision set forth in Section 1 which provides for Pre-employment Drug Screening and Testing shall become effective immediately upon the final passage of this ordinance. All other provisions and section of this ordinance shall become effective on July 11, 1989, provided that the City Manager has complied with the provisions of Section 5 of this ordinance.

Section 7. This ordinance shall be cumulative of all provisions of ordinances of the City of Willow Park, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

Section 8. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

Section 9. The City Secretary is directed to publish his ordinance as prescribed by law.

PASSED AND ADOPTED the 30th day of May, 1989.

J. Mark Bumpas

Mayor

ATTEST:

Aref Hassan

City Secretary

PASSED AND ADOPTED ON THE SECOND AND FINAL READING THIS
THE 11TH day of July, 1989.

J. Mark Bumpas

Mayor

ATTEST:

Aref Hassan

City Secretary

APPROVED:

Henry E. Kerry

City Attorney